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# New Mexico Register

The official publication for all official notices of rulemaking  
and filing of proposed, adopted and emergency rules.

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## **The New Mexico Register**

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# New Mexico Register

Volume XXXII, Issue 16

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## Notices of Rulemaking and Proposed Rules

### CHILDREN, YOUTH AND FAMILIES DEPARTMENT

#### NOTICE OF PUBLIC HEARING

Protective Services Division (PSD) of the Children, Youth and Families Department (CYFD) will hold a public hearing via zoom link on Friday, September 24<sup>th</sup>, 2021, from 3:00 p.m. to 5:00 p.m. to take comments regarding the proposed new policy 8.10.5 NMAC Comprehensive Addictions and Recovery Act (CARA) Guidelines.

The purpose of the new proposed rules is to be in compliance with Section 32A-3A-13 NMSA 1978 and 32A-1-4 NMSA 1978. The new proposed rules provide guidance on the CYFD/DOH CARA program in accordance with these Statutes.

A free electronic copy of the proposed changes can be found at <https://cyfd.org/for-providers/rfp>. Due to COVID, physical copies will not be distributed or offered.

Zoom link for the public hearing is available upon request. All requests must be sent to Serra Dittel-Payne, PSD Policy and Procedure Coordinator at [Serra.Dittel-Payne@state.nm.us](mailto:Serra.Dittel-Payne@state.nm.us) or call 505-412-9597.

Written comments can be provided at the virtual public hearing or via e-mail to Serra Dittel at [serra.dittel-payne@state.nm.us](mailto:serra.dittel-payne@state.nm.us). All written comments must be received no later than 5:00 p.m. on Friday, September 24<sup>th</sup>, 2021. Written comments provided carry the same weight as comments received during the public hearings.

Subsection D of Section 9-2A-7 NMSA 1978 states "The secretary may make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions" which provides the authority authorizing the proposed

rule and the adoption of the proposed rule.

The PERA building is accessible to people with disabilities. Documents can be available in different formats to accommodate a particular disability upon request by calling 505-827-8400. If assistance is required to attend the hearing, please call 505-827-8400 to arrange accommodation.

### HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

#### NOTICE OF RULEMAKING

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to amend the New Mexico Administrative Code (NMAC) rule 8.200.400 NMAC - *General Recipient Rules-General Medicaid Eligibility*, 8.200.410 NMAC - *General Recipient Rules-General Recipient Requirements*, 8.231.400 NMAC - *Medicaid Eligibility-Infants of Mothers Who Are Medicaid Eligible Recipient Policies*, 8.231.600 NMAC - *Medicaid Eligibility-Infants of Mothers Who Are Medicaid Eligible Benefit Description*, 8.234.400 NMAC - *Medicaid Eligibility-SSI Ineligibility-Due to Income or Resources from an Alien Sponsor Recipient Requirements*, 8.234.500 NMAC - *Medicaid Eligibility-SSI Ineligibility - Due to Income or Resources from an Alien Sponsor; Income and Resource Standards*, 8.243.400 NMAC - *Medicaid Eligibility-Working Disabled Individuals Recipient Policies*, 8.249.400 NMAC - *Medical Assistance Program Eligibility-Refugee Medical Assistance Program Recipient Requirements*, 8.249.500 NMAC - *Medical Assistance Program Eligibility -Refugee Medical Assistance Program, Income and Resource Standards*, 8.250.400 NMAC - *Medical Assistance Program*

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Section 9-8-6 NMSA 1978, authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

Notice Date: August 24, 2021  
Hearing Date: September 24, 2021  
Adoption Date: Proposed as January 1, 2022

Technical Citations: Section 208 of the Consolidated Appropriations Act,



2021; 42 Code of Federal Regulation 435.603(h)(2)

The Department is proposing to amend the rule as follows:

Background

The Centers for Medicare and Medicaid Services (CMS) has indicated that the use of the term “alien” is outdated and should be replaced with the term “non-citizen.” The Department is proposing rule changes to change “alien” to “non-citizen” throughout our rules.

Effective December 27, 2020, section 208 of the Consolidated Appropriations Act, 2021 requires states and the District of Columbia (DC) to provide Medicaid coverage for individuals who are considered Compact of Free Association (COFA) migrants (also referred to as compact citizens). COFA is an agreement between the United States and the three Pacific Island sovereign states of Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, known as Freely Associates States. States must cover COFA migrants in Medicaid as “qualified non-citizens” without a 5-year waiting period, if otherwise eligible under the Medicaid state plan or section 1115 demonstration. The Department is updating citizenship rules to include COFA migrants as “qualified non-citizens” exempt from the 5-year waiting period.

The Department is proposing additional rule changes to no longer require an interview for Program of All-Inclusive Care for the Elderly (PACE) applicants, and update the “Income Eligibility” section for Modified Adjusted Gross Income (MAGI) Medicaid categories to remove outdated language, make the language consistent, and clarify that the Department uses current monthly income in accordance with 42 Code of Federal Regulations 435.603(h)(2).

The Department is proposing to amend these rules as follows:

8.200.400, 8.200.410, 8.231.400, 8.231.600, 8.234.400, 8.234.500, 8.243.400, 8.249.400, 8.249.500, 8.250.400, 8.252.400, 8.285.400, 8.285.500, 8.285.600, 8.291.410 and 8.325.10 NMAC.

These rules are being updated to change the term “alien” to ‘non-citizen” throughout.

8.200.410 NMAC

Section 11 citizenship is being updated to incorporate the new COFA requirements.

8.280.400 NMAC:

Section 11 of the PACE rules are being updated to clarify that an interview is not required in accordance with Institutional Care rules found at 8.281.400.11.

8.292.500, 8.293.500, 8.294.500, 8.295.500, 8.296.500, 8.299.500 NMAC:

Section 12 is updated to remove outdated language, inconsistent language across Medicaid categories, and clarify that income eligibility for Parent/Caretaker, Pregnant Women, Pregnancy-Related Services, and Children under 19 Medicaid categories use modified adjusted gross income methodology using current monthly income, per State option, as opposed to projected annual household income per 42 Code of Federal Regulations 435.603(h)(2). The state defines current monthly income as a 30-day period.

Section 11 for Other Adult and Family Planning Medicaid categories is updated to reflect the same language changes cited in the prior paragraph above for consistency.

8.200.400, 8.200.410, 8.231.400, 8.231.600, 8.234.400, 8.234.500, 8.243.400, 8.249.400, 8.249.500, 8.250.400, 8.252.400, 8.285.500, 8.291.410, 8.292.500, 8.293.500, 8.294.500, 8.295.500, 8.296.500, 8.299.500 NMAC.

Section 8 is being updated to include the Department’s mission statement. Throughout all the proposed rules amendments have been made to address formatting requirements.

The register for these proposed amendments to these rules will be available August 24, 2021 on the HSD web site at <https://www.hsd.state.nm.us/lookingforinformation/registers/> or at <https://www.hsd.state.nm.us/public-information-and-communications/opportunity-for-public-comment/public-notices-proposed-waiver-changes-and-opportunities-to-comment/comment-period-open/>. If you do not have Internet access, a copy of the proposed rules may be requested by contacting MAD in Santa Fe at 505-827-1337.

The Department proposes to implement these rules effective January 1, 2022. A public hearing to receive testimony on these proposed rules will be held via conference call on Friday, September 24, 2021 at 9 a.m., Mountain Time (MT). Conference phone number: 1-800-747-5150. Access Code: 2284263.

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATT: Medical Assistance Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348.

Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: [madrules@state.nm.us](mailto:madrules@state.nm.us). Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MT on September 24, 2021. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the HSD website at <https://www.hsd.state.nm.us/public-information-and-communications/opportunity-for-public-comment/public-notices-proposed-waiver-changes-and-opportunities-to-comment/comment-period-open/> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD in Santa Fe at 505-827-1337. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the MAD upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

## NURSING, BOARD OF NOTICE OF PROPOSED RULEMAKING

The New Mexico Board of Nursing (hereinafter the “Board”) will hold a public rule hearing on Monday, September 27, 2021 at 9:00 a.m. Due to the COVID-19 pandemic and state of emergency, the rule hearing will be held online and telephonically via Zoom teleconferencing. A Board staff member will also be present on the day of the hearing from approximately 8:00 a.m. to 9:00 a.m. at 6301 Indian School Rd, NE, Suite 710, Albuquerque, NM 87110, to accept comments in written form and submit those comments to the Hearing Officer during the hearing.

To attend the hearing online, please use the following link: <https://us02web.zoom.us/j/83068857429>

To join the meeting by phone, please call: (253) 215 8782 or (346) 248 7799 or (669) 900 9128 or (301) 715 8592 or (312) 626 6799 or (646) 558 8656.  
Webinar ID: 830 6885 7429

The purpose of the rule hearing is to consider a proposal to repeal and replace 16.12.1 NMAC (“General Provisions”) and to promulgate a new

16.12.12 NMAC (“Discipline and Application Denials”).

Persons desiring to view the proposed rules may download them from <https://nmbon.sks.com/rule-changes.aspx>. If you do not have internet access, a copy of the proposed rules may be requested by contacting the NMBON at (505) 841-9083.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes via email to [sasha.poole@state.nm.us](mailto:sasha.poole@state.nm.us). Alternatively, members of the public may submit written comments by sending an original, signed copy to:

New Mexico Board of Nursing  
ATTN: NMBON Public Comments  
6301 Indian School Road, NE,  
Suite 710  
Albuquerque, NM 87110

The Board will accept written public comment received at or before 5:00 PM on Friday, September 25, 2021, as well as written public comment hand-delivered between approximately 8:00 a.m. to 9:00 a.m. at the above-referenced address on the date of the rule hearing. All written comments will be posted to the Board’s website no later than three business days following receipt to allow for public viewing.

Designated Hearing Officer Melissa Charlie, PhD, RN, Director of Education and Practice, will preside over the hearing in lieu of the Board. Following the hearing, the Hearing Officer will send the Board a memorandum summarizing the contents of the hearing along with the hearing transcript, written public comments, and any exhibits admitted during the hearing.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate

in the public hearing, please contact the NMBON at (505) 841-9083. The NMBON requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

**Statutory Authority:** Subsection A of Section 61-3-10 NMSA 1978 of the Nursing Practice Act, Sections 61-3-1 to -30 NMSA 1978, specifically authorizes the Board to “adopt and revise such rules and regulations as may be necessary to enable it to carry into effect the provisions of the Nursing Practice Act and to maintain high standards of practice.” In addition, Section 61-1-36 NMSA 1978 of the Uniform Licensing Act, Sections 61-1-1 to -36 NMSA 1978, requires the Board to “promulgate and post on the board’s website rules relating to licensing requirements to list the specific criminal convictions that could disqualify an applicant from receiving a license on the basis of a previous felony conviction.”

### **Purpose of the proposed rules:**

The proposed rules are intended to provide greater clarity in existing regulatory and statutory requirements, ensure continued high levels of professionalism among licensees and certificate holders, and to generally satisfy the Board’s statutory obligation to “promote, preserve and protect the public health, safety and welfare.” Section 61-3-2. In addition, several of the proposed rule changes are intended to address recent statutory changes to the Uniform Licensing Act. See S.B. 2, 55th Leg., 1st S.S. (N.M. 2021), available at <https://www.nmlegis.gov/Sessions/21%20Special/final/SB0002.pdf>, and H.B. 120, 55th Leg., 1st Sess. (N.M. 2021), available at <https://www.nmlegis.gov/Sessions/21%20Regular/final/HB0120.pdf>.

### **Summary of Proposed Changes:**

The Board summarizes its proposed changes to its administrative rules as follows:



**16.12.1 NMAC - General Provisions**

The proposed changes to Part 1 of the Board's current rules consist of repealing the existing language in its entirety and replacing it with modified language. The new Part 1 would set forth critical definitions applicable to all of the Board's rules. It would also set general procedural requirements for the Board and the Board's staff such as the election of Board officers, the responsibilities and authority of the Executive Director, and requirements for Board meetings. The new Part 1 would also clarify the roles and functions of the Board's various committees and set ethical standards for Board members and staff. Finally, the new Part 1 would set new informational obligations on licensees and certificate holders such as maintaining current and accurate contact information on file with the board and maintaining maintain the current and accurate name and mailing address of the licensee or certificate holder's employer on file with the board.

**16.12.12 NMAC - Discipline and Application Denials**

This new rule, which recodifies and amends many of the existing provisions in 16.12.1.9 NMAC, would create a new Part 12 of the Board's rules governing discipline and application denials. As a general overview, the new Part 12 would establish procedures for disciplinary and application proceedings conducted by the Board as well as the substantive grounds for disciplinary action and application denials by the Board. Notably, the rule amends and clarifies the definitions of "incompetent" and "unprofessional conduct," revises the requirements for former licensees and certificate holders to reinstate revoked licenses and certificates, and clarifies the Board's use of serious letters of concern. The rule also adds new language governing the Board's consideration of criminal convictions in applications and disciplinary matters, pursuant to Section 61-1-36 of the Uniform Licensing Act, listing the specific criminal convictions that

could disqualify an applicant from receiving a license on the basis of a previous felony conviction and adding related limitations on the Board's consideration of such convictions.

The purpose of the rule is to ensure that applications and complaints against licensees and certificate holders are evaluated and adjudicated in a fair and impartial manner that complies with due process while ensuring the public's continued confidence in the profession.

**Technical Information:** No technical information provided the basis for either of the proposed rules.

**PRIVATE  
INVESTIGATIONS  
ADVISORY BOARD**

**NOTICE OF PROPOSED  
RULEMAKING AND RULE  
HEARING**

The Regulation and Licensing Department (Department) Private Investigations Advisory Board will hold a rule hearing on Friday, September 24, 2021 at 9:00 a.m. to 1:00 p.m. The rule hearing will be held via Cisco WebEx, please use the following link:

<https://nmrld.webex.com/nmrld/onstage/g.php?MTID=eef119fc708f0e1d5fc027bac48021f81>

To join the meeting by phone: 1-415-655-0002 United States Toll

Event Number (Access Code): 146 304 7074; no password

The purpose of the rule hearing is to consider proposed amendments to the following rules:

- 16.48.2 NMAC – Requirements for Licensure
- 16.48.3 NMAC – Standards of Practice
- 16.48.4 NMAC – Mandatory Firearms Training
- 16.48.6 NMAC – Continuing Education
- 16.48.7 NMAC – License Renewal,

Inactive Status and Reinstatement  
16.48.8 NMAC – Licensure for Military Service Members, Spouses and Veterans

On August 24, 2021 you may obtain and review copies of the proposed changes and public comments, by going to the Private Investigation's website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/private-investigations/pi-laws-rules-and-policies/>

or by contacting the Boards and Commissions Division at (505)690-5032.

The Department will begin accepting public comments on the proposed amendments beginning August 24, 2021. Please submit written comments on the proposed changes to Austin Basham, Board Administrator, via electronic mail at: [pipolygraph@state.nm.us](mailto:pipolygraph@state.nm.us), or by regular mail at P.O. Box 25101, Santa Fe, NM 87504 no later than Thursday, September 23, 2021. Comments received prior to the rule hearing will be posted to the RLD website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/private-investigations/pi-laws-rules-and-policies/>

Persons will also be given the opportunity to present their comments during the rule hearing.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact Austin Basham, Board Administrator (505)690-5032.

**Statutory Authority:** Legal authority for this rulemaking may be found in the Private Investigations Act, Sections 61-27B-1 through 61-27B-36 NMSA 1978, which among other provisions, specifically authorizes the Department to "adopt and enforce rules necessary to carry out the provision of the Private Investigations Act, including establishing professional ethical

standards.” See Section 61-27B-5(C) NMSA 1978.

#### Summary of Proposed Changes:

##### 16.48.2 NMAC – Requirements for Licensure

Clarifies Part 2 applies to licensure and registrations; removes the requirement for documentation for proof of age; removes private investigators and private patrol operators from surety bond requirements; revised sections related to fingerprinting for background investigations to comply with 61-27B-34 NMSA 1978, effective on July 1, 2020; revised the rule to require a Department approved standardized minimum training for security guard level one, level two, and level three training, and provides for review and comment of copies of the draft curriculum for each level; revised requirements for psychological evaluations for level three applicants; revised instructor certification requirements; requires update of instructor certifications every four years; requires instructors to complete four hours of continuing education specific to instructor development; removes the special event permit requirements as they are duplicative to Section 61-27B-19 NMSA 1978; and revised the rule to conform to the requirements in Section 61-1-35 NMSA 1978, effective May 20, 2020.

##### 16.48.3 NMAC – Standards of Practice

Removes sections regarding interview of applicants and consumption of alcoholic beverages; makes grammatical corrections.

##### 16.48.4 NMAC – Mandatory Firearms Training

Clarifies requirements for mandatory firearms training and provides the details for applicant qualification and licensure and registration compliance.

##### 16.48.6 NMAC – Continuing Education

Clarifies the definition of “renewal period” and adds private patrol operators to the requirement to

complete four hours of continuing education.

##### 16.48.7 NMAC – License Renewal, Inactive Status and Reinstatement

Requires all applications for licensure or registration to have instructions for completion of the renewal process and sets out the information that a complete application must include; revises the rule to remind licensees and registrants that they will receive a courtesy renewal notice via electronic mail, but ultimately renewal applicants will be responsible for timely renewal; revises requirements for reinstatement, inactive licensure or registration.

##### 16.48.8 NMAC – Licensure for Military Service Members, Spouses, Dependent Children, and Veterans

Amends Part 8 to comply with the requirements set out in Section 61-1-34 NMSA 1978, effective June 18, 2021.

## PUBLIC EDUCATION DEPARTMENT

### NOTICE OF PROPOSED RULEMAKING

**Public Hearing.** The New Mexico Public Education Department (PED) gives notice that it will conduct a public hearing on Tuesday, September 28, 2021 from 9 a.m. to 11 a.m. (MDT) in Mabry Hall, located in the Jerry Apodaca Education Building, 300 Don Gaspar Ave., Santa Fe, New Mexico 87501. The location of the public hearing is subject to change due to concerns surrounding COVID-19 and in accordance with Governor Michelle Lujan Grisham’s Executive Order 2021-044, Renewing the State of Public Health Emergency Initially Declared in Executive Order 2020-004, Other Powers Invoked in That Order, and All Other Orders and Directives Contained in Executive Orders Tied to the Ongoing Public Health Emergency; or with any executive order that supersedes Executive Order 2021-044. Continuous updates on hearing

changes and Zoom information will be provided on the PED website. The purpose of the public hearing is to receive public input on the proposed new rule 6.12.13 NMAC, COVID-19 School Requirements and the proposed repeal of 6.64.11 NMAC, TESOL Competencies, to be replaced with 6.64.11 NMAC, TESOL Competencies. At the hearing, the PED will provide a verbal summary statement on record. Attendees who wish to provide public comment on record will be given three (3) minutes to make a statement concerning the rule changes. Written comment will also be accepted at the hearing.

#### Explanation of Purpose of Text

The purpose of the proposed new rule **6.12.13 NMAC, COVID-19 School Requirements**, is to establish the requirements for the operation of public schools during the COVID-19 pandemic.

The purpose of the proposed repeal and replace of **6.64.11 NMAC, TESOL Competencies**, is: (1) to require teacher candidates who are seeking a TESOL endorsement to pass a content knowledge assessment in TESOL and ensure such teacher candidates have met a minimum of 24 credit hours in TESOL, which is a decrease from the current minimum number of credit hours required for the TESOL endorsement; (2) to allow two different options for licensed teachers to obtain a TESOL endorsement, including: (a) the requirement of passing a content knowledge assessment in TESOL or a department-approved TESOL licensure exam from another state and earning 12 credit hours in TESOL; or (b) the requirement of obtaining a minimum of 24 credit hours in TESOL; (3) to clarify the process for teachers who currently hold a TESOL certification from the National Board for Professional Teaching Standards; (4) to add the requirements for teachers who hold a reciprocal license from a place outside the United States to pass a content knowledge assessment in TESOL

or a department-approved TESOL licensure exam from another state; (5) to create a process for teacher candidates seeking to obtain waivers for credit hours in one language other than English; and (6) to clarify teacher competencies related to TESOL to ensure teachers have knowledge of first and second language acquisition and language development, in addition to knowledge of students, family partnerships, culture, and diversity.

### Summary of Text

The proposed new rule **6.12.13 NMAC, COVID-19 School Requirements**, includes the procedures public schools and local school districts are required to follow during the COVID-19 pandemic, including the measures required by public health orders and executive orders and department guidance for the operation of schools, school-sponsored activities, and school premises. The proposed new rule details COVID-19 safe practices, such as requiring school nurses and other healthcare providers to use standard precautions when caring for sick people as recommended by the centers for disease control and prevention (CDC). Additionally, the proposed new rule requires school districts and schools to honor tribal sovereignty and abide by applicable tribal public health orders, tribal executive orders, and tribal council resolutions.

The proposed repeal and replace of **6.64.11 NMAC, TESOL Competencies**, includes requirements teacher candidates, licensed teachers, teachers who hold a TESOL certification from the National Board for Professional Teaching Standards, and teachers with a reciprocal license from another state or from outside the United States must meet in order to qualify and receive a TESOL endorsement from the department to serve English language learners. The proposed repeal and replace also contains details related to the documentation to waive credit

hours in one language other than English and clarifies the required competencies and knowledge teachers are required to have in order to obtain a TESOL endorsement from the department.

### Statutory Authorization(s):

Sections 9-24-8, 12-10-10, 22-2-1, 22-2-2, and 22-10A-3 NMSA 1978.

No technical information served as a basis for this proposed rule change.

**Public Comment.** Interested parties may provide comment at the public hearing or may submit written comments by mail to John Sena, Policy Division, New Mexico Public Education Department, 300 Don Gaspar Avenue, Room 121, Santa Fe, New Mexico 87501, by electronic mail to [rule.feedback@state.nm.us](mailto:rule.feedback@state.nm.us), or by fax to (505) 827-6520. Written comments must be received no later than 5 p.m. (MDT) on Tuesday, September 28, 2021. The PED encourages the early submission of written comments. The public comment period is from Tuesday, August 24, 2021 to Tuesday, September 28, 2021 at 5:00 p.m. (MDT).

The PED will review all feedback received during the public comment period and issue communication regarding a final decision at a later date.

Copies of the proposed rules may be accessed through the page titled, "Rule Notification," on the PED's website at <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>, or may be obtained from John Sena at (505) 570-7816 during regular business hours.

Individuals with disabilities who require the above information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact John Sena at (505) 570-7816 as soon as possible before the date set for the public hearing. The PED

requires at least 10 calendar days advance notice to provide any special accommodations requested.

## REGULATION AND LICENSING DEPARTMENT REAL ESTATE COMMISSION

### NEW MEXICO REAL ESTATE COMMISSION MEETING AND RULE HEARING NOTICE

The New Mexico Real Estate Commission will conduct a meeting and rule hearing on Friday, September 24, 2021, at 9 a.m. at the offices of the Greater Albuquerque Association of Realtors (GAAR) at 1635 University Boulevard NE in Albuquerque, New Mexico.

Because the Commission's public meeting space at the GAAR offices is under construction, broker and public participation in the meeting and rule hearing will be limited to attendance by a Zoom meeting hosted by GAAR.

#### Synopsis:

The Commission will be considering changes to the Commission Rules under Title 16 Chapter 61:

#### Part 1, General Provisions

The Commission will consider a proposal from a homeowner's association trade group that would amend the existing definitions of Property Management and Property Managers to remove references to the activities of homeowners and unit owner associations (HOA's) from the definitions.

#### Part 3, Real Estate Broker's License: Examination and Licensing Application Requirements.

#### Expedited Licensure for Military Members and Veterans

The Commission proposes to amend Part 3 of its rules to conform with the provisions of House Bill 120 passed by the 2021 legislature that require professional and occupational licensing boards to issue licenses to



military members, their spouses and dependent children, and veterans, within 30 days of receiving a completed application and to waive initial licensing fees.

Part 3, Real Estate Broker's License: Examination and Licensing Application Requirements.

Disqualifying Convictions

The Commission proposes to amend Part 3 of its rules to conform with the provisions of Senate Bill 2 passed by the 2021 legislature that limit a professional and occupational licensing board's ability to deny, suspend, revoke, or condition a license only for felony convictions that relate to the profession or occupation in which the applicant has applied for licensure.

Pursuant to the provisions of Senate Bill 2, the Commission proposes to amend Part 3 to include a list of felony convictions that would disqualify an applicant from being issued a real estate broker's license.

Statutory Authority:

61-29-4, NMSA 1978, Creation of Commission; powers and duties, authorizes the Commission to make and enforce rules to carry out the provisions of the Real Estate Brokers and Salesmen Act.

Public Comment and Participation:

Interested persons may submit written comments on the proposed changes to the Commission rules by email at [wayne.ciddio@state.nm.us](mailto:wayne.ciddio@state.nm.us) or may submit written comments to the New Mexico Real Estate 5500 San Antonio Drive NE, Albuquerque, New Mexico 87109, Attn. Wayne W. Ciddio, Executive Secretary.

Interested persons may make comments and ask questions about the proposed rules via Zoom during the rule hearing. The Commission will vote on the final rules at the conclusion of the rule hearing.

Full copies of the texts of the proposed rules can be obtained from the Commission office at the email and physical addresses shown above.

Special Accommodations:

If you are individual with a disability who is in need of reader, amplifier, qualified sign language interpreter or any other form of auxiliary aid or service to attend or participate in the meeting and hearing, contact Wayne W. Ciddio, Executive Secretary, New Mexico Real Estate Commission at (505) 785-3937 at least one week prior to the meeting or as soon as possible.

Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact Mr. Ciddio if a summary or other type of accessible format is needed.

Continuing Education Credits

Real estate brokers may receive up to four hours of continuing education credit during each three-year licensing cycle by attending the meeting and rule hearing. Qualifying brokers and qualifying broker candidates can fulfill the requirement to attend a meeting, rule hearing, or disciplinary hearing by attending this meeting and hearing.

**RETIREMENT HEALTH CARE AUTHORITY**

**NOTICE OF PROPOSED RULEMAKING AND PUBLIC RULE HEARING**

The New Mexico Retiree Health Care Authority (NMRHCA) is considering amending the existing Rule 2.81.5.7 NMAC - DEFINITIONS. The purpose of the amendment of the rule is to amend the definition of "Salary" to reflect recent changes to the complement definition of salary under the Public Employees Retirement Act, NMSA 1978 Section 10-11-1 et seq. ("PERA Act"). A summary of the full

text of the amendment and proposed rule follows:

The existing Rule 2.81.5.7 NMAC provides for a definition of salary for the purpose of calculating employee and employer contributions. The existing rule follows a definition provided under the PERA Act and excludes overtime from the definition. The PERA Act was amended in the most recent legislative session to include overtime. The amendment changes the definition of salary to refer to the amended definition of salary in the PERA Act. Thus, the proposed rule would follow any subsequent changes that the Legislature makes to the definition of salary in the PERA Act.

The NMRHCA is authorized to promulgate rules to implement the Retiree Health Care Act, NMSA 1978, Sections 10-7C-1 to -16 (1990, as amended through 2009) ("Act") by NMSA 1978, Section 10-7C-7 (1998). By resolution dated June 1, 2021, the NMRHCA resolved to undertake the rulemaking in conformity with the Act, the State Rules Act, NMSA 1978, Sections 14-4-1 to -11 (1967, as amended through 2017), the Default Procedural Rule for Rulemaking, 1.24.25 NMAC (4/10/2018) and the Open Meetings Act, NMSA 1978, Sections 10-15-1 to -4 (1974, as amended through 2013).

The full text of the amendment and proposed rule may be obtained by contacting Neil Kueffer, Deputy Director, New Mexico Retiree Health Care Authority, 6300 Jefferson St. NE, Suite 150, Albuquerque, New Mexico 87109; telephone 505-222-6408, to request a copy of the rule. The full text and this notice are also available on NMRHCA's website: <http://www.nmrhca.org/>.

A person may submit, by mail or electronic form, written comments on the amendment and proposed rule through the end of the public comment period, which ends September 23, 2021. Written comments should be submitted

to Neil Kueffer, Deputy Director, New Mexico Retiree Health Care Authority, 6300 Jefferson St. NE, Suite 150, Albuquerque, New Mexico 87109. Written comments also will be accepted by email: [neil.kueffer@state.nm.us](mailto:neil.kueffer@state.nm.us) or by fax: (505) 884-8611. All written comments received by the agency will be posted on <http://www.nmrhca.org/> no more than 3 business days following receipt to allow for public review. Written comments will also be available for public inspection at New Mexico Retiree Health Care Authority, 6300 Jefferson St. NE, Suite 150, Albuquerque, New Mexico 87109.

A public rule hearing on the amendment and proposed rule will be held before Neil Kueffer, Deputy Director, NMRHCA, on September 24, 2021 from 3:00 p.m. - 5:00 p.m. at the NMRHCA Board Room, located at 6300 Jefferson St. NE, in Albuquerque, NM, 87109. Individuals may submit data, views or arguments orally or in writing to the amendment and proposed rule at the public rule hearing. Persons offering written comments at the hearing must have 2 copies for the hearing officer.

Any individual with a disability in need of an auxiliary aid or service to attend or participate in the hearing, or who needs copies of the amendment and proposed rule in an accessible form may contact Neil Kueffer at 505-222-648 at least 10 days before the hearing.

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**SUPERINTENDENT OF  
INSURANCE,  
OFFICE OF**

**NOTICE OF PROPOSED  
RULEMAKING**

**NOTICE IS HEREBY GIVEN** that the Superintendent of Insurance (“Superintendent”), pursuant to Section 59A-2-9 NMSA 1978, SB 71, enacting a new Section of Chapter 57, NMSA 1978 cited as the “Patients’ Debt Collection Protection Act”, and 13.1.4 NMAC, proposes to repeal and

replace Emergency Rule 13.10.39 NMAC: Patients’ Debt Collection Protections.

**PURPOSE OF THE PROPOSED REPLACEMENT RULE:**

The purpose of this rule is to implement the provisions of the Patients’ Debt Collection Protection Act for which the Office of Superintendent of Insurance (“OSI”) is responsible, including provisions that ensure that health care facilities and covered third-party health care providers screen and identify patients who are indigent and eligible for Medicaid or other health insurance, and to ensure that medical debt incurred by indigent patients will not be pursued through collection actions.

**STATUTORY AUTHORITY:**

Section 59A-2-9 NMSA 1978 and SB 71, enacting a new Section of Chapter 57, NMSA 1978 cited as the “Patients’ Debt Collection Protection Act”.

Copies of the proposed rule will be available on the OSI electronic docket by clicking here: **2021-0037** or the New Mexico Sunshine Portal, or by contacting Melissa Gutierrez at [melissa.gutierrez@state.nm.us](mailto:melissa.gutierrez@state.nm.us).

OSI will hold a public video/ telephonic hearing on the proposed rule on September 27, 2021 at 9:00 a.m.

Join via Video: <https://us02web.zoom.us/j/83654595694>

Join via telephone: 1 312 626 6799  
Meeting ID: 836 5459 5694

The Superintendent designates R. Alfred Walker as hearing officer for this rulemaking who will accept oral comments at the video/telephonic hearing from members of the public and any interested parties.

Written comments and proposals will be accepted through 4:00 pm on September 27, 2021. Responses to written comments or oral comments will be accepted through 4:00 pm on October 7, 2021. Comments

may be submitted via email to [OSI-docketfiling@state.nm.us](mailto:OSI-docketfiling@state.nm.us) or may be filed by sending original copies to:

OSI Records and Docketing, NM Office of Superintendent of Insurance 1120 Paseo de Peralta, P.O. Box 1689, Santa Fe, NM 87504-1689

**Docket No.: 2021-0037**

IN THE MATTER OF ADOPTION OF RULES FOR PATIENTS’ DEBT COLLECTION PROTECTIONS, 13.10.39 NMAC

Only signed statements, proposals, or comments will be accepted. Scanned or electronic signatures conforming to federal and state court requirements will be accepted with the understanding that if there is any dispute regarding a signature, OSI reserves the right to require that original signatures be provided to verify the electronic signature.

**SPECIAL NEEDS:** Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other auxiliary aid or service to attend or participate in the hearing should contact Melissa Gutierrez at 505-476-0333 ten (10) business days prior to the hearing.

**SPANISH INTERPRETER**

**NEEDS:** Cualquier persona que necesite un intérprete de español para participar en la audiencia debe enviar un correo electrónico a Melissa Gutiérrez a [melissa.gutierrez@state.nm.us](mailto:melissa.gutierrez@state.nm.us) diez (10) días hábiles antes de la audiencia.

The Superintendent will consider all oral comments and will review all timely submitted written comments and responses.

ISSUED this 24<sup>th</sup> day of August, 2021  
/S/RUSSELL TOAL

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**SUPERINTENDENT OF  
INSURANCE,  
OFFICE OF**

**NOTICE OF PUBLIC HEARING**

NOTICE IS HEREBY GIVEN that the Superintendent of Insurance, in his capacity as Custodian of the New Mexico Patient's Compensation Fund, pursuant to the statutory mandates of NMSA 1978, Section 41-5-25 will hold a public video/ telephonic hearing to determine surcharge rates on October 7, 2021 at 1:00 p.m.

Join via Video: <https://us02web.zoom.us/j/2916274744>

Join via telephone: 1 312 626 6799  
Meeting ID: 291  
627 4744

The hearing will be governed by the procedures specified in Rule 13.21.4 NMAC – Administrative Hearings. Only parties shall be allowed to offer evidence or argument at the hearing. Any person interested in participating as a party must request intervenor party status pursuant to Rule 13.21.4.9(D) NMAC. Filing deadlines and other updates concerning this case are available on the Patient's Compensation website <https://pcf.osi.state.nm.us/index.php/news/>

All documents shall be filed by mail or electronic mail to:  
Patient's Compensation Fund  
Attention: Freya Tschantz, PCF  
Docketing Manager  
PO Box 1689, Santa Fe, New Mexico  
87504-1689  
[Freya.tschantz2@state.nm.us](mailto:Freya.tschantz2@state.nm.us)

Docket No. 21-0004-PCF  
IN THE MATTER OF  
DETERMINING PATIENT'S  
COMPENSATION FUND  
SURCHARGE RATES

Any person with a disability requiring special assistance to participate in the hearing should contact Melissa Gutierrez at 505-476-0333 no later than September 17, 2021.

ISSUED this 24th day of August,  
2021  
/S/RUSSELL TOAL

**VETERINARY MEDICINE,  
BOARD OF**

**NOTICE OF RULEMAKING**

The New Mexico Board of Veterinary Medicine (NMBVM) will hold a rule hearing on Friday, October 1, 2021. Following the rules hearing, the Board of Veterinary Medicine will convene a regular meeting to adopt the rules and take care of regular business. The Board of Veterinary Medicine rules hearing will begin at 9:00 a.m. and the regular meeting will convene following the rules hearing. The meeting will be held via Zoom Videoconferencing, Meeting ID: 826 2834 8646, Passcode: 276999.

The purpose of the rules hearing is to consider amendments to the Board's rules. The proposed amendments, public comments, and written comments made during the rules hearing will be voted on by the Board at the regular Board meeting immediately following the rule hearing.

Copies of the proposed rules may be obtained in person from Frances R. Sowers, Executive Director, New Mexico Board of Veterinary Medicine, 7301 Jefferson Street, N.E., Suite H, Albuquerque, New Mexico 87109-4363, by calling (505) 553-7021 or by downloading from the Board's web site: [www.NMBVM.org](http://www.NMBVM.org). Interested persons may submit their comments on the proposed rules in writing to Frances R. Sowers, Executive Director, New Mexico Board of Veterinary Medicine, 7301 Jefferson Street, N.E., Suite H, Albuquerque, New Mexico 87109-4363 or by email to [director@NMBVM.org](mailto:director@NMBVM.org) or by participating in the rules hearing.

The New Mexico Board of Veterinary Medicine, is adopting the following rules that are part of the New Mexico

Administrative Code (NMAC):  
16.24.7 – Minimum Standards –  
Animal Shelters.

Subsection F of Section 61-14-5 NMSA 1978, authorizes the Board to promulgate rules and regulations that may be necessary to carry out the duties of the Board.

Notice Date: August 24, 2021  
Hearing Date: October 1, 2021  
Effective Date: Proposed as  
November 5, 2021  
Technical Citations: HB219

The Board is establishing rules as mandated by state legislation contained in House Bill (HB) 219. HB291 states, "The Board shall provide for inspections of animal shelters and euthanasia agencies and adopt, promulgate and revise rules necessary to carry out the provisions of the Animal Sheltering Act."

The Board through these rules promulgations is implementing minimum standards for animal shelters.

**The Board is proposing to adopt the rule amendment as follows:**

**16.24.7.7 DEFINITIONS:**

**A. Words starting with the letter A:**

**(1) "Act"**

means the Veterinary Practice Act, Section 77-1-1 through 77-1-12 NMSA 1978.

**(2) "Animal"**

means any animal, except humans, not defined as "livestock" in Subsection L of this section.

**(3) "Animal shelter"**

means:

**(a)**

a county or municipal facility that provides shelter to animals on a regular basis; and

**(b)**

a private humane society or a private animal shelter that temporarily houses stray, unwanted or injured animals through administrative or contractual arrangements with a local government agency; and



(c)  
does not include a municipal  
zoological park.

**B. Words starting  
with the letter B: “Board”** means  
the board of veterinary medicine.

**C. Words starting  
with the letter C:**

(1) **“Capacity  
for Care”** means the overall ability of  
an animal shelter to provide humane  
care of animals.

(2) **“Colony  
housing”** means housing two or more  
animals in the same primary enclosure  
or playgroups.

(3) **“Companion animal”** means  
any vertebrates commonly kept as  
domestic pets, excluding man, and  
those under the jurisdiction of the  
New Mexico department of game and  
fish and those under the jurisdiction of  
the New Mexico livestock board.

(4) **“Consulting pharmacist”** means  
a pharmacist whose services are  
engaged on a routine basis by a  
euthanasia agency and who is  
responsible for the distribution,  
receipt and storage of drugs according  
to the state and federal regulations.

**D. Words starting  
with the letter D:**

(1) **“Dangerous drug”** means a drug,  
other than a controlled substance  
enumerated in Schedule I of the  
Controlled Substances Act, that  
because of a potentiality for harmful  
effect or the method of its use or  
the collateral measures necessary to  
its use is not safe, except under the  
supervision of a practitioner licensed  
by law to direct the use of such  
drug and hence for which adequate  
directions for use cannot be prepared.  
“Adequate directions for use” means  
directions under which the layperson  
can use a drug or device safely  
and for the purposes for which it is  
intended.

(2) **“DEA”** means United States drug  
enforcement administration.

(3) **“Disposition”** means the adoption  
of an animal; return of an animal to

the owner; return to field; release of  
an animal to a rescue organization;  
release of an animal to another animal  
shelter or to a rehabilitator licensed  
by the department of game and fish  
or the United States fish and wildlife  
service; or euthanasia of an animal.

**E. Words starting  
with E:**

(1) **“Emergency field euthanasia”**  
means the process defined by rule  
of the board to cause the death of  
an animal in an emergency situation  
when the safe and humane transport  
of the animal is not possible.

(2) **“Enrichment”** means improving the  
environment and behavioral care for  
confined animals.

(3) **“Euthanasia”** means to produce  
the humane death of an animal by  
standards deemed acceptable to the  
board as set forth in its rules.

(4) **“Euthanasia agency”** means a  
facility licensed by the board that  
provides shelter to animals on a  
regular basis, including a humane  
society or a public or private shelter  
facility that temporarily houses stray,  
unwanted or injured animals, and that  
performs euthanasia.

(5) **“Euthanasia drugs”** means non-  
narcotic schedule II or schedule III  
substances and chemicals as set forth  
in the Controlled Substances Act,  
Section 30-31-1 NMSA 1978, that are  
used for the purposes of euthanasia  
and pre-euthanasia of animals.

(6) **“Euthanasia instructor”** means a  
euthanasia technician or a veterinarian  
certified by the board to instruct other  
individuals in euthanasia techniques.

(7) **“Euthanasia technician”** means  
a person licensed by the board to  
euthanize animals for a euthanasia  
agency.

(8) **“Exotic”**  
means any vertebrate animals,  
excluding man, wild animals,  
livestock and companion animals.

**F. Words starting  
with F: “FDA”** means United States

food and drug administration.

**G. Words starting  
with G: “Group Housing”** means  
housing two or more animals in  
the same primary enclosure or  
playgroups.

**H. Words starting  
with H: “Humanely”** means actions  
marked by compassion, sympathy  
or consideration, especially for the  
prevention of the suffering of the  
animal.

**I. Words starting  
with I: “Isolation”** means to  
separate apart from others.

**J. Words starting  
with J: [RESERVED]**

**K. Words starting  
with K: [RESERVED]**

**L. Words starting  
with L: “Livestock”** means all  
domestic or domesticated animals that  
are used or raised on a farm or ranch  
and exotic animals in captivity and  
includes horses, asses, mules, cattle,  
sheep, goats, swine, bison, poultry,  
ostriches, emus, rheas, camelids and  
farmed cervidae but does not include  
canine or feline animals.

**M. Words starting  
with M: “May”** means permissive  
and a possible means to best practices.

**N. Words starting  
with N: “Non-livestock”** means  
any animal not covered under the  
definition of livestock in Subsection L  
of Section 77-1B-2 NMSA 1978.

**O. Words starting  
with O: [RESERVED]**

**P. Words starting  
with P:**

(1) **“Personal  
protective equipment”** means items  
such as gloves, eye protection, gowns,  
and boots that protect a person from  
exposure to chemical or biological  
agents.

(2) **“Population management”** means  
a proactive process of planning,  
ongoing daily evaluations and  
responses to changing conditions as  
an organization cares for multiple  
animals, based on that organization’s  
capacity for care and statistical data.

(3) **“Potable  
water”** means clean, fresh water that  
is suitable for drinking.

(4) **“Primary enclosure”** means an animal enclosure in which the animal normally eats, eliminates, rests, and sleeps.

**Q. Words starting with Q: “Quarantine”** means restriction of activity, enforced isolation. As defined by Subsection Q of Section 7.4.2.7 NMAC quarantine means the strict containment of all animals specified in the order of the district health officer upon the private premises of the owner, or under restraint by leash, or within a closed cage or paddock and shall include other measures ordered by the district health officer to control the spread of rabies.

**R. Words starting with R: “Rescue organization”** means an organization that rescues animals and is not involved in the breeding of animals.

**S. Words starting with S:**

(1) **“Sharps”** means any discarded article that may cause punctures or cuts. Such wastes may include, but are not limited to needles, scalpel blades, glass slides, glassware, suture needles and trocars.

(2) **“Spot-cleaning”** means using cleaning solution and a paper towel or rag to remove any smudges or contaminants in lieu of total disinfection.

(3) **“Supervising veterinarian”** means a person who is a New Mexico-licensed veterinarian, who holds both a valid New Mexico controlled substance license and a valid federal drug enforcement agency license and who approves the drug protocols and the procurement and administration of all pharmaceuticals at a euthanasia agency.

**T. Words starting with T: [RESERVED]**

**U. Words starting with U: [RESERVED]**

**V. Words starting with V:**

(1) **“Ventilation”** means the circulation of air; a system or means of providing fresh air.

(2) **“Veterinarian”** means a person who is licensed as a doctor of veterinary medicine by the board of veterinary medicine pursuant to the Veterinary Practice Act, Section 61-14-1 et. seq. NMSA 1978.

(3) **“Veterinary facility”** means any building, mobile unit, vehicle or other location where services included within the practice of veterinary medicine are provided.

**W. Words starting with W: “Wild animal”** means any vertebrate animals under the jurisdiction of the New Mexico game and fish department.

**X. Words starting with X: [RESERVED]**

**Y. Words starting with Y: [RESERVED]**

**Z. Words starting with Z: [RESERVED]**  
[16.24.7.7 NMAC - N, 5/25/2021; A, 11/5/2021]

**16.24.7.8 SHELTERING CAPACITY STANDARDS:**

**A.** The delivery of sheltering services shall be provided in a competent and humane matter.

**B.** Sheltering services shall be performed in a manner ensuring the health and well-being of animals while in the care of sheltering providers. The recommended standard of care is [a minimum of] 15 minutes per animal per day.

**C.** Sheltering providers shall practice active population management within the balance of decisions and practices that support the overall population of the shelter.  
[16.24.7.8 NMAC - N, 05/01/2021; A, 11/5/2021]

**16.24.7.9 PREMISES**

**- STRUCTURAL:** All exterior structures and fencing may:

**A.** be constructed of building materials that will ensure a sound physical structure;

**B.** be maintained in good repair;

**C.** protect animals from injury and ensure containment within shelter;

**D.** prevent the entry of outside animals and unauthorized persons;

**E.** include fencing sufficiently constructed to prevent animals from jumping, climbing or digging to escape.  
[16.24.7.9 NMAC - N, 05/01/2021]

**16.24.7.10 FACILITY STANDARDS:**

**A.** Animal housing areas may be physically apart from areas where food and drink for human consumption are prepared, served or stored.

**B.** Interior building surfaces may be constructed and maintained to be water resistant to moisture and easily cleaned.

**C.** Animal food storage and equipment cleaning areas may be physically apart from animal housing.

**D.** Reliable, adequate electric power or gas may be provided for lighting, air circulation, heating, and cooling.

**E.** Reliable and adequate potable water shall be provided. Back flow preventers may be installed on any threaded faucets with attached hoses for the purpose of cleaning the facility, or on the main water line serving the facility.

**F.** Noise control may be considered for the wellbeing of animals as well as visitors, volunteers and staff. Noise mitigation may include:

(1) Housing cats away from the sound of dogs.

(2) Facility modifications to minimize or contain barking.

(3) Training staff to minimize slamming doors.

(4) Using music to reduce animal stress.

**G.** Readily accessible washrooms or sinks may be provided to maintain personal hygiene of animal caretakers.

(1) A two-compartment sink in good repair may be provided for washing and sanitizing equipment used for animal care and feeding.

(2) A tub or

low-pressure hose may be available to wash any animal that becomes soiled to avoid the use of high-pressure hoses for cleaning animals.

**H.** Indoor housing for animals shall be sufficiently heated or cooled to protect animals from extreme temperatures. The ambient temperature shall be consistent with the requirements of the specific species.

**I.** Indoor housing for animals may be adequately ventilated with fresh air to minimize odors and moisture and to provide for the health of the animals.

**J.** Water supply may allow for hose hook up to readily reach all parts of animal housing. Water pressure shall be adequate for cleaning of animal housing areas.

**K.** A suitable method to rapidly eliminate excess water from animal housing areas may be provided. Drains shall be properly constructed and maintained in good repair. If closed drainage systems are used, wastewater shall be disposed of by connection to a sanitary sewer or approved sewage disposal system. [16.24.7.10 NMAC - N, 05/01/2021]

**16.24.7.11 ANIMAL ENCLOSURE AND HOUSING STANDARDS:**

**A.** General Indoor Enclosures.

- (1) Primary enclosures shall provide sufficient space to allow each animal to make normal postural adjustments to:
  - (a) Turn freely.
  - (b) Easily stand.
  - (c) Sit.
  - (d) Stretch.
  - (e) Move their head without touching the top or sides of the enclosure.
  - (f) Lie in a comfortable position with limbs extended.
  - (g) Move about and assume a comfortable posture for feeding,

drinking, urinating, and defecating.

(h) Dogs and cats shall be able to hold their tails erect when in a normal standing position.

(2) Primary enclosures may allow animals to be able to see out while avoiding visual contact with other animals.

(3) Animals housed shall be confined to a primary enclosure at all times unless under the direct supervision of shelter personnel or a designee.

(4) Primary enclosures shall be structurally sound and maintained in good repair and sanitary condition to protect the animals from injury and disease.

(a) Primary enclosures shall be constructed and maintained to enable the animals to remain dry and clean and to provide convenient access to food and clean water.

(b) Latches shall be secure and in good working order so that animals cannot escape.

(5) Floors of primary enclosures shall be constructed to prevent injury to animals, ensure adequate draining and prevent pooling of fluids. Wire mesh or slatted floors in cages shall not be used.

(6) Guillotine or doors separating two enclosure section shall be in working order.

(7) Animals shall not be able to escape from their primary enclosure.

(8) When housing aggressive, under quarantine or protective custody animals, condition of all enclosures shall be monitored daily with various types of locks considered.

(9) Primary enclosures may house one animal; if compatible, two altered animals per enclosure with the exceptions of litters housed with their dams or colony housing. Animals shall not be randomly housed in groups. Animals that fight shall not be grouped with other animals.

(10) Isolation areas shall be provided for animals with infectious diseases. Ten percent of the total housing may be designated for this purpose. The isolation housing may be double-sided to facilitate cleaning without removing the animal. Handwashing stations may be available at all isolation areas. Isolation areas may have separate cleaning tools and personal protective equipment.

(11) Dogs shall not be tethered except in the short term to facilitate cleaning primary enclosure or in the event of a fire or flood emergency. In emergency situations, short term tethering of dogs shall be used only until transport to another facility can be made. The safety of the dog shall be ensured while tethered. Cats shall not be tethered.

(12) Animals placed in crates or carriers, even for a short time, shall have ample space to stand up, turn around and lie down. Crates and carriers shall be disinfected and dried after each use and before another animal is placed in the crate or carrier. Crates and carriers may not be used as primary enclosures.

**B.** Outdoor Primary Enclosures. It is not recommended that primary enclosures be exclusively outdoors and not for very young, old, sick, or injured animals.

(1) Structurally sound, weatherproof enclosures may be made accessible to animals housed exclusively outdoors. Water resistant and windproof structure of suitable size shall be provided so animals stay warm and dry during cold weather; shaded and cool during hot weather. The structure may have a water-resistant door covering or offset doorway to minimize drafts, provide proper ventilation and made of durable materials with the floor raised off the ground to prevent water entry.

(2) A shaded area may be provided to all animals housed in an outdoor primary enclosure. An animal shall be able to rest in the shade, outside of the

interior structure, but within the fencing or run.

(3) Sufficient clean, absorbent bedding material in addition to other means of protection from weather may be provided for the health and safety of the animals and may prevent strong [orders] odors forming if replaced regularly.

(4) Floors of outdoor enclosures may be constructed of gravel, sand or soil; a solid material such as concrete is preferable. It is not possible to sanitize or disinfect gravel, sand or soil.

C. Enclosure Requirements for Cats

(1) Cats shall be able to assume normal postures in primary enclosures. Space may be large enough to accommodate bedding, food and water dishes and a litter box. When there is more than one cat occupying a cage, additional floor and vertical space may be provided.

(2) Primary enclosures may be made of stainless steel, fiberglass, or other impervious material that is water-resistant and can be cleaned and sanitized. Chicken wire, barbed wire and wood shall not be used.

(3) Feral cat boxes, which allow for hiding places within the cage, reduce stress for all cats.

(4) Cats may be housed in a separate building or in a separate room far removed from rooms containing dog runs.

D. Enclosure Requirements for Dogs. Dogs shall be able to assume normal postures and engage in normal behaviors playing and moving freely without encountering another dog. Space may be large enough to accommodate bedding, food and water bowls.

(1) Enclosure height may be a minimum of one and one-half times the height of the dog at the shoulder.

(2) Floors in dog runs may slope to drain liquid out of runs to prevent pooling or puddling in runs or walkways. Slope may be

one-quarter to one-half inch per linear foot.

(3) To prevent water and waste material from flowing from run to run, there may be solid walls between dog runs. Height of walls may be sufficient to prevent nose-to-nose contact of dogs between runs.

(4) Fencing or other materials that allow for airflow may be used, horizontally and vertically, above the solid walls providing a protective barrier at least six feet high between runs to prevent dogs from jumping over.

(5) All solid surfaces of dog runs may be constructed of water-resistant concrete, stone, cement block, brick, metal, or non-porous synthetic material which can be cleaned and sanitized. Sealed floors can be cleaned and disinfected most effectively. Fencing materials may be water resistant which can be easily cleaned and sanitized. Fencing materials shall be gauged and spaced to avoid escape by or injury to dogs. Chicken wire, barbed wire and wood shall not be used.

(6) If more than one dog occupies the same primary enclosure, additional floor and vertical space may be provided.

E. Enclosure Requirements for Other Species. Species other than dogs and cats shall have special requirements for housing and care.

(1) Stray livestock. The New Mexico Livestock Board shall be contacted to help facilitate the identification and ownership.

(2) Exotic animals. A veterinarian or someone with expertise in handling and caring for the species may be contacted for guidance.

(3) Wild animals. The appropriate agency shall be contacted to take possession of the animal.

(a) Wild birds. The U.S. Fish and Wildlife Service shall be contacted.

(b) For any other wild animals, N.M. Department of Game and Fish shall be contacted.

F. Foster Housing Standards.

(1) Potential foster homes may go through an application process with background checks and home inspections.

(2) Guidelines addressing the following may be established:

(a) Vaccination and altered status of foster home animals.

(b) Maximum number of animals allowed.

(c) Housing and care standards.

(d) Maximum length of foster stay.

(3) Foster parents may be trained or educated on standards of care and potential health and wellness issues; emergency contact information may be provided.

(4) Care capacity within foster home may be considered before sending animals into the homes.

(5) Foster animals may be altered and have current vaccinations unless under the care of a veterinarian.

(6) Tag or microchip identification for foster animals may be provided to foster homes.

G. Colony/Group Housing Standards - Dogs. Dogs housed in the same primary enclosure may be maintained in compatible groups with the following restrictions:

(1) Primary enclosures may house one, or two, altered compatible dogs per enclosure. Litters may be housed with their dams.

(2) A female dog in season shall not be housed in the same primary enclosure with a male dog.

(3) An unaltered male dog shall not be housed in the same primary enclosure with an unaltered female other than



under breeding age litter mates.

(4) An aggressive dog shall be housed individually in a primary enclosure; for protection of shelter personnel the enclosure shall be marked accordingly.

(5) Nursing mothers and their puppies may be removed from other animals. Removal will allow privacy, protection from unwanted intrusion and noise, alleviates fear/aggression, and to promote general well-being.

(6) Dogs shall not be housed in the same primary enclosure as cats.

(7) Dogs shall not be housed in the same primary enclosure with any other species of animals.

**H. Colony/Group Housing Standards – Cats.** When housing cats in colony rooms, the following guidelines may be followed:

(1) Cats may have at least 18 square feet of floor space per cat to maintain a distance of three to ten feet between cats; non-inclusive of perches or walkways. In temperate climates, can include outdoor access with 24-hour access to indoors.

(2) Cats with unknown vaccination history may be evaluated for health and behavior, vaccinated, isolated, and observed for at least 24 hours before being placed in cat colony rooms.

(3) Unsterilized males shall be separated from females. A female in season shall not be housed in the same primary enclosure as a male.

(4) Nursing mothers and their kittens may not be housed with other cats.

(5) One 12" x 8" cat litter pan for every three cats or five kittens may be provided.

(6) Water shall be provided at all times and dry food may be available at all times.

(7) Colony rooms may be equipped with shelves, resting boxes and hiding boxes.

(8) Stainless steel, fiberglass or other materials that are water resistant and can be cleaned and sanitized may be used. Wood shall not be used.

(9) Any cat exhibiting aggressive behavior shall be housed individually in its primary enclosure; for the protection of shelter personnel the enclosure shall be marked accordingly.

[16.24.7.11 NMAC - N, 05/01/2021; A, 11/5/2021]

#### **16.24.7.12 SANITATION STANDARDS:**

**A.** Written sanitation protocols shall be developed to provide consistent and thorough sanitation of the facilities. Protocols may be reviewed periodically in consultation with a veterinarian. Protocols may be updated for best practices. During an outbreak, sanitation protocols may be revised as needed to address specific pathogens.

**B.** Animal housing units or kennels shall be cleaned once daily at minimum and shall be thoroughly cleaned and disinfected once an animal no longer occupies the unit or kennel.

**C.** Animal waste shall be removed from primary enclosures daily or more often to prevent contamination of animals and to reduce disease hazards and odors. Waste shall be disposed of in accordance with local ordinance.

**D.** Cages, kennels, containers, equipment, and other items shall be cleaned at least once daily to maintain sanitary conditions.

**E.** Kennels and cages shall not be hosed down while animals are inside the kennels and cages.

**F.** To minimize stress for an animal remaining in an enclosure, spot cleaning may be used as appropriate. The enclosure shall be thoroughly cleaned and disinfected once an animal leaves an enclosure.

**G.** Cleaning may be carried out in the following order: from first to last to minimize the spread of disease.

(1) Healthy puppies and kittens; healthy, nursing bitches and queens.

(2) Healthy adult or quarantined animals.

(3) Unhealthy isolated animals.

**H.** To minimize the spread of disease, water and food containers and all other utensils shall be cleaned and sanitized using generally accepted methods such as the use of heat and chemical sanitizing solution. Containers shall be cleaned and sanitized as often as necessary to maintain sanitary conditions; food pans and bowls shall be cleaned between each use. If sinks are the method for cleaning, water and food pans or bowls shall be soaked and washed separately from litter pans with water and disinfectant changed between water and food pans or bowls and litter pans.

**I.** Product manufacturer instructions shall be followed precisely when cleaning, sanitizing and disinfecting. Chemicals shall not be mixed. Pine products and fumes are extremely toxic to cats and birds and shall not be used near them or to clean cat enclosures, pans, bowls etc.

**J.** Mopping may be avoided to reduce the spread of pathogens. If hosing is not possible and mopping must be used, disinfectant solution shall not be used from one housing area to another.

**K.** Water and food pans or bowls may be made of metal or be disposable. Plastic should not be used because it may be chewed and ingested and may retain contaminants.

**L.** Litter boxes shall be provided for cats in their primary enclosures with soiled litter disposed of on an as needed basis, a minimum of once a day. Litter boxes may be disposable or reusable if they are cleaned daily and sanitized before use by another cat. The use of plastic litter boxes is not recommended because they cannot be sufficiently disinfected and may be a source of disease.

**M.** Animal and food waste, soiled bedding, debris, and

other organic waste may be stored in closed containers and disposed of on an as needed basis to avoid vermin infestation, odors, disease, and nuisances. Waste may be removed at least weekly from the facility. All reusable trash containers may be regularly sanitized and disinfected. All clothing and bedding shall be laundered and thoroughly dried before reuse.

**N.** To maintain sanitary conditions, pens and runs with absorbent or loose flooring i.e., sand, gravel or soil soiled with urine and/or fecal matter shall have such materials replaced as necessary. These types of organic materials cannot be sanitized or disinfected when the surface is muddy, water puddled or when odors and vermin are present.

**O.** Buildings and grounds shall be kept clean, in good repair and free of trash.

**P.** Weeds may be mowed or cut down where animals are kept or exercised.

**Q.** An effective program shall be maintained for the control of insects, fleas, avian, and mammalian pests.

**R.** Opened food supplies may be stored separately in closed waterproof containers. Unopened supplies of food may be stored off of the floor and adequately protected against contamination or infestation by vermin.

**S.** Animal bedding may be stored off of the floor and adequately protected against contamination or infestation.

**T.** Dead animals shall be stored and disposed of in strict compliance with state laws and local ordinances to avoid disease hazard or nuisance.

[16.24.7.12 NMAC - N, 05/01/2021]

**16.24.7.13 ANIMAL CARE AND HANDLING STANDARDS:**

**A. Food and Water**  
**(1) Animals** may be fed twice daily except in cases of veterinary treatment or malnutrition. The food shall be free of contamination, palatable and of sufficient quality and nutritive value

to meet normal daily requirements for the condition, size and age of the animal. Refrigeration may be provided for perishable food.

**(2) Uneaten** food shall be discarded after 24 hours. Food offered to an animal remaining uneaten shall not be fed to other animals.

**(3) Care** shall be taken not to underfeed or overfeed animals.

**(4) Special** consideration regarding types of food and frequency of feeding shall be given to puppies, kittens, older animals, and nursing dams.

**(5)** Malnourished or emaciated animals may need an increased food intake; introduction of food shall be regulated and increased gradually preferably with veterinary guidance.

**(6) Animals** shall be provided potable water at all times.

**(7) Food** and water containers shall be accessible and located to minimize contamination by excrement or other material. Food and water containers shall be cleaned daily; disposable food containers may be used only if discarded after each use.

**(8) Food** and water containers may be of a size to ensure accessibility based on the size of the animal.

**(9) Spoiled,** moldy food or food contaminated with feces, droppings or insects shall never be used. Food left in food bowls from the previous day shall be disposed of, disposable bowls discarded and non-disposable bowls cleaned.

**B. Enrichment**

**(1) Enrichment** means improving the environment and behavioral care for confined animals. Enrichment reduces stress and improves well-being by providing physical and mental stimulation and encouraging species-typical behaviors. Enrichment shall not be considered optional.

**(2)** If the recommended space requirements

for dogs cannot be met due to shelter configuration, dogs may be exercised twice daily. For dogs requiring an opportunity to exercise, a written plan may be on file with each exercise session noted.

**(3) Behavioral** health and care of each animal as well as the conditions experienced by the entire population shall be a consideration of the shelter.

**C. Quarantine and Isolation**

**(1) Animals** that have bitten a human shall be quarantined pursuant to New Mexico State Law, local municipal or county ordinances.

**(2) A** veterinarian may be consulted.

**(3) Animals** under quarantine for observation of rabies symptoms after a bite incident shall be physically separated from all other animals and shall never be housed with animals under treatment for a communicable disease.

**(4) Quarantine** areas may have a separate ventilation system and may only be accessible to shelter personnel or owners accompanied by shelter personnel.

**(5) Animals** diagnosed and/or under treatment for a communicable disease may be isolated from healthy animals to minimize spread of disease. If isolation is impossible or inadequate to control the spread of pathogens, the shelter shall weigh consequences of exposure to general population and the alternatives of euthanasia or transfer to an appropriate separate facility.

**D. Other Care Considerations**

**(1) Shelter** animals shall always be handled safely and humanely to prevent injury, distress and spread of disease both to animals and personnel.

**(2) Adequate** animal handling equipment such as transfer cages, nets, catch poles, syringe poles shall be available, kept clean and in good repair to ensure the safety of personnel and animals.



(3) Shelter personnel may be trained in current humane and sanitary animal handling techniques.

(4) Long term confinement, including feral and aggressive animals, who cannot be provided with basic care, daily enrichment and exercise without inducing stress shall be euthanized or transferred to a separate facility.

(5) The minimal amount of physical restraint needed without injury to people or animals shall be used.

(6) The use of catch poles for routine restraint of cats, including carrying or lifting, is inhumane and poses significant risk of injury to the animal and shall not be used. Humane traps, boxes or nets designed for restraint shall be used for handling fractious cats or cats who appear to be unaccustomed to handling.

(7) When cats are moved from one location to another, it is recommended to cover the carrier with a towel or sheet to reduce stress and susceptibility to disease.

(8) Cats may be provided with clean bedding in each cage. Bedding shall be replaced when soiled or wet and when a new animal is introduced to the enclosure.

(9) Bedding or platforms may be provided to dogs on an as needed basis. Clean bedding may be provided to old, young, ill, or injured dogs. Bedding shall be replaced when soiled or wet and when a new animal is introduced to the enclosure. Only single layer bedding may be used for puppies and kittens to prevent accidental suffocation. Bedding may be withheld if it poses a danger to the animal.

(10) Nursing dams may be provided with a whelping box. If a shelter is unable to provide a whelping box, the shelter shall ensure nursing dams have adequate bedding, warmth and cleanliness. Bedding shall be provided in the whelping box and replaced when soiled or wet.

(11) Nursing mothers and their babies may be removed from other animals to allow for privacy, protect them from unwanted intrusion and noise, to alleviate fear/aggression, and to promote their general well-being.

(12) Animals may be cleaned and groomed on an as needed basis.

(13) Medical issues may be treated; matted coats can cause pain, skin or eye irritation, or trap fecal matter. Bathing may be necessary to prevent or treat parasites and/or insects.

(14) No animal shall be allowed to suffer while in the care of the shelter.

(15) Care shall be taken to ensure that animals are not squirted or hosed with water, not put in contact with chemicals and not placed back in a wet or damp enclosures.

[16.24.7.13 NMAC - N, 05/01/2021]

**16.24.7.14 DISEASE CONTROL, HEALTH AND VETERINARY CARE STANDARDS:**

A. No animal shall be allowed to suffer due to lack of veterinary care.

B. Shelters shall not fail to provide treatment for pain.

C. Shelters shall ensure compliance with all federal, state and local laws concerning reportable diseases.

D. Animals may be examined for injury and signs of disease at the time of impound under the guidance of a veterinarian, if possible, and treated immediately if animal is in pain or distress. If injured or sick animals cannot be provided veterinary care in a timely manner to stop their pain and suffering, the animal shall be humanely euthanized or immediately transferred to another facility where veterinary care can be timely provided.

E. Common signs of illness, injury or parasitic infestation in dogs and cats that warrant veterinary care:

(1) Eyes are watery, appear swollen or show discharge.

(2) Ears are red or inflamed, show discharge or have a foul odor.

(3) Nose shows mucous, blood or pus discharge, or is crusty, congested or blocked.

(4) Gums are swollen or inflamed, teeth are loose or brown, or mouth has a foul odor.

(5) Animal is sneezing, coughing or wheezing.

(6) Animal has fleas or ticks; skin shows swelling or lesions.

(7) Animal limps or does not place weight on a limb.

(8) Animal is thin or obese.

(9) Animal has wounds, abscesses, cuts, or abrasions.

(10) Body temperature is abnormal.

(11) Animal is vomiting or has diarrhea.

F. Shelter may have a trained and experienced staff member, a veterinary technician or a veterinarian available to check animals and to provide care. Symptoms of possible illness shall be noted, recorded and brought to a supervisor's attention immediately.

G. Animals may be observed daily for signs of disease or distress. An animal suspected of having an infectious disease may be physically separated from other susceptible animals until the animal is determined to be non-infectious.

H. A system may be in place to care for injured and sick animals brought to the shelter after normal working hours. Shelters may enter into a written contract with a local veterinarian to be available on call for treatment after hours.

I. Animals with obvious signs of serious disease, injury or distress that cannot be addressed shall be humanely euthanized or be immediately transferred to another facility where veterinary care can be timely provided.

**J.** For humane reasons, it may be necessary to euthanize an animal despite the holding time requirements not having been met. An animal shall not be allowed to suffer while in the shelter’s care.

**K.** Dogs and cats may be dipped or sprayed, top spotted or given oral treatment for fleas, ticks or internal parasites, as necessary. Methods shall be used according to the season, region of state and according to manufacturer’s instructions concerning treatment strengths depending on size, age or health of animal.  
[16.24.7.14 NMAC - N, 05/01/2021; A, 11/5/2021]

**16.24.7.15 VACCINATIONS STANDARDS:**

**A.** All dogs and cats may be vaccinated upon initial impound. A veterinarian or trained staff member may administer the following core vaccines:

- (1) Dogs:
- (a)

DA2PP or DHPP vaccine to provide protection against distemper, adenovirus-2, parvovirus, parainfluenza. Adult dogs may be vaccinated upon intake. Puppies may be vaccinated starting at 4-6 weeks of age and re-vaccinated every 2-4 weeks until 16-18 weeks of age.

- (b)

Bordetella bronchiseptica vaccine to protect against kennel cough for puppies and adult dogs.

- (2) Cats:

FVRCP vaccine to provide protection against feline herpesvirus, feline viral rhinotracheitis, feline calicivirus, and feline panleukopenia. Adult cats may be vaccinated once upon intake. Kittens may be vaccinated starting at 4-6 weeks of age and re-vaccinated every 2-4 weeks until 18 weeks of age. A modified live vaccine is recommended.

**B.** All animals shall be considered unvaccinated unless a documented medical record exists. Special consideration shall be given to animals with medical conditions, pregnant animals and animals less than 4 weeks old.

**C.** Core vaccines may be administered at the time of intake for optimum disease control.

**D.** Rabies vaccinations may be given at the time of adoption or by the adopter’s veterinarian depending on local municipal or county ordinance.

**E.** Rabies vaccinations shall be administered pursuant to Section 77-1-3 NMSA 1978.  
[16.24.7.15 NMAC - N, 05/01/2021]

**16.24.7.16 RECORD KEEPING STANDARDS:**

**A.** Records shall be kept for each animal impounded, for each animal accepted as an owner-surrender, for each animal brought to the shelter by a member of the public as a stray, and for each animal that is otherwise acquired.

**B.** Records shall include:

- (1) Date of acquisition and manner of acquisition: animal control officer, public intake, owner surrender etc.
- (2) Description and identifying characteristics including: species, breed, color, age, weight, gender, and any background information.
- (3) Tag and/or microchip information.
- (4) Reason for impoundment or relinquishment.
- (5) Veterinary care.
- (6) Disposition of the animal.
- (7) Date of redemption of adoption, transfer of ownership or euthanasia.
- (8) Name, address and telephone number of receiving person or entity.

**C.** Statistics may include monthly intake and outcomes by type for each species.

**D.** Collars, tags or other potential identification may be kept on the animal or in the animal’s file during the impound time.

**E.** Each animal shall be identifiable by use of cage/run cards and/or identifying collars.

**F.** Photographs may be

taken of each animal, maintained with the animal’s records and posted on its cage to minimize the possibility of a mistaken euthanasia.

**G.** Shelters shall maintain records for a minimum of two years from the date of an animal’s final disposition.  
[16.24.7.16 NMAC - N, 05/01/2021]

**16.24.7.17 COMMUNITY ACCESS AND SERVICE STANDARDS:**

**A.** Shelters may be accessible to the public seeking to reclaim their animal or adopt an animal.

(1) Hours open to the public shall be clearly marked on the facility.

(2) The shelter’s telephone number and address shall be listed in local telephone directories.

(3) The shelter may have internet presence with all pertinent information as well as listings of lost or found animals and animals available for adoption.

(4) Shelters may be open to the public at least one weekend day or two days until 6:00 p.m.

**B.** Shelters may have provisions for animals dropped off after hours. Care shall be taken so that animals are protected from injury, theft and the elements. Unattended drop boxes are not recommended. Provisions may be made for after hours entry, impoundment and treatment procedures for animal control officers to follow. Sick or injured animals shall be attended to by trained personnel immediately due to potential for unalleviated suffering of the animal as well as liability to the shelter.

**C.** When an animal has visible identification or a microchip upon impound, shelter personnel shall make every attempt to contact the owner. Each animal shall be scanned for a microchip and the number entered into the animal’s record. If the owner surrenders a microchipped animal, the shelter shall determine if the surrendering owner

matches the name on the microchip to ensure the animal is not stolen. In the case of stray animals, the shelter shall promptly attempt to contact the owner to whom the microchip is registered by telephone. In the event no contact can be made via telephone, then the shelter may send a letter to the address listed on the microchip registration. Attempts to trace microchip information and contact attempts with the registered owner shall be documented.

**D.** In addition to being scanned at intake, animals shall be re-scanned prior to final disposition. If the final disposition is by euthanasia, scanning shall be done pursuant to Board of Veterinary Medicine rule 16.24.3.8 B Duties of Licensee and Certificate Holders.

**E.** Shelters shall refer to local, municipal or county ordinance which address the minimum stray holding time. Stray animals without identification should be held long enough to give owner sufficient time to reclaim the animal. Stray animals with identification i.e., tag, tattoo, and/or microchip may be held long enough to allow the shelter sufficient time for notification and owner reclaim.

**F.** Animals in law enforcement protective custody shall be in locked areas with appropriate signage that meet standards and are inaccessible to the public. Depending on the case type, owner may be allowed to visit the animal or animals. [16.24.7.17 NMAC - N, 05/01/2021]

**16.24.7.18 SHELTER PERSONNEL STANDARDS:**

**A.** The shelter shall maintain compliance with federal and state occupational safety regulations for chemical, biological and physical hazards in the workplace.

**B.** All shelter personnel may be trained in all aspects of their responsibilities. Training topics may be, at minimum:

- (1) Animal health and disease control.
- (2) Humane care and treatment of animals.

(3) Control of animals in an animal shelter.

(4) Transportation of animals.

(5) Disease recognition.

(6) Animal breed identification and behavior.

(7) Pre-adoption evaluation and temperament testing.

(8) Adoption policies and procedures.

(9) Handling, capture and restraint techniques.

(10) Personnel safety and use of equipment.

(11) Euthanasia.

(12) Compassion fatigue and self-care.

**C.** A shelter shall create and maintain a comprehensive procedures manual (SOP.) Shelter personnel may be provided with an SOP manual. The SOP may outline all shelter policies and procedures and the duties for each position.

**D.** Shelter personnel shall adhere to New Mexico’s anti-cruelty law at all times. See 30-18-1 *et seq.* NMSA 1978.

**E.** Personal protective equipment and appropriate animal handling equipment shall be readily available to personnel.

**F.** Shelter personnel may wash their hands frequently to protect themselves and the animals. Hand sanitizers, first aid kits and eye wash stations may be made available to all employees, volunteers and visitors.

[16.24.7.18 NMAC - N, 05/01/2021]

**16.24.7.19 ADOPTION STANDARDS:**

**A.** Shelters may establish adoption fees. An adoption program may be developed and implemented. If the shelter waives specific adoption fees, the shelter guidelines shall not be waived.

**B.** Shelters may develop criteria for potential adopters and unsuitable adopters. Adopters may sign a contract under which they agree to provide a specified level of care.

**C.** Shelters may learn temperament testing procedures to ensure that animals are fit for adoption and to facilitate the best possible match between adopters and animals.

**D.** An adoption screening program may include discussion of a suitable match between an adopter and animal.

**E.** When adopting out a known sick animal or animal that is receiving medical treatment, full disclosure shall be made to the person or organization receiving the animal.

**F.** In the event shelters offer animals for adoption that have not been sterilized, the shelter shall comply with New Mexico State law 77-1-20 A-F NMSA 1978.

**G.** Policies may be developed to avoid adopting out or releasing unaltered animals.

**H.** Shelters may consider a program to microchip all adopted animals.

**I.** Reasonable care shall be taken to adopt out or transfer only those animals free of disease and untreatable injury.

**J.** Animals believed to be dangerous, potentially dangerous in accordance with Chapter 77 Section 1A NMSA 1978, or have caused a serious injury resulting in same species or human death shall not be re-homed.

**K.** Shelters, in their due diligence, shall make every effort to place animals with recognized rescue organizations and responsible sanctuaries. Shelters may thoroughly research rescue organizations and sanctuaries prior to placement to avoid possible hoarding situations. [16.24.7.19 NMAC - N, 05/01/2021]

**16.24.7.20 SHELTER TRANSPORT STANDARD:**

**A.** Transport vehicles and equipment shall be cleaned and sanitized prior to transport.

**B.** Animals shall not be transported unrestrained in open beds of trucks.

**C.** Temperature extremes, below 45 degrees and above 80 degrees, during transport shall be avoided.

**D.** Compliance with state and local laws shall be followed for source and destination shelters.

**E.** Health certificates shall accompany animals crossing state lines as required.

**F.** Unfamiliar animals shall not be transported together in same enclosure.

**G.** Animals may be vaccinated and treated for internal and external parasites prior to transport.

**H.** Transport space may be adequate to allow the animal to turn around and lie down.

**I.** Transports anticipated longer than eight hours in duration may accommodate safe animal exercise and relief.

[16.24.7.20 NMAC - N, 05/01/2021]

**HISTORY OF 16.24.7 NMAC:  
[RESERVED]**

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**End of Notices of  
Rulemaking and  
Proposed Rules**

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## Adopted Rules

### Effective Date and Validity of Rule Filings

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

**ENERGY, MINERALS AND  
NATURAL RESOURCES  
DEPARTMENT  
OIL CONSERVATION  
COMMISSION**

**This is an amendment to 19.15.29 NMAC, Sections 6, 8 and 15, effective August 24, 2021.**

**19.15.29.6 OBJECTIVE:**  
To prohibit releases and require persons who operate or control the release or the location of the release to report the unauthorized release of oil, gases, produced water, condensate or oil field waste including regulated NORM or other oil field related chemicals, contaminants or mixtures of those chemicals or contaminants that occur during drilling, producing, storing, disposing, injecting, transporting, servicing or processing and to establish procedures for reporting, site assessment, remediation, closure, variance and enforcement [~~procedures~~].  
[19.15.29.6 NMAC - Rp, 19.15.29.6 NMAC, 8/14/2018; A, 8/24/2021]

**19.15.29.8 RELEASES:**  
**A. Prohibition.**  
Except as provided in 19.15.27 NMAC or 19.15.28 NMAC, major releases and minor releases are prohibited.

~~[A.]~~ **B. Requirements.**  
For all releases regardless of volume, the responsible party shall comply with 19.15.29.8 NMAC and shall remediate the release. For major and minor releases, the responsible party shall also comply with 19.15.29.9, 19.15.29.10, 19.15.29.11, 19.15.29.12 and 19.15.29.13 NMAC.

~~[B.]~~ **C. Initial response.**  
The responsible party must take the following immediate actions unless the actions could create a safety hazard that would result in injury.

**(1) Source elimination and site security.**  
The responsible party must take appropriate measures to stop the source of the release and limit access to the site as necessary to protect human health and the environment.

**(2) Containment.** Once the site is secure, the responsible party must contain the materials released by construction of berms or dikes, the use of absorbent pads or other containment actions to limit the area affected by the release and prevent potential fresh water contaminants from migrating to watercourses or areas that could pose a threat to public health and environment. The responsible party must monitor the containment to ensure that it is effectively containing the material and not being degraded by weather or onsite activity.

**(3) Site stabilization.** After containment, the responsible party must recover any free liquids and recoverable materials that can be physically removed from the surface within the containment area. The responsible party must deliver material removed from the site to a division-approved facility.

**(4) Remediation.** The responsible party may commence remediation immediately.  
[19.15.29.8 NMAC - Rp, 19.15.29.8 NMAC, 8/14/2018; A, 8/24/2021]

**19.15.29.15 ENFORCEMENT:**  
**A.** The responsible party must comply with all the requirements of 19.15.29 NMAC. The division may take enforcement action pursuant to 19.15.5.10 NMAC against any responsible party who does not comply with 19.15.29 NMAC [~~pursuant to 19.15.5.10 NMAC~~].

**B.** A responsible party may enter [~~an agreed compliance~~] a stipulated final order with the division for any violation of 19.15.29 NMAC, except for 19.15.29.9 NMAC. An agreed compliance order may be entered prior to or after the filing of an application by the division or any other party for an administrative compliance proceeding. Any administrative compliance order will have the same force and effect as a compliance order issued after an adjudicatory hearing.

**C.** The director or the director's designee may deny any application or permit, including but not limited to, a permit to drill, deepen or plug back a well if the responsible party is not in compliance with a court order [~~agreed compliance order or administrative compliance~~] or final order arising from 19.15.29 NMAC.

~~[D.]~~ ~~— If the division or other party files an administrative enforcement application, the provisions of 19.15.4 NMAC apply to the enforcement proceeding, unless altered or amended by 19.15.5.10 NMAC or 19.15.29 NMAC.~~  
[19.15.29.15 NMAC - N, 8/14/2018; A, 8/24/2021]

**GAME AND FISH  
DEPARTMENT**

**TITLE 19 NATURAL  
RESOURCES AND WILDLIFE  
CHAPTER 31 HUNTING AND  
FISHING  
PART 6 MIGRATORY  
GAME BIRD**

**19.31.6.1 ISSUING**  
**AGENCY:** New Mexico department of game and fish.  
[19.31.6.1 NMAC - Rp, 19.31.6.1 NMAC, 9/1/2021]



**19.31.6.2 SCOPE:**

Sportspersons interested in migratory game bird management and hunting. Additional requirements may be found in Chapter 17 NMSA 1978 and Title 19 NMAC.

[19.31.6.2 NMAC - Rp, 19.31.6.2 NMAC, 9/1/2021]

**19.31.6.3 STATUTORY**

**AUTHORITY:** Section 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds and fish.

[19.31.6.3 NMAC - Rp, 19.31.6.3 NMAC, 9/1/2021]

**19.31.6.4 DURATION:**

September 1, 2021 - March 31, 2022.

[19.31.6.4 NMAC - Rp, 19.31.6.4 NMAC, 9/1/2021]

**19.31.6.5 EFFECTIVE**

**DATE:** September 1, 2021, unless a later date is cited at the end of a section.

[19.31.6.5 NMAC - Rp, 19.31.6.5 NMAC, 9/1/2021]

**19.31.6.6 OBJECTIVE:**

Establishing open hunting seasons, regulations, rules and procedures governing the issuance of migratory game bird licenses and permits by the department.

[19.31.6.6 NMAC - Rp, 19.31.6.6 NMAC, 9/1/2021]

**19.31.6.7 DEFINITIONS:**

**A. "Bernardo pond unit"** shall mean that portion of Bernardo wildlife management area 600 feet south of U.S. 60 and west of the unit 7 drain.

**B. "Bernardo youth unit"** shall mean that portion of Bernardo wildlife management area immediately south of the Quagmire and east of the unit 7 drain.

**C. "Central flyway"** shall mean that portion of New Mexico east of the continental divide.

**D. "Dark goose"** shall mean Canada goose or white-fronted goose.

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

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

**G. "Dove north zone" or "north zone"** shall mean that portion of New Mexico north of Interstate 40 from the Arizona-New Mexico border to Tucumcari and U.S. 54 at its junction with Interstate 40 at Tucumcari to the New Mexico-Texas border.

**H. "Dove south zone" or "south zone"** shall mean that portion of New Mexico south of Interstate 40 from the Arizona-New Mexico border to Tucumcari and U.S. 54 at its junction with Interstate 40 at Tucumcari to the New Mexico-Texas border.

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

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

**K. "Falconry"** shall mean hunting migratory game birds using raptors.

**L. "Federal youth waterfowl hunting days"** shall mean the special seasons where only those 17 years of age and younger may hunt ducks and geese. A supervising adult at least 18 years of age must accompany the youth hunter. The adult may not hunt ducks, but may participate in other seasons that are open on the special youth days.

**M. "Light geese"** shall mean snow geese, blue phase snow geese and Ross's geese.

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

**O. "Middle Rio Grande valley (MRGV) dark goose hunt area"** shall mean Sierra, Socorro and Valencia counties.

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

**Q. "Migratory game bird"** shall mean band-tailed pigeon, mourning dove, white-winged dove, sandhill crane, American coot, common moorhen/gallinule, snipe, ducks, geese, sora, purple gallinule and Virginia rail.

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

**S. "Pacific flyway"** shall mean that portion of New Mexico west of the continental divide.

**T. "Possession limit"** shall mean the number of birds in a person's possession regardless of the location stored.

**U. "Quagmire"** shall mean that portion of Bernardo wildlife management area 600 feet south of U.S. 60 and east of the unit 7 drain.

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

**W. "Southwest band-tailed pigeon hunting area" or "southwest BPHA"** shall mean that portion of New Mexico both south of U.S. 60 and west of Interstate 25.

**X. “Southwest New Mexico sandhill crane hunt area” or “SW”** shall mean that area bounded on the south by the New Mexico-Mexico border; on the west by the New Mexico-Arizona border north to Interstate 10; on the north by Interstate 10 east to U.S. 180, north to N.M. 26, east to N.M. 27, north to N.M. 152, and east to Interstate 25; on the east by Interstate 25 south to Interstate 10, west to the Luna county line, and south to the New Mexico-Mexico border.

**Y. “Wildlife management areas” or “WMAs”** shall mean those areas as described in 19.34.5 NMAC, Wildlife Management Areas. [19.31.6.7 NMAC - Rp, 19.31.6.7 NMAC, 9/1/2021]

**19.31.6.8 ADJUSTMENT OF SANDHILL CRANE PERMITS:**

The director, with verbal concurrence of the chairperson or their designee, may adjust the number of permits to address significant changes in harvest levels. This adjustment may be applied to any or all of the entry hunt codes. [19.31.6.8 NMAC - Rp, 19.31.6.8 NMAC, 9/1/2021]

**19.31.6.9 LICENSE AND APPLICATION REQUIREMENTS:**

**A. License:** A Harvest Information Program (HIP) number shall be required. Waterfowl hunters 16 years of age and older are required to have in their possession a federal migratory bird hunting and conservation stamp (duck stamp). It shall be unlawful to take or attempt to take migratory birds without a HIP number, or duck stamp if required.

(1) Any person taking or attempting to take sandhill cranes in the eastern hunt area must have a valid license and a free sandhill crane hunting permit obtained from department offices or website.

(2) For EV sandhill crane, MRGV sandhill crane, MRGV youth-only sandhill crane and SW sandhill crane: in addition

to a valid license, a special permit obtained by drawing shall be required.

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

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

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

**C. Applications:** Applications for EV sandhill crane, MRGV sandhill crane, SW sandhill crane and MRGV youth-only sandhill crane hunt permits shall be submitted via the department website.

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

(2) 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.

(3) The application deadline date for the EV, MRGV, MRGV youth-only and SW sandhill crane hunt permits shall be on date(s) set by the state game commission. If any permits are available after the drawing, those permits may be sold online via a secondary sale.

**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. [19.31.6.9 NMAC - Rp, 19.31.6.9 NMAC, 9/1/2021]

**19.31.6.10 MANNER AND METHODS FOR MIGRATORY GAME BIRDS:**

**A. Hours:** Migratory game birds may be hunted or taken only during the period from one-half hour before sunrise to sunset, unless otherwise specifically allowed or restricted by rule.

(1) On the Bottomless lakes overflow, and Bernardo, Casa Colorada, Jackson lake, La Joya and W.S. Huey WMAs, hunting hours shall mean from one-half hour before sunrise to 1:00 p.m. unless otherwise stated in rule. For hunting September teal on Bernardo and La Joya WMAs, hunting hours are from one-half hour before sunrise to sunset.

(2) During the light goose conservation order hunt dates, hunting hours shall mean from one-half hour before sunrise to one-half hour after sunset, excluding the WMAs listed in Paragraph (1) above.

**B. Seizure:** Any officer authorized to enforce Chapter 17 NMSA 1978 and state game commission rules shall seize any migratory game birds or parts that are illegally obtained or possessed.

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

(1) State wildlife management areas open, species that can be hunted, and days open for hunting (use of vehicles will be restricted to designated areas):

(a) Bernardo WMA:

(i) That portion of the Bernardo WMA south of U.S. 60 is open to teal hunting each day of the September teal season and the federal youth waterfowl days. That portion of the Bernardo WMA north of U.S. 60 is closed except during the light goose conservation order.

(ii) The Quagmire shall be open only on Tuesday, Thursday and Sunday to hunt ducks, geese, Virginia rail, sora, common moorhen/gallinule, American coot and snipe during established seasons, unless otherwise specifically allowed by rule.

(iii) The Bernardo pond unit shall be open for general waterfowl hunting on Monday, Wednesday and Saturday to hunt ducks, geese, Virginia rail, sora, common moorhen/gallinule, American coot and snipe during established seasons, unless otherwise specifically allowed by rule.

(iv) The Bernardo youth unit shall be open for youth waterfowl hunting on Monday, Wednesday and Saturday to hunt ducks, geese, Virginia rail, sora, common moorhen/gallinule, American coot and snipe during established seasons, unless otherwise specifically allowed by rule.

(b) The Edward Sargent, W. A. Humphries, Rio Chama, Urraca, Colin Neblett, Water canyon, Marquez and Elliot S. Barker WMAs shall be open for hunting dove and band-tailed pigeon during established seasons.

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

(d) The lesser prairie-chicken management areas shall be open to hunt dove during established seasons.

(e) La Joya WMA:

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

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

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

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

(f) The Charette lake, McAllister lake, Wagon Mound, Tucumcari and Socorro-Escondida WMAs shall be open for all migratory game bird hunting during established seasons.

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

(2) The Hammond tract and Retherford tract WMAs shall be open for waterfowl hunting during established seasons.

(3) All WMAs shall be open to falconry waterfowl hunting each day of the established falconry season, unless otherwise restricted by rule.

[19.31.6.10 NMAC - Rp, 19.31.6.10 NMAC, 9/1/2021]

**19.31.6.11 SPECIES, OPEN AREAS, SEASON DATES AND DAILY BAG LIMITS: 2021-2022 season**, all dates are 2021 unless otherwise specified. Possession limits are three times the daily bag limit unless otherwise specified.

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| species  | open areas                      | season dates                                | daily bag limit             |
|--|---------------------------------|---|-----------------------------|
| mourning and white-winged dove                       | north zone                      | Sept. 1 - Nov. 29                           | 15 (singly or in aggregate) |
|  | south zone                      | Sept. 1 - Oct. 28 and Dec. 1 - Jan. 1, 2022 |                             |
| band-tailed pigeon                                   | southwest BPHA                  | Oct. 1 - 14                                 | 2                           |
|  | statewide except southwest BPHA | Sept. 1 - 14                                |                             |
| regular season sandhill crane (free permit required) | eastern                         | Oct. 30 - Jan. 30, 2022                     | 3 (6 in possession)         |

**CENTRAL FLYWAY:** possession limits are three times the daily bag limit unless otherwise specified.

| species   | season dates                        | daily bag limit   |
|---|-------------------------------------|---|
| September teal: blue-winged teal, green-winged teal, and cinnamon teal                                    | Sept. 11 - 19                       | 6 (singly or in the aggregate)  |
| ducks   | north zone: Oct. 9 - Jan. 12, 2022  | 6 (singly or in the aggregate); that consists of no more than 5 mallard of which only 2 may be female mallard, (Mexican-like ducks are included towards the mallard bag limit), 3 wood duck, 3 scaup, 2 redhead, 2 hooded merganser, 1 pintail and 2 canvasback |
|   | south zone: Oct. 28 - Jan. 31, 2022 |   |
| youth waterfowl days  | north zone: Sept. 25 - 26           |   |
|   | south zone: Oct. 2 - 3              |   |
| American coot   | north zone: Oct. 9 - Jan. 12, 2022  | 15  |
|   | south zone: Oct. 28 - Jan. 31, 2022 |   |
| common moorhen/gallinule and purple gallinule   | Sept. 11 - Nov. 19                  | 1   |
| snipe   | Oct. 9 - Jan. 23, 2022              | 8   |
| Virginia rail & sora  | Sept. 11 - Nov. 19                  | 10 (singly or in the aggregate); 20 in possession   |
| dark goose: Canada & white-fronted geese (regular season closed in Sierra, Socorro and Valencia counties) | Oct. 17 - Jan. 31, 2022             | 5   |
| dark goose: special MRGV season   | Dec. 19 - Jan. 31, 2022             | 2 (2 per season)  |
| light goose: Ross's & snow geese  | Oct. 17 - Jan. 31, 2022             | 50 (no possession limit)  |
| light goose conservation order  | Feb. 1 - Mar. 10, 2022              | no bag or possession limit  |

**PACIFIC FLYWAY:** possession limits are three times the daily bag limit unless otherwise specified.

| species                                    | season dates  | daily bag limit   |
|--|---|---|
| youth waterfowl days                       | Oct. 2 - 3  | 7 (singly or in the aggregate); that consists of no more than 2 female mallard, 2 redhead, 1 pintail and 2 canvasback |
| ducks                                      | Oct. 19 - Jan. 31, 2022                                   |   |
| scaup                                      | Oct. 19 - Jan. 12, 2022                                   |   |
| American coot and common moorhen/gallinule | Oct. 19 - Jan. 31, 2022                                   | 25 daily (singly or in the aggregate)   |
| snipe                                      | Oct. 17 - Jan. 31, 2022                                   | 8   |
| Virginia rail & sora                       | Sept. 11 - Nov. 19  | 25 daily (singly or in the aggregate)   |
| goose                                      | north zone: Sept. 25 - Oct. 10 and Nov. 2 - Jan. 31, 2022 | 4 Canada geese, 10 white-fronted geese and 20 light geese   |
|  | south zone: Oct. 17 - Jan. 31, 2022                       |   |

**19.31.6.12 FALCONRY SEASONS: 2021-2022 season**, all dates are 2021 unless otherwise specified. Bag limits are three singly or in the aggregate and nine in possession unless otherwise specified.

| <b>CENTRAL FLYWAY</b>                         |                                 |   |
|---|---------------------------------|---|
| <b>species</b>                                | <b>open areas</b>               | <b>season dates</b>                           |
| mourning and white-winged dove                | north                           | Sept. 1 - Dec. 4 and Dec. 21 - Jan. 1, 2022   |
|   | south                           | Sept. 1 - Nov. 5 and Nov. 22 - Jan. 1, 2022   |
| band-tailed pigeon                            | southwest BPHA                  | Oct. 1 - 14                                   |
|   | statewide except southwest BPHA | Sept. 1 - 14                                  |
| sora and Virginia rail                        | all                             | Sept. 11 - Dec. 26                            |
| snipe   | all                             | Oct. 9 - Jan. 23, 2022                        |
| common moorhen/gallinule and purple gallinule | all                             | Sept. 11 - Dec. 26                            |
| ducks   | north                           | Sept. 11 - 19 and Oct. 9 - Jan 12, 2022       |
|   | south                           | Sept. 11 - 19 and Oct. 28 - Jan 31, 2022      |
| goose (light and dark)                        | all                             | Oct. 17 - Jan. 31, 2022                       |
| goose (dark)                                  | MRGV                            | Dec. 19 - Jan. 31, 2022                       |
| sandhill crane                                | regular (eastern)               | Oct. 16 - Jan. 30, 2022; 3 (6 in possession)  |
|   | Estancia valley                 | Oct. 30 - Dec. 28; 3 (6 in possession)        |
| <b>PACIFIC FLYWAY</b>                         |                                 |   |
| <b>species</b>                                | <b>open areas</b>               | <b>season dates</b>                           |
| mourning and white-winged dove                | north                           | Sept. 1 - Dec. 4 and Dec. 21 - Jan. 1, 2022   |
|   | south                           | Sept. 1 - Nov. 5 and Nov. 22 - Jan. 1, 2022   |
| band-tailed pigeon                            | southwest BPHA                  | Oct. 1 - 14                                   |
|   | statewide except southwest BPHA | Sept. 1 - 14                                  |
| ducks   | all                             | Oct. 19 - Jan. 31, 2022                       |
| scaup   | all                             | Oct. 19 - Jan. 12, 2022                       |
| goose (all)                                   | north                           | Sept. 25 - Oct. 10 and Nov. 2 - Jan. 31, 2022 |
|   | south                           | Oct. 17 - Jan. 31, 2022                       |
| snipe   | all                             | Oct. 17 - Jan. 31, 2022                       |
| coots and common moorhen/gallinule            | all                             | Oct. 19 - Jan. 31, 2022                       |
| sora and Virginia rail                        | all                             | Sept. 11 - Nov. 19                            |

[19.31.6.12 NMAC - Rp, 19.31.6.12 NMAC, 9/1/2021]

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

**A.** An adult, 18 years of age or older, must accompany the youth hunter in the field (the adult may not hunt ducks but may participate in other seasons that are open on the special youth days).

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

[19.31.6.13 NMAC - Rp, 19.31.6.13 NMAC, 9/1/2021]

**19.31.6.14 REQUIREMENTS FOR THE SPECIAL BERNARDO YOUTH WATERFOWL UNIT:** Blind selection will be available on a first-come, first-serve basis from one-half hour before sunrise to 1:00 p.m. Youth hunters must be accompanied by a supervising adult who may not hunt. A maximum of four people is allowed per blind, at least half of which must be youth hunters.

[19.31.6.14 NMAC - Rp, 19.31.6.14 NMAC, 9/1/2021]

**19.31.6.15 SEASON DATES, OPEN AREAS, BAG LIMITS, HUNT CODES AND PERMIT NUMBERS FOR THE SPECIAL ESTANCIA VALLEY, MIDDLE RIO GRANDE VALLEY AND SOUTHWEST NEW MEXICO SANDHILL CRANE SEASONS:**

**A.** The daily bag limit is 3. The possession limit is twice the daily bag limit, except for the MRGV



youth-only hunt where the bag and possession limits are 3. The hunting seasons for 2021-2022 are:

| hunt location    | hunt dates                              | hunt code | permits |
|------------------|---|-----------|---------|
| EV               | Oct. 30 - Nov. 2<br>and Nov. 4 - Nov. 7 | SCR-0-101 | 65      |
| MRGV             | Nov. 13 - 14                            | SCR-0-102 | 75      |
| MRGV             | Nov. 27 - Nov. 28                       | SCR-0-103 | 70      |
| MRGV             | Dec. 11 - 12                            | SCR-0-104 | 70      |
| MRGV             | Jan. 8 - 9, 2022                        | SCR-0-105 | 65      |
| MRGV             | Jan. 15 - 16, 2022                      | SCR-0-106 | 65      |
| MRGV, youth-only | Nov. 20                                 | SCR-0-107 | 24      |
| SW               | Oct. 30 - Nov. 7                        | SCR-0-108 | 70      |
| SW               | Jan. 8 - 9, 2022                        | SCR-0-109 | 60      |

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

**C.** The department may cancel one or more EV, MRGV or SW sandhill crane hunts if harvest is expected to exceed our federal allocation of greater sandhill cranes.

[19.31.6.15 NMAC - Rp, 19.31.6.15 NMAC, 9/1/2021]

#### **HISTORY OF 19.31.6 NMAC:**

**Pre-NMAC Filing History:** The material in this part was derived from that previously filed with the State Records Center & Archives under: Regulation No. 486, Establishing 1967 Seasons On Quail, Pheasants, Prairie Chickens, and Lesser Sandhill (Little Brown) Crane And Additional Seasons On Migratory Waterfowl, filed 9/22/67; Regulation No. 494, Establishing 1968 Seasons On Migratory Waterfowl, Common Snipe, Lesser Sandhill Crane, Scaled, Gambel's, And Bobwhite Quail, Pheasants, And Prairie Chickens, filed 10/2/68; Regulation No. 508, Establishing 1969 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Scaled, Gambel's And Bobwhite Quail, Pheasants, And Prairie Chickens, filed 9/19/69; Regulation No. 527, Establishing 1971 Seasons On Migratory Waterfowl And Lesser Sandhill Cranes, filed 9/10/71; Regulation No. 540, Establishing 1972 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, And Wilson's Swipe, filed 9/26/72; Regulation No. 551, Establishing 1973 Seasons On Migratory Waterfowl And Lesser Sandhill Crane, filed 8/20/73; Regulation No. 560, Establishing 1974 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Quail, Pheasants, And Prairie Chickens, filed 8/21/74; Regulation No. 570, Establishing 1975 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Common Snipe, Quail, Pheasants, And Prairie Chickens, filed 9/5/75; Regulation No. 578, Establishing 1976 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Common Snipe, Quail, Pheasants, And Prairie Chickens, filed 8/31/1976; Regulation No. 588, Establishing 1977 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Common Snipe, Quail, Pheasants, And Prairie Chickens, filed 9/6/1977; Regulation No. 594, Establishing 1978 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Quail, Pheasants, And Prairie Chickens, filed 9/11/1978; Regulation No. 601, Establishing 1979 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Quail, Pheasants, And Prairie Chickens, filed 8/30/1979; Regulation No. 606, Establishing 1980 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Quail, Pheasants, And Prairie Chickens, filed 9/3/80; Regulation No. 611, Establishing 1981 Seasons On Migratory Waterfowl, Lesser Sandhill Crane, Quail, Pheasants, And Prairie Chickens, filed 9/4/1981; Regulation No. 616, Establishing 1982 Seasons On Migratory Waterfowl, Quail, Pheasants, And Prairie Chickens, filed 9/3/1982; Regulation No. 626, Establishing 1983 Seasons On Migratory Waterfowl, Quail, Pheasants, And Prairie Chickens, filed 9/7/1983; Regulation No. 631, Establishing 1984 Seasons On Migratory Waterfowl, filed 8/31/1984; Regulation No. 638, Establishing 1985 Seasons On Migratory Waterfowl, filed 9/11/1985; Regulation No. 643, Establishing 1986-1987 Seasons On Migratory Birds, filed 8/24/1987; Regulation No. 660, Establishing 1988-1989 Seasons On Migratory Birds, filed 6/28/1988; Regulation No. 669, Establishing 1989-1990 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Sandhill Crane, Band-tailed Pigeon, Dove, And Setting Falconry Seasons, filed 10/5/1989; Regulation No. 680, Establishing 1990-1991 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Common Snipe And Setting Falconry Seasons, filed 9/28/1990; Regulation No.

687, Establishing 1991-1992 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Common Snipe And Setting Falconry Seasons, filed 8/6/1991; Regulation No. 698, Establishing 1991-92 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Common Snipe And Setting Falconry Seasons, filed 8/6/1991; Regulation No. 698, Establishing 1992-1993 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Common Snipe And Setting Falconry seasons, filed 9/15/1992; Regulation No. 704, Establishing 1993-1994 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Common Snipe And Setting Falconry Seasons, filed 3/11/1993; Regulation No. 707, Establishing The 1994-1995, 1995-1996, 1996-1997 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Common Snipe, And Setting Falconry Seasons, filed 7/28/1994; Regulation No. 708, Establishing The 1994-1995, 1995-1996, And 1996-1997 Seasons On Ducks, Geese, Virginia Rail, Sora, Common Moorhen, American Coot, Common Snipe, And Setting Falconry Seasons, filed 9/7/1994.

**NMAC History:**

19 NMAC 31.6, Waterfowl, filed 8/31/1995  
 19.31.6 NMAC, Waterfowl, filed 8/15/2000  
 19.31.6 NMAC, Waterfowl, filed 8/26/2002  
 19.31.6 NMAC, Waterfowl, filed 8/12/2003  
 19.31.6 NMAC, Waterfowl, filed 8/2/2004  
 19.31.6 NMAC, Waterfowl, filed 8/8/2005  
 19.31.6 NMAC, Waterfowl, filed 8/1/2006  
 19.31.6 NMAC, Waterfowl, filed 8/16/2007  
 19.31.6 NMAC, Migratory Game Bird, filed 8/13/2008  
 19.31.6 NMAC, Migratory Game Bird, filed 8/17/2009  
 19.31.6 NMAC, Migratory Game Bird, filed 8/2/2010

19.31.6 NMAC, Migratory Game Bird, filed 8/1/2011  
 19.31.6 NMAC, Migratory Game Bird, filed 8/14/2012  
 19.31.6 NMAC, Migratory Game Bird, filed 8/29/2013

**History of Repealed Material:**

19.31.6 NMAC, Waterfowl, filed 8/15/2000 - duration expired 3/31/2002  
 19.31.6 NMAC, Waterfowl, filed 8/26/2002 - duration expired 3/31/2003  
 19.31.6 NMAC, Waterfowl, filed 8/12/2003 - duration expired 3/31/2004  
 19.31.6 NMAC, Waterfowl, filed 8/2/2004 - duration expired 3/31/2005  
 19.31.6 NMAC, Waterfowl, filed 8/8/2005 - duration expired 3/31/2006  
 19.31.6 NMAC, Waterfowl, filed 8/1/2006 - duration expired 3/31/2007  
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 19.31.6 NMAC, Migratory Game Bird, filed 8/13/2008 - duration expired 3/31/2009  
 19.31.6 NMAC, Migratory Game Bird, filed 8/17/2009 - duration expired 3/31/2010  
 19.31.6 NMAC, Migratory Game Bird, filed 8/2/2010 - duration expired 3/31/2011  
 19.31.6 NMAC, Migratory Game Bird, filed 8/1/2011 - duration expired 3/31/2012  
 19.31.6 NMAC, Migratory Game Bird, filed 8/14/2012 - duration expired 3/31/2013  
 19.31.6 NMAC, Migratory Game Bird, filed 8/29/2013 - duration expired 3/31/2014  
 19.31.6 NMAC, Migratory Game Bird, filed 8/31/2014 - duration expired 3/31/2015  
 19.31.6 NMAC, Migratory Game Bird, filed 9/1/2015 - duration expired 3/31/2016  
 19.31.6 NMAC, Migratory Game Bird, filed 6/30/2016 - duration expired 3/31/2017  
 19.31.6 NMAC, Migratory Game Bird, filed 7/27/2017 - duration expired 3/31/2018  
 19.31.6 NMAC, Migratory Game Bird, filed 7/2/2018 - duration expired

3/31/2019

19.31.6 NMAC, Migratory Game Bird, filed 8/28/2019 - duration expired 3/31/2020  
 19.31.6 NMAC, Migratory Game Bird, filed 8/13/20- duration expired 3/31/2021

**HUMAN SERVICES  
 DEPARTMENT  
 INCOME SUPPORT DIVISION**

**This is an amendment to 8.139.120 NMAC, Section 9 effective 9/1/2021.**

**8.139.120.9 SIMPLIFIED**

**REPORTING:** All households will be assigned to simplified reporting (SR). Households must submit an interim report once every six or twelve months, depending on their certification period. Households assigned to a 12-month certification period have an interim report form due at six months. Households assigned to a 24-month certification period have an interim report form due at 12 months.

**A. Household**

**Certification Periods:** A household that is approved for SNAP benefits shall be assigned the longest certification period possible in accordance with the household's circumstances. Households wherein all adult members are elderly or disabled, with no earned income, will be assigned a 24-month certification period. All other households will be assigned a 12-month certification period.

**B. Household**

**responsibility to turn in interim report form:**

**(1) A**

household assigned to a 12-month certification period shall be required to file an interim report form no later than the tenth day of the sixth month of the certification period in order to receive uninterrupted benefits.

**(2) A**

household assigned to a 24-month certification period shall be required to file an interim report form no later than the tenth day of the twelfth month of the certification period

in order to receive uninterrupted benefits.

**C. Information that ISD is responsible to provide to households regarding simplified reporting:** At the initial certification and at recertification, ISD shall provide the household with the following:

- (1) A written and oral explanation of how simplified reporting works;
- (2) A written and oral explanation of the reporting requirements including:
  - (a) what needs to be reported and verified;
  - (b) when the interim report form is due;
  - (c) how to obtain assistance; and
  - (d) the consequences of failing to file an interim report form.
- (3) Special assistance in completing and filing interim reports to households whose adult members are all either mentally or physically handicapped or are non-English speaking or otherwise lacking in reading and writing skills such that they cannot complete and file the required report; and
- (4) A toll-free number which the household may call to ask questions or to obtain help in completing the interim report.

**D. Information requirements for the interim report form:** The interim report form will be written in clear, simple language, include information on the availability of a bilingual version of the document described in 7 CFR 272.4(b), and shall specify:

- (1) the deadline date to submit the form to ISD to ensure uninterrupted benefits if the household is determined eligible;
- (2) the consequences of submitting a late or incomplete form including whether ISD shall delay benefits if the form is not received by the due date;
- (3) verification the household must submit with the form;

(4) a statement to be signed by a member of the household indicating his or her understanding that the information provided may result in a reduction or termination of benefits;

(5) where to call for help in completing the form;

(6) a statement explaining that ISD will not change certain deductions until the household's next recertification and identify those deductions if ISD has chosen to disregard reported changes that affect certain deductions in accordance with paragraph (c) of section 7 CFR 273.12;

(7) a brief explanation of fraud penalties; and

(8) how the agency may use social security numbers.

**E. The following information, along with required verification, must be returned to ISD with the interim report form:**

(1) a change of more than one hundred dollars (\$100) in the amount of unearned income, except changes relating to public assistance (PA) or general assistance (GA) programs when jointly processed with SNAP cases;

(2) a change in the source of income, including starting or stopping a job or changing jobs, if the change in employment is accompanied by a change in income;

(3) changes in either:

(a) the wage rate or salary or a change in full-time or part-time employment status as defined in Subsection C of 8.102.461.11 NMAC, provided the household is certified for no more than six months; or

(b) a change in the amount earned of more than one hundred dollars (\$100) a month from the amount last used to calculate the household's allotment, provided the household is certified for no more than six months.

(4) all changes in household composition, such as the addition or loss of a household member;

(5) changes in residence and the resulting shelter costs;

(6) the acquisition of a licensed vehicle, unless the household is categorically eligible as defined at Sections 8 and 9 of 8.139.420 NMAC or the vehicle is not fully excludable under 8.139.527 NMAC;

(7) when cash on hand, stocks, bonds and money in a bank account or savings institution reach or exceed the resource limit set at 8.139.510.8 NMAC, unless the household is categorically eligible as defined at Sections 8 and 9 of 8.139.420 NMAC;

(8) changes in the legal obligation to pay child support; and

(9) for able-bodied adults subject to the time limit of 7 CFR 273.24, any changes in work hours that bring an individual below 20 hours per week, averaged monthly, as defined in 7 CFR 273.24(a)(1)(i).

**F. ISD's responsibility with interim report forms:**

(1) **Interim report form is not received:** If a household fails to file a report by the specific filing date, defined in Subsection B of 8.139.120.9 NMAC, ISD will send a notice to the household advising of the missing report no later than 10 calendar days from the date the report should have been submitted. If the household does not respond to the notice, the household's participation shall be terminated.

(2) **Incomplete interim report form is received:**

- (a) An interim report form that is not signed shall be returned to the household for a signature. The household:
  - (i) shall be notified that the form is incomplete;
  - (ii) what needs to be completed to complete the interim report form; and

(iii) shall be given 10 calendar days to provide the signed interim report form to be reviewed for completeness.

(b) An interim report form that is incomplete because required verification is not provided shall not be returned to the household. The household:

(i) shall be notified that the form is incomplete;

(ii) what information must be provided to complete the interim report form; and

(iii) shall be given 10 calendar days to provide the verification to process the interim report form.

**(3) Complete interim report form is received:**

(a) A form that is complete and all verifications are provided, shall be processed within 10 calendar days of receipt.

(b) A form that is complete, and all verifications are provided except for verification of an allowable deduction, shall be processed, unless the verification is otherwise questionable, in accordance with 8.100.130.12 NMAC. The household:

(i) shall be notified that verification is questionable; and

(ii) shall be given 10 calendar days to provide the verification to process the allowable deduction.

(c) A deduction that is verified within the month the interim report form is due shall be processed as part of the interim report form.

(d) A deduction that is verified in the month after the interim report form is due shall be processed as a change reported by the household.

(e) If the household files a timely and complete report resulting in reduction or termination of benefits, ISD shall send a notice of case action. The notice must be issued so that the

household will receive it no later than the time that its benefits are normally received. If the household fails to provide sufficient information or verification regarding a deductible expense, ISD will not terminate the household, but will instead determine the household's benefits excluding the deduction from the benefit calculation.

**G. Changes that must be reported at any time during certification period:**

Households must report changes no later than 10 days from the end of the calendar month in which the change occurred, provided that the household has at least 10 calendar days within which to report the change. If there are not 10 days remaining in the month, the household must report within 10 days from the date the work hours fall below 20 hours per week, averaged monthly or when income exceeding the gross federal poverty limit as mentioned below is first received. The interim report form is the sole reporting requirement for any information that is required to be reported on the form, except that a household must report at any time during the certification period:

(1) the household must report when its monthly gross income exceeds one hundred thirty percent of poverty level. A categorically eligible household defined in accordance with 8.139.420.8 NMAC, must report when its monthly gross income exceeds one hundred sixty-five percent of poverty level. The household shall use the monthly gross income limit for the household size that existed at the time of certification or recertification regardless of any subsequent changes to its household size; and

(2) able-bodied adults subject to the time limit in accordance with 7 CFR 273.24 shall report whenever their work hours fall below 20 hours per week, averaged monthly.

(3) In accordance with 7 CFR 273.12(a)(2), SNAP households must report substantial lottery and gambling

winnings within 10 days of the end of the month in which the household received the winnings.

(a) If the substantial lottery and gambling winning is won by multiple beneficiaries and is over the elderly and disabled resource standard, each SNAP member's share must be reported;

(b) if the winning is less than the elderly and disabled resource standard it does not need to be reported.

**H. Action on changes reported outside of the interim report form:**

In addition to changes that must be reported in accordance with Subsection G of 8.139.120.9 NMAC, ISD must act on changes in between interim report forms, if it would increase the household's benefits. ISD shall not act on changes that would result in a decrease in the household's benefits unless:

(1) The household has voluntarily requested that its case be closed.

(2) ISD has information about the household's circumstances considered verified upon receipt. Verified upon receipt is defined:

(a) information is not questionable; and

(b) the provider of the information is the primary source of information; or

(c) the recipient's attestation exactly matches the information received from a third party.

(3) A household member has been identified as a fleeing felon or probation violator in accordance with 7 CFR 273.11(n);

(4) There has been a change in the household's cash grant, or where cash and SNAP cases are jointly processed in accordance with 7 CFR 273.2(j)(2).

**I. Responsibilities on reported changes outside of the interim report form:**

When a household reports a change, ISD shall take action to determine the household's eligibility or SNAP benefit amount within 10 working



days of the date the change is reported.

(1) During the certification period, action shall not be taken on changes to medical expenses of households eligible for the medical expense deduction which ISD learns of from a source other than the household and which, in order to take action, requires ISD to contact the household for verification. ISD shall act only on those changes in medical expenses that it learns about from a source other than the household, if those changes are verified upon receipt and do not necessitate contact with the household.

(2) **Decreased or termination of benefits:** For reported and verified changes that result in a decrease or termination of household benefits, ISD shall act on the change as follows:

(a) Issue a notice of adverse action within 10 calendar days of the date the change was reported and verified unless one of the exemptions to the notice of adverse action in 7 CFR 273.13 (a)(3) or (b) applies.

(b) When a notice of adverse action is used, the decrease in the benefit level shall be made effective no later than the allotment for the month following the month in which the notice of adverse action period has expired, provided a fair hearing and continuation of benefits have not been requested.

(c) When a notice of adverse action is not used due to one of the exemptions in 7 CFR 273.13 (a)(3) or (b), the decrease shall be made effective no later than the month following the change. Verification which is required by 7 CFR 273.2(f) must be obtained prior to recertification.

(3) **Increased benefits:** For reported and verified changes that result in an increase of household benefits, ISD shall act on the change as follows:

(a) For changes which result in an increase in a household's benefits, other than changes described in

paragraph (b) of this section, ISD shall make the change effective no later than the first allotment issued 10 calendar days after the date the change was reported to ISD.

(b) For changes which result in an increase in a household's benefits due to the addition of a new household member who is not a member of another certified household, or due to a decrease of fifty dollars (\$50) or more in the household's gross monthly income, ISD shall make the change effective not later than the first allotment issued 10 calendar days after the date the change was reported.

(i) In no event shall these changes take effect any later than the month following the month in which the change is reported.

(ii) If the change is reported after the last day to make changes and it is too late for ISD to adjust the following month's allotment, ISD shall issue a supplement or otherwise provide an opportunity for the household to obtain the increase in benefits by the tenth day of the following month, or the household's normal issuance cycle in that month, whichever is later.

(4) **No change in SNAP benefit amount:** When a reported change has no effect on the SNAP benefit amount, ISD shall document the change in the case file and notify the household of the receipt of the report.

(5) **Providing verification:** The household shall be allowed 10 calendar days from the date a change is reported to provide verification, if necessary. If verification is provided at the time a change is reported or by the deadline date, the increase in benefits shall be effective in accordance with (a) and (b) above. If the household fails to provide the verification by the deadline date, but does provide it at a later date, the increase shall be effective in the month following the month the verification is provided. If the household fails to provide necessary verification, its' SNAP benefit amount shall revert to the original benefit amount.

**J. Resolving unclear information:**

(1) During the certification period, ISD may obtain information about changes in a household's circumstances from which ISD cannot readily determine the effect of the change on the household's benefit amount. The information may be received from a third party or from the household itself. ISD must pursue clarification and verification of household circumstances using the following procedure if unclear information received outside the periodic report is:

(a) information fewer than 60 days old relative to the current month of participation; and,

(b) if accurate, would have been required to be reported under simplified reporting rules, in accordance with 8.139.120.9 NMAC.

(c) ISD must pursue clarification and verification of household circumstances in accordance with the process outlined in Subsection B of 8.100.130.12 NMAC, for any unclear information that appears to present significantly conflicting information from that used by ISD, at the time of certification.

**(2) Unclear information resulting from certain data matches:**

(a) if the department receives match information from a trusted data source as described in 7 CFR 272.13 or 7 CFR 272.14, ISD shall send a notice in accordance with Subsection B of 8.100.130.12 NMAC in accordance with 7 CFR 272.13(b)(4) and 7 CFR 272.14 (c)(4). The notices must clearly explain what information is needed from the household and the consequences of failing to respond to the notice.

(b) if the household fails to respond to the notice or does respond but refuses to provide sufficient information to clarify its circumstances, ISD shall remove the individual and the individual's income from the



household and adjust benefits accordingly. As appropriate, ISD shall issue a notice of adverse action.

**K. Failure to report changes:** If ISD discovers that the household failed to report a change as required, ISD shall evaluate the change to determine whether the household received benefits to which it was not entitled or if the household is entitled to an increased benefit amount.

**(1) Decreased benefit amount:** After verifying the change, ISD shall initiate a claim against the household for any month in which the household was over issued SNAP benefits. The first month of the over issuance is the month following the month the adverse action notice time limit would have expired had the household timely reported the change. If the discovery is made within the certification period, the household is entitled to a notice of adverse action if its benefits will be reduced. No claim shall be established because of a change in circumstances that a household is not required to report in accordance with Subsection G of 8.139.120.9 NMAC above.

**(2) Increased benefit amount:** When a household fails to make a timely report of a change which will result in an increased SNAP benefit amount, the household is not entitled to a supplement for any month prior to and including the month in which the change was reported. The household is entitled to an increased benefit amount effective no later than the first benefit amount issued 10 calendar days after the date the change was reported.

[2/1/1995, 10/1/1995, 6/15/1996, 9/14/1996, 11/1/1996, 7/1/1998, 6/1/1999; 8.139.120.9 NMAC - Rn, 8 NMAC 3 FSP.123, 5/15/2001; 8.139.120.9 - N, 02/14/2002; A, 01/01/2004; A, 07/16/2008; A, 08/15/2008; A/E, 10/15/2008; A, 12/31/2008; A, 09/01/2021]

**HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION**

**This is an amendment to 8.139.400 NMAC, Section 11 and 12 to be effective 9/1/2021.**

**8.139.400.11 SPECIAL MEMBERS:**

**[A. Students: (1) Eligibility:**

An individual who is enrolled at least half-time in an institution of higher education will be ineligible to participate in SNAP unless the individual qualifies for one of the exemptions contained in Paragraph (3) of Subsection A of 8.139.400.11 NMAC. Half-time enrollment status is determined by the definition of the institution in which the individual is enrolled or attending.

**(2)**

**Enrollment:**

**(a)**

Students enrolled in an institution of higher education less than half time are not considered students for purposes of SNAP eligibility, and do not have to meet an exemption at Paragraph (3) of Subsection A of 8.139.400.11 NMAC to be eligible for SNAP.

**(b)**

Students who are enrolled at least half-time in an institution of higher education in a program that normally requires a high school diploma or equivalency certificate for enrollment in a "regular curriculum," are students and have to meet an exemption at Paragraph (3) of Subsection A of 8.139.400.11 NMAC to be eligible for SNAP. The following programs are not in the "regular curriculum," and if enrolled in one of these programs, the student would not be considered a student for purposes of SNAP eligibility:

**(i)**

Career or technical certificate programs. Career and technical certificate programs are programs which offer a sequence of courses that provide individuals with coherent and rigorous content aligned with challenging academic standards

and relevant technical knowledge and skills needed to prepare for further education and careers in current or emerging professions; provide technical skill proficiency; an industry-recognized credential, a certificate, or an associate degree; and may include prerequisite courses that meet the requirements of this subparagraph; and include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills, and knowledge of all aspects of an industry, including entrepreneurship, of an individual.

**(ii)**

English as a second language;

**(iii)**

adult basic education;

**(iv)**

literacy; or

**(v)**

community education courses

**(c)**

Students who are enrolled at least half-time in a "regular curriculum," at a college or university that offers degree programs regardless of whether a high school diploma is required are considered students for purposes of SNAP eligibility, and have to meet an exemption found at Paragraph (3) of Subsection A of 8.139.400.11 NMAC to be eligible for SNAP.

**(d)**

The enrollment status of a student shall begin on the first day of the school term. Such enrollment shall be deemed to continue through normal periods of class attendance, vacation and semester breaks. Enrollment status shall terminate when the student graduates, is expelled, does not re-enroll or is suspended for a period in excess of 30 calendar days

**(e)**

Students who reside on campus as defined at 34 CFR 668.46(a) and who have opted to or are required to purchase a meal plan which provides fifty percent or more of their meals are ineligible for SNAP in accordance with 7 CFR 273.1(b)(7)(vi).

(3) **Student exemptions:** To be eligible, a student must meet at least one of the following exemptions:

(a) **Age:** Be age 17 or younger or age 50 or older.

(b) **Physical or mental unfitness:** For exemption purposes, physical or mental unfitness per Paragraph (3) of Subsection A of 8.139.400.11-NMAC and 7 CFR 273.5(b)(2) is defined as follows: An individual who has a mental or physical illness or disability, temporary or permanent, which reduces their ability to financially support themselves. Unfitness can be obvious to the department and documented in the case file; or not obvious to the department, but is documented by a physician, physician's assistant, nurse, nurse practitioner, a licensed or certified psychiatrist or a licensed or certified psychologist, or social worker as being unfit to work; the claim of physical or mental unfitness must be substantiated by written documentation identifying the physical or mental condition and certifying that the person is unfit for employment.

(i) If an individual claims to be physically or mentally unfit for purposes of the student exemption, and the unfitness is not evident to ISD, verification may be required.

(ii) Appropriate verification may consist of receipt of temporary or permanent disability benefits issued by government or private sources, or of a statement from a physician or licensed or certified psychologist.

(c) **Education/training program:** Assigned to or placed in an institution of higher education through or in compliance with the requirements of:

(i) a program under the Job Training Partnership Act of 1974 (JTPA);

(ii) an employment and training program under 7 CFR 273.7;

(iii) a program under Section 236 of the Trade Act of 1974 [19 U.S.C. 2296]; or

(iv) an employment and training program for low-income households that is operated by a state or local government where one or more of the components of such program is at least the equivalent to an acceptable SNAP employment and training program component.

(d) **Employment:** Employed a minimum of 20 hours per week and paid for such employment, or, if self-employed, working a minimum of 20 hours per week, and receiving weekly earnings at least equal to the federal minimum wage multiplied by 20 hours. Students whose employment hours fluctuate week to week will be considered to have met the minimum work hour requirement, as long as they maintain an average of 20 hours per week or 80 hours per month.

(e) **Work study:** Be participating in a state or federally financed work study program during the regular school year.

(i) The student must be approved for work study at the time of application for SNAP benefits, the work study must be approved for the school term, and the student must anticipate actually working during that time.

(ii) The exemption will begin with the month in which the school term begins or the month work study is approved, whichever is later.

(iii) Once begun, the exemption will continue until the end of the month in which the school term ends, or it becomes known that the student has refused an assignment.

(iv) The exemption will not continue between terms when there is a break of a full month or longer, unless the student is participating in work study during the break.

(f) **Children:** Responsible for a

dependent household member who: (i) is under age 6; or

(ii) has reached the age of 6 but is under age 12 when ISD has determined that adequate child care is not available to enable the student to attend class and comply with the 20-hour work requirement in (d) or the work study requirement in (e) above.

(g) **Single parents:** Enrolled in an institution of higher education on a full-time basis (as determined by the institution) and be responsible for the care of a dependent child under age 12.

(i) This provision applies when only one natural, adoptive or stepparent (single, widow/ widower, separated, divorced) is in the same SNAP household as the child.

(ii) If there is no natural, adoptive or stepparent in the same SNAP household as the child, another full-time student in the same SNAP household as the child may qualify for eligible student status under this provision if he/she has parental control over the child and is not living with his/her spouse.

(h) **Title IV-A:** Receiving Title IV-A cash assistance.

(i) **Work incentive program:** Participation in the job opportunities and basic skills program under Title IV of the Social Security Act or its successor programs.

(j) **On-the-job training:** Be participating in an on-the-job training program. An individual is considered to be participating in an on-the-job training program only during the period of time the individual is being trained by the employer.]

**A. Students:**  
**(1) Eligibility:**

An individual who is enrolled at least half-time in an institution of higher education will be ineligible to participate in SNAP unless the individual qualifies for one of the

exemptions contained in Paragraph (3) of Subsection A of 8.139.400.11 NMAC. Half-time enrollment status is determined by the definition of the institution in which the individual is enrolled or attending.

**(2) Reside**

**on Campus:** Students who reside on campus as defined at 34 CFR 668.46(a) and who have opted to or are required to purchase a meal plan which provides fifty percent or more of their meals are ineligible for SNAP in accordance with 7 CFR 273.1(b)(7) (vi).

**(3)**

**Enrollment:** An individual is considered to be enrolled in an institution of higher education if the individual:

**(a)**

is enrolled in a business, technical, trade, or vocational school that normally requires a high school diploma or equivalency certificate for enrollment in the curriculum; or

**(b)**

is enrolled in a regular curriculum at a college or university that offers degree programs regardless of whether a high school diploma is required.

**(4) Student**

**Exemptions:** To be eligible for SNAP, a student as defined in with Subparagraphs (a) and (b) of Paragraph (4) of Subsection A of 8.139.400.11 NMAC must meet at least one of the following criteria.

**(a)**

Be age 17 or younger or age 50 or older;

**(b)**

Be physically or mentally unfit: For exemption purposes, physical or mental unfitness per Paragraph (3) of Subsection A of 8.139.400.11 NMAC and 7 CFR 273.5(b)(2) is defined as follows: An individual who has a mental or physical illness or disability, temporary or permanent, which reduces their ability to financially support themselves. Unfitness can be obvious to the department and documented in the case file; or not obvious to the department, but is documented by a physician, physician's assistant,

nurse, nurse practitioner, a licensed or certified psychiatrist or a licensed or certified psychologist, or social worker as being unfit to work; the claim of physical or mental unfitness must be substantiated by written documentation identifying the physical or mental condition and certifying that the person is unfit for employment.

**(i)**

if an individual claims to be physically or mentally unfit for purposes of the student exemption, and the unfitness is not evident to ISD, verification may be required;

**(ii)**

appropriate verification may consist of receipt of temporary or permanent disability benefits issued by government or private sources, or of a statement from a physician or licensed or certified psychologist.

**(c)**

be receiving Temporary Assistance for Needy Families under Title IV of the Social Security Act;

**(d)**

be enrolled as a result of participation in the Job Opportunities and Basic Skills program under Title IV of the Social Security Act or its successor program;

**(e)**

be employed for a minimum of 20 hours per week and be paid for such employment or, if self-employed, be employed for a minimum of 20 hours per week and receiving weekly earnings at least equal to the federal minimum wage multiplied by 20 hours. For students whose employment hours fluctuate week to week will be considered to have met the minimum work hour requirement, as long as they maintain an average of 20 hours per week or 80 hours per month. Compliance with this requirement can be determined by calculating whether the student worked an average of 20 hours per week over the period of a month, quarter, trimester or semester.

**(f)**

be participating in a state or federally financed work study program during the regular school year.

**(i)**

To qualify under this provision, the

student must be approved for work study at the time of application for SNAP benefits, the work study must be approved for the school term, and the student must anticipate actually working during that time. The exemption shall begin with the month in which the school term begins or the month work study is approved, whichever is later. Once begun, the exemption shall continue until the end of the month in which the school term ends, or it becomes known that the student has refused an assignment.

**(ii)**

The exemption shall not continue between terms when there is a break of a full month or longer unless the student is participating in work study during the break.

**(g)**

be participating in an on-the-job training program. A person is considered to be participating in an on-the-job training program only during the period of time the person is being trained by the employer;

**(h)**

be responsible for the care of a dependent household member under the age of six;

**(i)**

be responsible for the care of a dependent household member who has reached the age of six but is under age 12 when ISD has determined that adequate child care is not available to enable the student to attend class and comply with the work requirements of Subparagraphs (e) and (f) of Paragraph (3) Subsection A of 8.139.400.11 NMAC;

**(j)**

be a single parent enrolled in an institution of higher education on a full-time basis (as determined by the institution) and be responsible for the care of a dependent child under age 12;

**(i)**

This provision applies in those situations where only one natural, adoptive or stepparent (regardless of marital status) is in the same SNAP household as the child.

**(ii)**

If no natural, adoptive or stepparent is in the same SNAP household as the



child, another full-time student in the same SNAP household as the child may qualify for eligible student status under this provision if he or she has parental control over the child and is not living with his or her spouse.

**(k)** be assigned to or placed in an institution of higher education through or in compliance with the requirements of one of the programs identified in items (i), (iv) of Subparagraph (k) of Paragraph (3) of Subsection A of 8.139.400.11 NMAC. Self-initiated placements during the period of time the person is enrolled in one of these employment and training programs shall be considered to be in compliance with the requirements of the employment and training program in which the person is enrolled provided that the program has a component for enrollment in an institution of higher education and that program accepts the placement. Persons who voluntarily participate in one of these employment and training programs and are placed in an institution of higher education through or in compliance with the requirements of the program shall also qualify for the exemption. The programs are:

**(i)** a program under the Job Training Partnership Act of 1974 (29 U.S.C. 1501, *et seq.*);

**(ii)** an employment and training program in accordance with 7 CFR 273.7, subject to the condition that the course or program of study, as determined by the state agency;

**(iii)** is part of a program of career and technical education as defined in section 3 of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2302) designed to be completed in not more than four years at an institution of higher education as defined in section 102 of the Higher Education Act of 1965 (20 U.S.C. 2296); or

**(iv)** is limited to remedial courses, basic adult education, literacy, or English as a second language;

**(v)** A program under section 236 of the Trade Act of 1974 (19 U.S.C. 2296); or

**(vi)** An employment and training program for low-income households that is operated by a state or local government where one or more of the components of such program is at least equivalent to an acceptable SNAP employment and training program component in accordance with 7 CFR 273.7(e)(1). Using the criteria in 7 CFR 273.7(e)(1), a determination be made as to whether or not the programs qualify;

**(l)** the enrollment status of a student shall begin on the first day of the school term of the institution of higher education. Such enrollment shall be deemed to continue through normal periods of class attendance, vacation and recess, unless the student graduates, is suspended or expelled, drops out, or does not intend to register for the next normal school term (excluding summer school);

**(m)** the income and resources of an ineligible student shall be handled in accordance with the requirements in Subsection D of 8.139.520.10 NMAC.

**B. Strikers:**

Households with members on strike are ineligible to participate in the SNAP, unless the household was eligible for benefits the day before the strike began and is otherwise eligible at the time of application. A striker is anyone involved in a strike or concerted stoppage of work by employees, including a stoppage because of the expiration of a collective bargaining agreement, and any concerted slowdown or other concerted interruption of operations by employees. Employees participating in a sympathy strike will be considered strikers. The household will not receive an increased SNAP benefit amount as a result of the decrease in income of the striking member(s) of the household.

**(1)**

**Nonstrikers:** The following

individuals are not considered strikers and are eligible for program participation:

**(a)** any employee affected by a lockout;

**(b)** an individual who goes on strike who is exempt from work registration (Subsection B of 8.139.410.12 NMAC) the day before the strike, except those who were exempt because of employment;

**(c)** employees whose workplace is closed by an employer in order to resist demands of employees (i.e., a lockout);

**(d)** employees unable to work as a result of other striking employees (e.g., truck drivers who are not working because striking newspaper pressmen prevent newspapers from being printed;

**(e)** employees who are not part of the bargaining unit on strike but who do not want to cross a picket line for fear of personal injury or death;

**(f)** employees who are fired or laid off, or who are permanently replaced or officially resign; and

**(g)** employees who will not be permitted to return to their old jobs but are offered different ones.

**(2) Striker**

**eligibility:**

**(a)** Striker eligibility is determined by considering the day before the strike as the day of application and assuming the strike did not occur.

**(b)** Eligibility at the time of application is determined by comparing the striking member's income before the strike to the striker's current income and adding the higher of the two to the current income of the nonstriking household members during the month of application.

**(c)** To determine benefits (and eligibility for households subject to the net income eligibility standard), deductions will be calculated for the

month of application as for any other household. Whether the striker's prestrike earnings are used or the current income is used, the earnings deduction is allowed if appropriate.

(d)

Strikers whose households are eligible to participate in the SNAP will be required to register for work unless otherwise exempt.

**C. Boarders:**

Boarders are defined as individuals or groups of individuals residing with others and paying reasonable compensation to those others for lodging and meals. An individual furnished both lodging and meals by a household, but paying less than reasonable compensation to the household for such services, will be considered a household member. Foster care children placed in the home of relatives or other individuals or families will be considered boarders. Foster care payments made to the household will not be counted as income, unless the household chooses to include the foster child. Payment to a household for lodging and meals will be treated as self-employment income to the household.

(1)

**Reasonable compensation:** To determine if an individual is paying reasonable compensation for meals and lodging in making a determination of boarder status, only the amount paid for meals will be used, provided that the amount paid for meals can be distinguished from the amount paid for lodging. A reasonable monthly payment will be either of the following:

(a)

A boarder whose board arrangement is for more than two meals a day must pay an amount which equals or exceeds the maximum SNAP benefit amount for the appropriate size of the boarder household.

(b) A

boarder whose board arrangement is for two meals or less per day must pay an amount which equals or exceeds two-thirds of the maximum SNAP benefit amount for the appropriate size of the boarder household.

(2) **Included**

**boarders:** A household which provides boarding services may request that the boarder be included as a member of the household. Boarders are not eligible to participate in the SNAP separately from the household providing the board. All the income and resources of included boarders will be counted in determining the eligibility and SNAP benefit amount of the household.

(3) **Excluded**

**boarders:** The income and resources of boarders who are not included as household members will not be considered available to the household. [02/01/1995, 10/01/1995, 02/15/1996, 05/15/1997, 07/01/1997/ 06/01/1999; 8.139.400.11 NMAC - Rn, 8 NMAC 3.FSP.403, 05/15/2001; A, 07/15/2013; A, 09/01/2017; A, 06/01/2018; A, 09/01/2021]

**8.139.400.12 INELIGIBLE HOUSEHOLD MEMBERS:**

The following individuals shall be included as household members for the purpose of defining a household, but shall not be included as eligible members when determining the household's size, comparing the household's monthly income with the income eligibility standard, or assigning a benefit amount by household size.

**A. Excluded**

**household members:**

(1) **Ineligible**

**aliens:** Individuals who do not meet citizenship or eligible alien status requirements, or eligible sponsored alien requirements. The income and resources of such individuals shall be counted in determining the household's eligibility and benefit amount in accordance with the requirements in Subsection C of 8.139.520.10 NMAC.

(2) **Ineligible**

**students:** Individuals enrolled in an institution of higher education who are ineligible because they do not meet the student eligibility requirements in Subsection A of 8.139.400.11 NMAC. Ineligible students are considered as non-household members in determining

the household's eligibility and benefit amount. Income and resources are considered in accordance with the requirements in Subsection D of 8.139.520.10 NMAC.

**B. Disqualified**

**household members:**

(1) **SSN**

**disqualified:** Individuals who are disqualified for refusal or failure to provide a social security number.

(2) **Work**

**noncompliance:** Individuals who have been disqualified for failure or refusal to comply with work requirements.

(3) **IPV:**

Individuals disqualified for an intentional program violation.

**C. Disqualification**

**for fleeing felons and probation/parole violators:** No member of an otherwise eligible household shall be eligible to participate in the FSP as a member of the household during any period in which the individual is:

(1) fleeing

to avoid prosecution, or custody or confinement after conviction, under the law of the place from which the individual is fleeing, for a crime or attempt to commit a crime, that is a felony, or in New Jersey a high misdemeanor, under the law of the place from which the individual is fleeing; or

(2) violating

a condition of probation or parole imposed under a federal or state law.

(3) **Treatment**

**of income and resources:** The income and resources of an individual described in Paragraphs (1) and (2) of Subsection C of 8.139.400.12 NMAC shall be attributed in their entirety to the household while the individual is in the home.

**D. Disqualification**

**for certain convicted felon:** The disqualification contained in Subsection D of 8.139.400 NMAC shall not apply to a conviction if the conviction is for conduct occurring on or before February 7, 2014. An individual shall not be eligible for SNAP benefits if the individual is convicted as an adult of:



- (1) aggravated sexual abuse under section 2241 of title 18, United States Code;
- (2) murder under section 1111 of title 18, United States Code;
- (3) an offense under chapter 110 of title 18, United States Code;
- (4) a federal or state offense involving sexual assault, as defined in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)); or
- (5) an offense under state law determined by the attorney general to be substantially similar to an offense described in Paragraph (1), (2), or (3) of Subsection D of 8.139.400.12 NMAC; and
- (6) The individual is not in compliance with the terms of the sentence of the individual or the restrictions under Subsection C of 8.139.400.12 NMAC. [02/01/1995, 10/01/1995, 05/15/1997; 8.139.400.12 NMAC - Rn, 8 NMAC 3.FSP.404, 05/15/2001; A, 02/14/2002; A, 5/15/2002; A, 09/01/2021]

**HUMAN SERVICES  
DEPARTMENT  
INCOME SUPPORT DIVISION**

**This is an amendment to 8.139.420 NMAC, Section 8 effective 9/1/2021.**

**8.139.420.8 CATEGORICAL ELIGIBILITY (CE):** All members of a food stamp household must maintain CE status for the household to be considered CE. Categorically eligible one and two person households are entitled to the minimum food stamp benefit amount, except in an initial month if the prorated benefit is less than \$10.

**A. Determining CE:** Households may be CE by receiving financial assistance or by receiving a non-cash TANF/MOE funded benefit or service, known as broad-based CE.

**(1) Financial assistance/SSI CE:** A food stamp household is considered CE for the

entire month when all of its members receive or has been determined eligible to receive any combination of the benefits or services from the following:

- (a)** financial assistance;
- (b)** financial, in-kind benefits, or services funded either under Title IV-A of the Social Security Act or by the state as part of the TANF maintenance of effort;
- (c)** SSI under Section 1619(a) or 1619(b) of the Social Security Act (42 U.S.C. 1382h(a) or (b)).

**(2) Broad-based CE due to receiving a non-cash TANF/MOE funded benefit or service:** A food stamp household is considered to be a broad-based CE household for the month of application and the entire certification period when the household's gross income is less than 165% FPG and the household has received a non-cash TANF/MOE funded benefit or service.

**(3) Households not entitled to CE:** A household shall not be considered CE if:

- (a)** any member is disqualified for an IPV;
- (b)** any member is disqualified for failure to comply with work registration or E&T requirements, including voluntarily quitting a job or reducing employment hours without good cause;
- (c)** any member is disqualified because of fleeing felon status or parole/probation violations;
- (d)** the household is institutionalized;
- (e)** the household refuses to cooperate in providing information that is necessary to determine eligibility;
- (f)**

households that lose eligibility because an individual member received substantial lottery or gambling winnings will remain

ineligible until they meet the income and resource limits detailed in 7 CFR 273.8 and 273.9. The next time such a household reapplies and is certified for SNAP after losing eligibility under this rule, the household would not be considered categorically eligible. This requirement is not permanent; it applies only to the first time a household is certified under regular SNAP rules following the loss of eligibility for substantial lottery and gambling winnings.

**(4)** Households may be CE if they contain non-household members such as ineligible students, ineligible aliens, ABAWDs who are ineligible due to time limits.

**B. Eligibility factors for CE households:** All CE households are subject to food stamp eligibility requirements, including, but not limited to, verification of household composition, if questionable; benefit determination (income and deductions); disqualification for any reason; claims recovery and restored benefits; notices and fair hearings; and all reporting requirements.

**(1) Financial assistance/SSI households:** Households entitled to CE because of receipt of financial assistance or SSI do not have to provide verification of the following eligibility factors:

- (a)** resources;
- (b)** social security number;
- (c)** sponsored alien information; and
- (d)** residency.

**(2) Broad-based households:** Households entitled to CE because they received a non-cash TANF/MOE funded benefit or service do not have to verify resources.

**C. Case management for all CE households:**

**(1) Applicant households:** Caseworkers shall postpone denying a potentially CE household until the 30th day to allow financial assistance or SSI benefit

approval. If within 30 days following the denial date, the caseworker becomes aware of, approval which makes the household CE benefits shall be paid using the original application and any other information which has become available since that time.

(2)

**Responsibility to report changes:** CE households subject to simplified or regular reporting must report changes in accordance with 8.139.120 NMAC.

(3) **Action**

**on changes to CE status:** When a household reports a change or the department becomes aware of a change, the caseworker shall take action to determine if the household is still entitled to continue CE.

(a)

**Financial assistance:** When the household reports a loss or the department becomes aware of a loss of SSI or financial assistance, the household should be evaluated for broad-based CE.

(b)

**Broad-based CE:** The caseworker shall take action to determine if the household still meets the criteria for broad-based CE status per Paragraph (2) of Subsection A above. Should the reported change result in a loss of broad-based CE the household will be notified in writing. Any household no longer entitled to broad-based CE status may still participate in the food stamp program and are subject to all eligibility requirements including resource and reduced income limits. [2/1/1995, 7/1/1997, 6/1/1999; 8.139.420.8 NMAC - Rn, 8 NMAC 3.FSP.426, 05/15/2001; A, 02/14/2002; A, 04/01/2010; A, 09/01/2021]

**HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION**

**This is an amendment to 8.139.510 NMAC, Section 9 effective 9/1/2021.**

**8.139.510.9 STANDARDS:**  
**A. Liquid resources:**  
 Liquid resources are readily

negotiable resources such as, but not limited to:

- (1) cash on

hand;

- (2) money in

checking and saving accounts;

- (3) savings

certificates, stocks and bonds (even if they are producing income consistent with their fair market value), credit union shares, promissory notes, U.S. savings bonds (after they become accessible six months from the date of purchase);

- (4)

loans, including loans from private individuals as well as from commercial institutions, are considered in the month received.

**B. Lump-sum**

**payments:** Money received in the form of a nonrecurring lump sum payment is counted as a resource in the month received, unless specifically excluded by other federal laws.

- (1) Lump sum

payments include, but are not limited to:

- (a)

income tax refunds, rebates, or credits, including earned income tax credit payments after 2 months;

- (b)

retroactive lump sum social security, SSI, cash assistance, railroad retirement benefits or similar payments;

- (c)

lump sum insurance settlements;

- (d)

refunds of security deposits on rental property or utilities;

- (e)

substantial lottery or gambling winnings.

- (2) Lump sum

payments are delayed payments owed to a household for past periods.

**C. Other liquid**

**resources:** Liquid resources also include:

- (1) funds held

in individual retirement accounts (IRAs), and

- (2) funds held

in Keogh plans that do not involve a household member in a contractual

relationship with individuals who are not household members; in determining the availability of IRAs or Keogh plans, the caseworker shall count the total cash value minus the amount of the penalty (if any) for early withdrawal of the entire amount.

**D. Non-liquid**

**resources:** Non-liquid resources include personal property, boats, buildings, land, recreational property, and any other property, provided that the resource is not specifically excluded. Non-liquid resources shall be documented in sufficient detail to permit verification if the resource becomes questionable.

**E. Vehicles:**

The entire value of any licensed or unlicensed vehicle shall be excluded in determining eligibility and benefit amount in the food stamp program. [2/1/1995, 10/1/1995, 10/1/1996; 8.139.510.9 NMAC - Rn, 8 NMAC 3.FSP.511, 05/15/2001; A, 02/01/2002; A, 09/01/2021]

**HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION**

The Human Services Department - Medical Assistance Division reviewed at its 5/20/2021 hearing, 8.312.3 NMAC, Long Term Care Services - Nursing Services, Cost Related Reimbursement of Nursing Facilities filed 6/14/2002. The Department has decided to repeal 8.312.3 NMAC, Long Term Care Services - Nursing Services, Cost Related Reimbursement of Nursing Facilities filed 6/14/2002 and replace it with 8.312.3 NMAC, Long Term Care Services - Nursing Services, Cost Related Reimbursement of Nursing Facilities, adopted 8/12/2021 and effective 9/1/2021.

**HUMAN SERVICES  
DEPARTMENT  
MEDICAL ASSISTANCE  
DIVISION**

**TITLE 8 SOCIAL  
SERVICES  
CHAPTER 312 LONG TERM  
CARE SERVICES - NURSING  
SERVICES  
PART 3 COST RELATED  
REIMBURSEMENT OF  
NURSING FACILITIES**

**8.312.3.1 ISSUING**

**AGENCY:** New Mexico Human Services Department.  
[8.312.3.1 NMAC - Rp, 8.312.3.1 NMAC, 9/1/2021]

**8.312.3.2 SCOPE:** The rule applies to the general public.

[8.312.3.2 NMAC - Rp, 8.312.3.2 NMAC, 9/1/2021]

**8.312.3.3 STATUTORY**

**AUTHORITY:** The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended and by the state human services department pursuant to state statute. See Section 27-2-12 et seq., NMSA 1978.

[8.312.3.3 NMAC - Rp, 8.312.3.3 NMAC, 9/1/2021]

**8.312.3.4 DURATION:**

Permanent.

[8.312.3.4 NMAC - Rp, 8.312.3.4 NMAC, 9/1/2021]

**8.312.3.5 EFFECTIVE**

**DATE:** September 1, 2021, unless a later date is cited at the end of a section.

[8.312.3.5 NMAC - Rp, 8.312.3.5 NMAC, 9/1/2021]

**8.312.3.6 OBJECTIVE:**

The objective of this rule is to provide policies for the service portion of the New Mexico medicaid program. These policies describe eligible providers, covered services, noncovered services, utilization

review, and provider reimbursement.  
[8.312.3.6 NMAC - Rp, 8.312.3.6 NMAC, 9/1/2021]

**8.312.3.7 DEFINITIONS:**

**A. Accrual basis of accounting:** Under the accrual basis of accounting, revenue is recorded in the period when it is earned, regardless of when it is collected.

The expenditures for expense and asset items are recorded in the period in which they are incurred, regardless of when they are paid.

**B. Allocable costs:**

An item or group of items of cost chargeable to one or more objects, processes, or operations in accordance with cost responsibilities, benefits received, or other identifiable measure of application or consumption.

**C. Applicable**

**credits:** Those receipts or types of transactions which offset or reduce expense items that are allocable to cost centers as direct or indirect costs. Typical examples of such transactions are: purchase discounts, rebates, or allowances; recoveries or indemnities on losses; sales of scrap or incidental services; adjustments of over-payments or erroneous charges; and other income items which serve to reduce costs. In some instances, the amounts received from the federal government to finance hospital activities or service operations should be treated as applicable credits.

**D. Cash basis of**

**accounting:** Under the cash basis of accounting, revenues are recognized only when cash is received and expenditures for expense and asset items are not recorded until cash is disbursed for them.

**E. Charges:** The regular rates established by the provider for services rendered to both beneficiaries and to other paying patients whether inpatient or outpatient. The rate billed to the department shall be the usual and customary rate charged to all patients.

**F. Closed facility:**

A facility which has been either voluntarily or involuntarily terminated from participation in the medicaid program not to include termination for

construction of a replacement facility.

**G. Cost center:** A division, department, or subdivision thereof, a group of services or employees or both, or any other unit or type of activity into which functions of an institution are divided for purposes of cost assignment and allocations.

**H. Cost finding:** A determination of the cost of services by the use of informal procedures, i.e., without employing the regular processes of cost accounting on a continuous or formal basis. It is the determination of the cost of an operation by the allocation of direct costs and the proration of indirect costs.

**I. Facility:** The actual physical structure in which services are provided.

**J. General service cost centers:** Those cost centers which are operated for the benefit of other general service areas as well as special or patient care departments. Examples of these are: housekeeping, laundry, dietary, operation of plant, maintenance of plant, etc. Costs incurred for these cost centers are allocated to other cost centers on the basis of services rendered.

**K. Governmental institution:** A provider of services owned and operated by a federal, state or local governmental agency.

**L. Imputed occupancy:** The level of occupancy attributed for the purpose of calculating the reimbursement rate.

**M. Inpatient cost centers:** Cost centers established to accumulate costs applicable to providing routine and ancillary services to inpatients for the purposes of cost assignment and allocation.

**N. Owner:** The entity holding legal title to the facility.

**O. Provider:** The entity responsible for the provision of services. The provider must have entered into a valid agreement with the medicaid program for the provision of such services.

**P. RCC:** This is the ratio of charges to charges. The bases or charges used in the RCC formula



vary as to the costs to be allocated. The ratios may be expressed as follows:

(1) ratio of beneficiary charges to total charges on a departmental basis.

(2) ratio of beneficiary charges for ancillary services to total charges for ancillary services.

(3) ratio of total patient charges by patient care center to the total charges of all patient care centers.

**Q. Related**

**organization:** Organizations related to the provider by common ownership or control as defined by the provisions of the medicare provider reimbursement manual (HIM-15).

**R. Replaced facility:**

The facility replaced by a replacement facility as defined above.

**S. Replacement**

**facility:** A facility which replaces a facility that was participating in medicaid on July 1, 1984, or whose construction received Section 1122 approval by July 1, 1984, and where the basic structure of the facility to be replaced is at least 25 years old and has been in continuous use as a skilled nursing or intermediate care facility for at least 25 years or which facility has been destroyed by catastrophic occurrence and rendered unusable and irreparable, or condemned by eminent domain.

**T. Special service cost**

**centers:** Commonly referred to as ancillary cost centers. Such centers usually provide direct identifiable services to individual patients, and include departments such as the physical therapy and supply departments.

[8.312.3.7 NMAC - Rp, 8.312.3.7 NMAC, 9/1/2021]

**8.312.3.8 MISSION**

**STATEMENT:** To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.

[8.312.3.8 NMAC - Rp, 8.312.3.8 NMAC, 9/1/2021]

**8.312.3.9 COST RELATED REIMBURSEMENT OF**

**NURSING FACILITIES:** The New Mexico Title XIX program makes reimbursement for appropriately licensed and certified nursing facility (NF) services as outlined in this material.

[8.312.3.9 NMAC - Rp, 8.312.3.9 NMAC, 9/1/2021]

**8.312.3.10 GENERAL REIMBURSEMENT POLICY:**

The human services department will reimburse nursing facilities (effective October 1, 1990, the skilled nursing facility/intermediate care facility SNF/ICF distinction is eliminated; see 8.312.3.16 NMAC) the lower of the following, effective July 1, 1984:

- A. billed charges; and  
B. the prospective

rate as constrained by the ceilings (8.312.3.16 NMAC) established by the department as described in this plan.

[8.312.3.10 NMAC - Rp, 8.312.3.10 NMAC, 9/1/2021]

**8.312.3.11 DETERMINATION OF ACTUAL, ALLOWABLE AND REASONABLE COSTS AND SETTING OF PROSPECTIVE RATES:**

A. **Adequate cost data:**

(1) Providers receiving payment on the basis of reimbursable cost must provide adequate cost data based on financial and statistical records which can be verified by qualified auditors.

The cost data must be based on an approved method of cost finding and on the accrual basis of accounting.

However, where governmental institutions operate on a cash basis of accounting, cost data on this basis will be acceptable, subject to appropriate treatment of capital expenditures.

(2) **Cost**

**finding:** The cost finding method to be used by NF providers will be the step-down method. This method recognizes that services rendered by certain non-revenue-producing

departments or centers are utilized by certain other non-revenue-producing centers. All costs of non-revenue-producing centers are allocated to all centers which they serve, regardless of whether or not these centers produce revenue. The cost of the non-revenue-producing center serving the greatest number of other centers, while receiving benefits from the least number of centers, is apportioned first. Following the apportionment of the cost of the non-revenue-producing center, that center will be considered "closed" and no further costs will be apportioned to it. This applies even though it may have received some service from a center whose cost is apportioned later. Generally when two centers render services to an equal number, that center which has the greater amount of expense will be allocated first.

**B. Reporting year:**

For the purpose of determining a prospective per diem rate related to cost for NF services, the reporting year is the provider's fiscal year. The provider will submit a cost report each year.

**C. Cost reporting:**

At the end of each fiscal year the provider will provide to the state agency or its audit agent an itemized list of allowable cost (financial and statistical report) on the N.M. Title XIX cost reporting form. This itemized list must be submitted within 150 days after the close of the provider's cost reporting year. Failure to file a report within the 150-day limit will result in termination of Title XIX payments. In the case of a change of ownership the previous provider must file a final cost report as of the date of the change of ownership in accordance with reporting requirements specified in this plan. The department will withhold the last month's payment to the previous provider as security against any outstanding obligations to the department. The provider must notify the department 60 days prior to any change in ownership.

**D. Retention of records:**

(1) Each NF provider shall maintain financial and statistical records of the period covered by such cost report for a period of 10 years following the date of submittal of the New Mexico Title XIX cost report to the state agency. These records must be accurate and in sufficient detail to substantiate the cost data reported. The provider shall make such records available upon demand to representatives of the state agency, the state audit agent, or the department of health and human services.

(2) The state agency or its audit agent will retain all cost reports submitted by providers for a period of 10 years following the date of final settlement of such reports.

**E. Audits:** Audits will be performed in accordance with 42 CFR 447.202.

(1) **Desk audit:** Each cost report submitted will be subjected to a comprehensive desk audit by the state audit agent. This desk audit is for the purpose of analyzing the cost report. After each desk audit is performed, the audit agent will submit a complete report of the desk review to the state agency.

(2) **Field audit:** Field audits will be performed on all providers at least once every three years. The purpose of the field audit of the provider's financial and statistical records is to verify that the data submitted on the cost report are in fact accurate, complete and reasonable. The field audits are conducted in accordance with generally accepted auditing standards and of sufficient scope to determine that only proper items of cost applicable to the service furnished were included in the provider's calculation of its cost and to determine whether the expenses attributable to such proper items of cost were accurately determined and reasonable. After each field audit is performed, the audit agent will submit a complete report of the audit to the state agency. This report will meet generally accepted auditing standards and shall declare the auditor's opinion

as to whether, in all material respects, the costs reported by the provider are allowable, accurate and reasonable in accordance with the state plan. These audit reports will be retained by the state agency for a period of not less than three years from the date of final settlement of such reports.

**F. Overpayments:** All overpayments found in audits will be accounted for on the HCFA-64 report to health and human services (HHS) no later than the second quarter following the quarter in which found.

**G. Allowable costs:** The following identifies costs that are allowable in the determination of a provider's actual, allowable and reasonable costs. All costs are subject to all other terms stated in HIM-15 that are not modified by these regulations.

(1) **Cost of meeting certification standards:** These will include all items of expense that the provider must incur under:

- (a) 42 CFR 442;
- (b) Sections 1861(j) and 1902(a)(28) of the Social Security Act;
- (c) standards included in 42 CFR 431.610; and
- (d) cost incurred to meet requirements for licensing under state law which are necessary for providing NF service.

(2) **Costs of routine services:** Allowable costs shall include all items of expense that providers incur to provide routine services, known as operating costs. Operating costs include such things as:

- (a) regular room;
- (b) dietary and nursing services;
- (c) medical and surgical supplies (including syringes, catheters; ileostomy, and colostomy supplies);
- (d) use of equipment and facilities;

(e) general services, including administration of oxygen and related medications, hand feeding, incontinency care, tray service and enemas;

(f) items furnished routinely and relatively uniform to all patients, such as patient gowns, water pitchers, basins and bed pans;

(g) items stocked at nursing stations or on the floor in gross supply and distributed or used individually in small quantities, such as alcohol and body rubs, applicators, cotton balls, bandaids, laxatives and fecal softeners, aspirin, antacids, over-the-counter (OTC) ointments, and tongue depressors;

(h) items which are used by individual patients but which are reusable and expected to be available, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable equipment;

(i) special dietary supplements used for tube feeding or oral feeding even if prescribed by a physician;

(j) laundry services including basic personal laundry;

(k) the department will make payment directly to the medical equipment provider in accordance with procedures outlined in 8.324.5 NMAC, *Durable Medical Equipment and Medical Supplies*, and subject to the limitations on rental payments contained in that section; and

(l) managerial, administrative, professional, and other services related to the providers operation and rendered in connection with patient care.

(3) **Facility costs,** for purpose of specific limitations included in this plan, include only depreciation, lease costs, and long-term interest.

(a) Depreciation is the systematic



distribution of the cost or other basis of tangible assets, less salvage value, over the estimated useful life of the assets.

(i)

The basis for depreciation is the historical cost of purchased assets or the fair market value at the time of donation for donated assets.

(ii)

Historical cost is the actual cost incurred in acquiring and preparing an asset for use.

(iii)

Fair market value is the price for which an asset would have been purchased on the date of acquisition in an arms-length transaction between an informed buyer and seller, neither being under any compulsion to buy or sell. Fair market value shall be determined by a qualified appraiser who is a registered member of the American institute of real estate appraisers (MAI) and who is acceptable to the department.

(iv)

In determining the historical cost of assets where an on-going facility is purchased, the provisions of medicare provider reimbursement manual (HIM-15), Section 104.14 will apply.

(v)

Depreciation will be calculated using the straight-line method and estimated useful lives approximating the guidelines published in American hospital association chart of accounts for hospitals.

(b)

Long-term interest is the cost incurred for the use of borrowed funds for capital purposes, such as the acquisition of facility, equipment, improvements, etc., where the original term of the loan is more than one year.

(c)

Lease term will be considered a minimum of five years for purposes of determining allowable lease costs.

**(4) Gains**

**and losses on disposition:** Gains or losses on the disposition of depreciable assets used in the program are calculated in accordance with Section 130 and 132 of HIM-15. Disposition of a provider's depreciable assets which effectively

terminates its participation in the program shall include the sale, lease or other disposition of a facility to another entity whether or not that entity becomes a participant in the program. The amount of gain on the disposition of depreciable assets will be subject to recapture as allowed by HIM-15.

(5)

Depreciation, interest, lease costs, or other costs are subject to the limitations stated in Section 2422 of HIM-15 regarding approval of capital expenditures in accordance with Section 1122 of the Social Security Act.

(6) Facility

costs are subject to all other terms stated in HIM-15 that are not modified by these regulations.

**H. Non-allowable**

**costs:**

(1) bad debts,

charity, and courtesy allowances: bad debts on non-Title XIX program patients and charity and courtesy allowances shall not be included in allowable costs;

(2) purchases

from related organizations: cost applicable to services, facilities, and supplies furnished to a provider by organizations related to the provider by common ownership or control shall not exceed the lower of the cost to the related organization or the price of comparable services, facilities or supplies purchased elsewhere; providers shall identify such related organizations and costs in the state's cost reports;

(3) return on

equity capital;

(4) other

cost and expense items identified as unallowable in HIM-15;

(5) interest

paid on overpayments as per 8.302.2 NMAC, *Billing for Medicaid Services*; and

(6) any

civil monetary penalties levied in connection to intermediate sanctions, licensure, certification, or fraud regulations.

[8.312.3.11 NMAC - Rp, 8.312.3.11 NMAC, 9/1/2021]

**8.312.3.12 ESTABLISHMENT OF PROSPECTIVE PER-DIEM**

**RATES:** Prospective per diem rates will be established as follows and will be the lower of the amount calculated using the following formulas, or the ceiling:

**A. Base year:**

Rebasing of the prospective per diem rate will take place every three years. Therefore, the operating years under this plan will be known as year one, year two and year three. Because rebasing is done every three years, operating year four will again become year one, etc. Cost incurred, reported, audited or desk reviewed for the provider's last fiscal year which falls in the calendar year prior to year one will be used to rebase the prospective per-diem rate. Rebasing of costs in excess of one hundred and ten percent of the previous year's audited cost per diem times the index (as described further on in these regulations) will not be recognized for calculation of the base year costs. For implementation year one (effective July 1, 1984) the base year is the provider's last available audited cost report prior to January 1, 1984. Rebasing will occur out of cycle for rates effective January 1, 1996, using the provider's FYE 1994 audited cost reports. The rate period January 1, 1996, through June 30, 1996, will be considered year one. The rate period July 1, 1996, through June 30, 1997, will be considered year two, and the rate period July 1, 1997, through June 30, 1998, will be considered year three. The rebasing cycle will resume for rates effective July 1, 1998, and continue as described in the first paragraph of this section. Pursuant to budget availability, any changes to reimbursement, including the decision to rebase rates will be at the department's discretion.

**B. Inflation factor**

to recognize economic conditions and trends during the time period covered by the provider's prospective per diem rate:

(1) Pursuant

to budget availability and at the department's discretion, an inflation factor may be used to recognize

economic conditions and trends. A notice will be sent out every July informing each provider that a:

(a)

MBI will or will not be authorized; and

(b)

the percentage increase if the MBI is authorized.

(2) If utilized,

the index used to determine the inflation factor will be the center for medicare and medicaid services (CMS) market basket index (MBI) or a percentage up to the MBI.

(3) Each

provider's operating costs will be indexed up to a common point of 12/31 for the base year, and then indexed to a mid-year point of 12/31 for operating year one, if applicable. For out-of-cycle rebasing occurring for rates effective January 1, 1996, through June 30, 1996, the mid-year point for indexing in operating year one will be 3/31.

(4) The

inflation factor for the period July 1, 1996, through June 30, 1997, will be the percentage change in the (MBI) for the previous year plus two percentage points.

**C. Incentives to**

**reduce increases in costs:** As an incentive to reduce the increases in the costs of operation, the department will share with the provider in accordance with the following formula, the savings below the operating cost ceiling in effect during the state's fiscal year.

$$I = [1/2(M - N)] \leq$$

\$2.00

where

M = current operating cost ceiling per diem

N - allowable

operating per diem rate based on the base year's cost report

I = allowable

incentive per diem

**D. Calculation of**

**the prospective per-diem rate:**

The following formulas are used to determine the prospective per diem rate:

**YEAR ONE**

$$PR = BYOC \times (1 +$$

$$\Delta MBI) + I + FC$$

where

PR = prospective

per diem rate

BYOC = allowable

base year operating costs as described in A above, and indexed as described in B above.

NHI = the change in the MBI as described in B above

I = allowable

incentive per diem

FC = allowable

facility costs per diem

**YEARS TWO and**

**THREE**

$$PR = (OP + I) \times (1 +$$

$$\Delta MBI) + FC$$

where

PR = prospective

per-diem rate

OP= allowable

operating costs per diem

I = allowable

incentive per diem

NHI = the change in the MBI as described in B above

FC = allowable

facility costs per diem

**E. Effective dates**

**of prospective rates:** Rates are effective July 1 of each year for each facility.

**F. Calculation of**

**rates for existing providers** that do not have 1983 actuals, and for newly constructed facilities entering the program after July 1, 1984.

(1) For

existing and for newly constructed facilities entering the program that do not have 1983 actuals, the provider's interim prospective per-diem rate will become the sum of:

(a)

the applicable facility cost ceiling; and

(b)

the operating cost ceiling.

(2) After

six months of operation or at the provider's fiscal year end, whichever comes later, the provider will submit a completed cost report. This will be audited to determine the actual operating and facility cost, and retroactive settlement will take place. The provider's prospective per-diem rate will then become the sum of:

(a)

the lower of allowable facility costs or the applicable facility cost ceiling; and

(b)

the lower of allowable operating costs or the operating cost ceiling.

(3) Such

providers will not be eligible for incentive payments until the next operating year one, after rebasing.

**G. Changes of**

**provider by sale of an existing facility:**

(1) When

a change of ownership occurs, the provider's prospective per-diem rate will become the sum of:

(a)

the lower of allowable facility costs determined by using the medicare principles of reimbursement, or the facility cost ceiling; and

(b)

the operating cost established for the previous owner/operator, or the median of operating costs for its category, whichever is higher.

(2) Such

providers will not be eligible for incentive payments until the next operating year one, after rebasing.

**H. Changes of**

**provider by lease of an existing facility:**

(1) When

a change of ownership occurs, the provider's prospective per-diem rate will become the sum of:

(a)

the lower of allowable facility costs or the facility cost ceiling, as defined by this plan; and

(b)

the operating cost established for the previous owner/operator, or the median of operating costs for its category, whichever is higher.

(2) Such

providers will not be eligible for incentive payments until the next operating year one, after rebasing.

**I. Sale/leaseback of**

**an existing facility:** When a sale/ leaseback of an existing facility occurs, the provider's prospective rate will remain the same as before the transaction.

**J. Replacement of an existing facility:** When an existing facility is replaced, the provider's prospective rate will become the sum of:

- (1) the lower of allowable facility costs or the facility cost ceiling as defined by this plan; and
- (2) the operating cost plus incentive payment paid to the provider prior to the construction of the replacement facility.

**K. Replaced facility re-entering the medicaid program:**

(1) When a facility is replaced by a replacement facility and the replaced facility re-enters the medicaid program either under the same ownership or under different ownership, the provider's prospective rate will become the sum of:

- (a) the median operating cost for its category; and
- (b) the lower of allowable facility costs or the applicable facility cost ceiling.

(2) Such providers will not be eligible for incentive payments until the next operating year one, after rebasing.

**L. Closed facility re-entering the medicaid program:**

(1) When a facility has been closed and re-enters the medicaid program under new ownership, it shall be considered a change of ownership and either Subsection G or Subsection H, whichever is applicable, will apply.

(2) When a facility has been closed and re-enters the medicaid program under the same ownership within 12 months of closure, the provider's prospective rate will be the same as prior to the closing.

(3) When a facility has been closed and re-enters the medicaid program under the same ownership more than 12 months after closure, the provider's prospective rate will be the sum of:

- (a) the median operating cost for its category; and

(b) the lower of allowable facility costs or the applicable facility cost ceiling.

(4) Providers of such facilities will not be eligible for incentive payments until the next operating year one, after rebasing. [8.312.3.12 NMAC - Rp, 8.312.3.12 NMAC, 9/1/2021]

**8.312.3.13 ESTABLISHMENT OF CEILINGS:**

The following categories are used to establish ceilings for calculating prospective per diem rates: 1) state-owned and operated NF, 2) non-state-owned and operated NF. The department determines the status of each provider for exclusion from or inclusion in any one category. Ceilings will be separately established for each category as described above, and separately established for the two areas of allowable costs, i.e. operating costs and facility costs. The operating cost ceiling will be calculated using the base year costs for year one. For years two and three, the operating cost ceiling will not be recalculated. It will be indexed forward using the appropriate inflation factor. The facility cost ceiling of \$11.50 will be trended forward in year two beginning July 1, 1985, by MBI minus one percentage point and then annually by the MBI.

**A. Operating costs:**

The ceiling for operating costs will be established at one hundred and ten percent of the median of allowable costs for the base year, indexed to 12/31 of base year.

**B. Facility costs:** For

existing, replacement, and newly constructed facilities, including remodeling of a facility to become a long term care facility, facility costs will be limited as follows:

(1) Any facility that is participating in medicaid by July 1, 1984, or has been granted Section 1122 approval by July 1, 1984, for construction (including bed additions to such facilities) will be paid the lower of actual allowable facility costs or the applicable facility cost ceiling for implementation year one. The facility cost ceiling will be

eleven dollars and fifty cents (\$11.50).

(2) Any new facility not approved July 1, 1984, under Section 1122 for construction (including bed additions to such facilities) will be paid the lower of actual allowable facility costs or the median of facility costs for all other existing facilities in the same category.

(3) Effective for leases executed and binding on both parties on or after January 1, 1988, total allowable lease costs for the entire term of the lease for each facility will be limited to an amount determined by a discounted cash flow technique which will provide the lessor an annual rate of return on the fair market value of the facility equal to one time the average of the rates of interest on special issues of public debt obligations issued to the federal hospital insurance trust fund for the twelve months prior to the date the facility became a provider in the New Mexico medicaid program. The rates of interest for this fund are published in both the federal register and the commerce clearing house (CCH). The basis of the total investment will be subject to the limitations described in Paragraphs 1 and 2 of Subsection B of 8.312.3.13 NMAC. The rate of return described above will be exclusive of any escalator clauses contained in the lease. The effect of escalator clauses will be considered at the time they become effective and the reasonableness of such clauses will be determined by the inflation factor described in Subsection B of 8.312.3.12 NMAC. Any appraisal necessary to determine the fair market value of the facility will be the sole responsibility of the provider and is not an allowable cost for reimbursement under the program. The appraisals must be conducted by an appraiser certified by a nationally recognized entity, and such appraiser must be familiar with the health care industry, specifically long term care, and must be familiar with the geographic area in which the facility is located. Prior to the appraisal taking place, the provider must submit to the department the

name of the appraiser, a copy of his/her certification, and a brief description of the appraiser's relevant experience. The use of a particular appraiser is subject to the approval of the department.

(4) For newly constructed facilities, reconstruction of a facility to become a long term care facility, and replacement facilities entering the medicaid program on or after January 1, 1988, the total basis of depreciable assets shall not exceed the median cost of construction of a nursing home as listed in the Robert S. Means construction index, adjusted for New Mexico costs and for inflation in the construction industry from the date of publication to the date the provider is expected to enter the New Mexico medicaid program. The costs of construction referred to herein is expected to include only the cost of the building and fixed equipment. A reasonable value of land and major moveable equipment will need to be added to obtain the value of the entire facility.

(5) When an existing facility is sold, facility costs per day will be limited to the lower of:

(a) allowable facility costs determined by using the medicare principles of reimbursement; or

(b) the facility cost ceiling.

(6) When an existing facility is leased, the facility costs per day will be limited to the lower of:

(a) actual allowable facility costs; or

(b) for facilities owned or operated by the lessor for 10 years or longer, the applicable facility cost ceiling; or

(c) for facilities owned or operated by the lessor less than 10 years, one hundred and ten percent of the median of facility costs for all providers in the same category.

(7) When a replaced facility re-enters the medicaid program either under the

same ownership as existed prior to the replacement or under different ownership, facility costs per day will be limited to the lower of:

(a) actual allowable facility costs; or  
(b) the median of facility costs for all other existing facilities in the same category.

[8.312.3.13 NMAC - Rp, 8.312.3.13 NMAC, 9/1/2021]

**8.312.3.14 IMPUTED**

**OCCUPANCY:** In order to insure that the medicaid program does not pay for costs associated with unnecessary beds as evidenced by under-utilization, allowable facility costs will be calculated by imputing a ninety percent occupancy rate. This provision will apply to:

A. any new facility certified for participation in the medicaid program on or after January 1, 1988;

B. existing facilities, if the number of licensed or certified beds increases on or after January 1, 1988. In such cases, occupancy will be imputed for all beds;

C. replacement facilities, certified for participation in the medicaid program on or after January 1, 1988, if the replacement facility contains a higher number of licensed or certified beds than the facility being replaced;

D. any replaced facility which re-enters the medicaid program on or after January 1, 1988, either under the same ownership or different ownership;

E. any closed facility which re-enters the medicaid program on or after January 1, 1988;

F. facility costs will be adjusted and the resulting rate change will become effective when any of the above occurs; providers operating such facilities shall submit appropriate information regarding facility costs so that the rate adjustment can be computed.

[8.312.3.14 NMAC - Rp, 8.312.3.14 NMAC, 9/1/2021]

**8.312.3.15 ADJUSTMENTS TO BASE YEAR COSTS:**

A. Since rebasing of the prospective per diem rate will take place every three years, the department recognizes that certain circumstances may warrant an adjustment to the base rate. Therefore, the provider may request such an adjustment for the following reasons:

(1) additional costs incurred to meet new requirements imposed by government regulatory agencies, taxation authorities, or applicable law (e.g. minimum staffing requirements, social security taxation of 501 (c)(3) corporations, minimum wage change, property tax increases, etc.);

(2) additional costs incurred as a result of uninsurable losses from catastrophic occurrences; and

(3) additional costs of approved expansion, remodeling or purchase of equipment;

B. Such additional costs must reach a minimum of \$10,000 incurred cost per year for rebasing to be considered. The provider may request consideration of such rebasing no more than twice in its fiscal year. The provider is encouraged to submit such rebasing requests before the cost is actually incurred if possible. The department will approve or disapprove the rebasing request in a timely manner. If the rebasing is approved, the resulting increase in the prospective per diem rate will go into effect:

(1) beginning with the month the cost was actually incurred if prior approval was obtained; or

(2) no later than 30 days from the date of the approval if retroactive approval was obtained.

C. At no time will rebasing in excess of the applicable operating or facility cost ceilings be allowed, unless the department determines that a change in law or regulation has equal impact on all providers regardless of the ceiling limitation. An example of this would be the minimum wage law.



**D.** Pursuant to budget availability, the decision to approve any adjustments to base year costs will be at the department's discretion. [8.312.3.15 NMAC - Rp, 8.312.3.15 NMAC, 9/1/2021]

**8.312.3.16 IMPLEMENTATION OF NURSING HOME REFORM REQUIREMENTS EFFECTIVE OCTOBER 1, 1990:** As mandated by Section 1919 of the Social Security Act, the following changes are made effective October 1, 1990:

**A. Elimination of SNF/ICF Distinction:** Effective October 1, 1990, the SNF and ICF distinctions will be eliminated and all participating providers will become NFs. In order to account for the change the following will be implemented:

(1) Two levels of NF services will exist, representing the care needs of the respective recipients: High NF; Low NF.

(2) A high NF rate and a low NF rate will be established for each provider.

(3) For existing SNFs, the High NF rate will be the provider's SNF rate in effect on September 30, 1990.

(4) For existing SNFs with no existing ICF rate, the low NF rate will be the provider's SNF rate in effect on September 30, 1990, minus an amount equal to the statewide mean differential of the operating component of current SNF/ICF rates.

(5) For existing ICFs, the low NF rate will be the provider's ICF rate in effect on September 30, 1990.

(6) For existing ICFs with no existing SNF rate, the high NF rate will be the provider's ICF rate in effect on September 30, 1990, plus an amount equal to the statewide mean differential of the operating component of current SNF/ICF rates.

**B. Cost increases related to nursing home reform:** To account for cost increases necessary to comply with the nursing home

reform provisions, the following amounts will be added to NF rates (see above), effective October 1, 1990: high NF \$3.69; low NF \$4.96. [8.312.3.16 NMAC - Rp, 8.312.3.16 NMAC, 9/1/2021]

**8.312.3.17 PAYMENT OF RESERVE BED DAYS:** When medicaid payment is made to reserve a bed while the recipient is absent from the facility, the reserve bed day payment shall be in an amount equal to fifty percent of the regular payment rate.

[8.312.3.17 NMAC - Rp, 8.312.3.17 NMAC, 9/1/2021]

**8.312.3.18 RECONSIDERATION PROCEDURES FOR LONG TERM CARE DETERMINATIONS:**

**A.** A provider who is dissatisfied with the base year rate determination or the final settlement (in the case of a change in ownership) may request a reconsideration of the determination by addressing a request for reconsideration to: director, medical assistance division, human services department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348.

**B.** The filing of a request for reconsideration will not effect the imposition of the determination.

**C.** A request for reconsideration, to be timely, must be filed with or received by the medical assistance division director no later than 30 days after the date of the determination notice to the provider.

**D.** The written request for reconsideration must identify each point on which it takes issue with the audit agent and must include all documentation, citation of authority, and argument on which the request is based. Any point not raised in the original filed request may not be raised later.

**E.** The medical assistance division will submit copies of the request and supporting material to the audit agent. A copy of the transmittal letter to the audit agent will be sent to the provider. A written response from the audit agent must be

filed with or received by the medical assistance division no later than 30 days after the date of the transmittal letter.

**F.** The medical assistance division will submit copies of the audit agent's response and supporting material to the provider. A copy of the transmittal letter to the provider will be sent to the audit agent. Both parties may then come up with additional submittals on the point(s) at issue. Such follow-up submittals must be filed with or received by the medical assistance division no later than 15 days after the date of the transmittal letter to the provider.

**G.** The request for reconsideration and supporting materials, the response and supporting materials, and any additional submittal will be delivered by the medical assistance division director to the secretary, or his/her designee, within 5 days after the closing date for final submittals.

**H.** The secretary, or his/her designee, may secure all information and call on all expertise he/she believes necessary to decide the issues.

**I.** The secretary, or his/her designee, will make a determination on each point at issue, with written findings and will mail a copy of the determinations to each party within 30 days of the delivery of the material to him. The secretary's determinations on appeals will be made in accordance with the applicable provisions of the plan. The secretary's decision will be final and any changes to the original determination will be implemented pursuant to that decision.

[8.312.3.18 NMAC - Rp, 8.312.3.18 NMAC, 9/1/2021]

**8.312.3.19 PUBLIC DISCLOSURE OF COST REPORTS:**

**A.** Providers' cost reports submitted by participating providers as a basis for reimbursement as required by law are available to the public upon receipt of a written request to the medical

assistance division. Information thus disclosed is limited to cost report documents required by social security administration regulations and, in the case of a settled cost report, the notice of program settlement.

**B.** The request must identify the provider and the specific report(s) requested.

**C.** The provider whose report has been requested will be notified by the medical assistance division that its cost report has been requested, and by whom. The provider shall have 10 days in which to comment to the requester before the cost report is released.

**D.** The cost for copying will be charged to the requester.

[8.312.3.19 NMAC - Rp, 8.312.3.19 NMAC, 9/1/2021]

**8.312.3.20 SEVERABILITY:**

If any provision of this regulation is held to be invalid, the remainder of the regulations shall not be affected thereby.

[8.312.3.20 NMAC - Rp, 8.312.3.20 NMAC, 9/1/2021]

**HISTORY OF 8.312.3 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.

ISD 306.4000, Provider Protesting Certified Costs Reimbursement Rates, 1/7/1980.

SP-004.2400, Section 4, General Program Administration Standards For Payments For Skilled Nursing And Intermediate Care Facility Services, 3/5/1981.

**History of Repealed Material:**

8.312.3 NMAC, Nursing Services, Cost Related Reimbursement of Nursing Facilities filed 6/14/2002, repealed effective 9/1/2021.

**Other History:** 8.312.3 NMAC, Nursing Services, Cost Related Reimbursement of Nursing Facilities filed 6/14/2002 was replaced by 8.312.3 NMAC, Nursing Services,

Cost Related Reimbursement of Nursing Facilities, effective 9/1/2021.

**HUMAN SERVICES  
DEPARTMENT  
MEDICAL ASSISTANCE  
DIVISION**

**This is an amendment to 8.311.3 NMAC, Sections 8 and 14, effective 9/1/2021.**

**8.311.3.8 [RESERVED]**

**MISSION STATEMENT:** To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.

[8.311.3.8 NMAC - N, 9/1/2021]

**8.311.3.14 DETERMINATION OF ACTUAL, ALLOWABLE, AND REASONABLE COSTS:**

**A. Adequate cost data:**

(1) All hospitals must provide adequate cost data based on financial and statistical records which can be verified by qualified auditors. The hospital will submit a cost report each year. The cost data must be based on an approved method of cost finding and on the accrual basis of accounting. However, where governmental institutions operate on a cash basis of accounting, cost data on this basis will be acceptable, subject to appropriate treatment of capital expenditures.

(2) The cost finding method to be used by hospitals will be the step-down method. This method recognizes that services rendered by certain non-revenue-producing departments or centers are utilized by certain other non-revenue-producing centers. All costs of non-revenue-producing centers are allocated to all centers which they serve, regardless of whether or not these centers produce revenue. The cost of the non-revenue-producing center serving the greatest number of

other centers while receiving benefits from the least number of centers is apportioned first. Following the apportionment of the cost of the non-revenue-producing center, that center will be considered "closed" and no further costs will be apportioned to it. This applies even though it may have received some service from a center whose cost is apportioned later. Generally when two centers render services to an equal number, that center which has the greatest amount of expense will be allocated first.

**B. Reporting year:**

For the purpose of determining payment rates, the reporting year is the hospital's fiscal year.

**C. Cost reporting:**

At the end of each of its fiscal years, the hospital will provide to the department or its audit agent an itemized list of allowable costs (financial and statistical report) on the New Mexico MAD cost reporting form. The cost report must be submitted within five months after the close of the hospital's fiscal year. Failure to file a report within the five month limit, unless an extension is granted, will result in any or all of the following: suspensions of MAD payments, suspension of the provider's medicaid number, or a penalty of \$100 per day until such time as the report and other substantiating data is received. Extensions may be granted based on 42 CFR Part 413.

**D. Retention of records:**

(1) Each hospital will maintain financial and statistical records of the period covered by such cost report for a period of ~~[not less than four]~~ 10 years following the date of submittal of the New Mexico MAD cost report to the department. These records must be accurate and in sufficient detail to substantiate the cost data reported. The provider will make such records available upon demand to representatives of the department, the state of New Mexico audit agent, or the United States department of health and human services.

(2) The department or its audit agent will retain all cost reports submitted by providers for a period of [not less than three] 10 years following the date of final settlement of such reports.

**E. Audits:**

**(1) Desk**

**audit:** Each cost report submitted will be subjected to a comprehensive desk audit by the state’s audit agent. This desk audit is for the purpose of analyzing the cost report. After each desk audit is performed, the audit agent will submit a complete report of the desk review to the department.

**(2) Field**

**audit:** Field audits will be performed on all facilities and per the auditing schedule established by medicare. The purpose of the field audit of the facility’s financial and statistical

records is to verify that the data submitted on the cost report is accurate, complete, and reasonable. The field audits are conducted in accordance with generally accepted auditing standards. Field audits are of sufficient scope to determine that only proper items of cost applicable to the service furnished were included in the provider’s calculation of its cost and to determine whether the expense attributable to such proper items of cost was accurately determined and reasonable. After each field audit is performed, the audit agent will submit a complete report of the audit to the department. This report will meet generally accepted auditing standards and shall declare the auditor’s opinion as to whether, in all material respects, the costs reported by the provider are allowable, accurate, and reasonable.

These audit reports will be retained by the department for a period of not less than three years from the date of final settlement of such reports. Audits will be performed in accordance with applicable federal regulations.

**F. Overpayments:**

All overpayments found in audits will be accounted for on the CMS-64 report in accordance with 42 CFR 433.300 through 42 CFR 433.322.

**G. Allowable and non-allowable costs:**

Allowable costs, non-allowable costs, and reasonableness of costs will be determined as on the basis of the medicare health insurance manual (HIM-15). [8.311.3.14 NMAC - Rp, 8.311.3.14 NMAC, 6/1/2016; A, 1/1/2019; A, 9/1/2021]

**HUMAN SERVICES DEPARTMENT  
MEDICAL ASSISTANCE DIVISION**

This is an amendment to 8.291.430 NMAC, Section 10, effective 9/1/2021.

**8.291.430.10 FEDERAL POVERTY LEVEL (FPL):** This part contains the monthly federal poverty level table for use in determining monthly income standards for MAP categories of eligibility outlined in 8.291.400.10 NMAC:

| HOUSEHOLD SIZE | 100%                 | 133%                 | 138%                 | 190%                 | 240%                 | 250%                 | 300%                   |
|----------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|------------------------|
| 1              | [\$1,064]<br>\$1,074 | [\$1,415]<br>\$1,428 | [\$1,468]<br>\$1,482 | [\$2,021]<br>\$2,040 | [\$2,552]<br>\$2,576 | [\$2,659]<br>\$2,684 | [\$3,190]<br>\$3,220   |
| 2              | [\$1,437]<br>\$1,452 | [\$1,911]<br>\$1,931 | [\$1,983]<br>\$2,004 | [\$2,730]<br>\$2,759 | [\$3,449]<br>\$3,484 | [\$3,592]<br>\$3,630 | [\$4,311]<br>\$4,355   |
| 3              | [\$1,810]<br>\$1,830 | [\$2,408]<br>\$2,434 | [\$2,498]<br>\$2,526 | [\$3,439]<br>\$3,477 | [\$4,344]<br>\$4,392 | [\$4,525]<br>\$4,575 | [\$5,430]<br>\$5,490   |
| 4              | [\$2,184]<br>\$2,209 | [\$2,904]<br>\$2,938 | [\$3,013]<br>\$3,048 | [\$4,149]<br>\$4,196 | [\$5,240]<br>\$5,300 | [\$5,459]<br>\$5,521 | [\$6,550]<br>\$6,625   |
| 5              | [\$2,557]<br>\$2,587 | [\$3,401]<br>\$3,441 | [\$3,529]<br>\$3,570 | [\$4,858]<br>\$4,915 | [\$6,137]<br>\$6,208 | [\$6,392]<br>\$6,467 | [\$7,671]<br>\$7,760   |
| 6              | [\$2,930]<br>\$2,965 | [\$3,897]<br>\$3,944 | [\$4,044]<br>\$4,092 | [\$5,567]<br>\$5,634 | [\$7,032]<br>\$7,116 | [\$7,325]<br>\$7,413 | [\$8,790]<br>\$8,895   |
| 7              | [\$3,304]<br>\$3,344 | [\$4,394]<br>\$4,447 | [\$4,559]<br>\$4,614 | [\$6,277]<br>\$6,353 | [\$7,928]<br>\$8,024 | [\$8,259]<br>\$8,359 | [\$9,910]<br>\$10,030  |
| 8              | [\$3,677]<br>\$3,722 | [\$4,890]<br>\$4,950 | [\$5,074]<br>\$5,136 | [\$6,986]<br>\$7,072 | [\$8,825]<br>\$8,932 | [\$9,192]<br>\$9,305 | [\$11,031]<br>\$11,165 |
| +1             | [\$373]<br>\$378     | [\$496]<br>\$503     | [\$515]<br>\$522     | [\$709]<br>\$719     | [\$897]<br>\$908     | [\$933]<br>\$946     | [\$1,121]<br>\$1,135   |

[8.291.430.10 NMAC - Rp, 8.291.430.10 NMAC, 11/16/2015; A/E, 4/1/2016; A/E, 9/14/2017; A, 2/1/2018; A/E, 5/17/2018; A, 9/11/2018; A/E, 4/11/2019; A, 7/30/2019; A, 12/1/2020; A/E, 4/1/2021; A, 9/1/2021]

**HUMAN SERVICES  
DEPARTMENT  
MEDICAL ASSISTANCE  
DIVISION**

**This is an amendment to 8.200.510 NMAC, Sections 11, 12, 13, 14 and 15, effective 9/1/2021.**

**8.200.510.11 COMMUNITY SPOUSE RESOURCE ALLOWANCE (CSRA):**

The CSRA standard varies based on when the applicant or recipient become institutionalized for a continuous period. The CSRA remains constant even if it was calculated prior to submission of a formal MAP application. If institutionalization began:

**A.** Between September 30, 1989 and December 31, 1989, the state maximum CSRA is \$30,000 and the federal maximum CSRA is \$60,000.

**B.** On or after January 1, 1990, the state minimum is \$31,290 and the federal maximum CSRA is \$62,580.

**C.** On or after January 1, 1991, the state minimum is \$31,290 and the federal maximum CSRA is \$66,480.

**D.** On or before January 1, 1992, the state minimum is \$31,290 and the federal maximum CSRA is \$68,700.

**E.** On or after January 1, 1993, the state minimum is \$31,290 and the federal maximum CSRA is \$70,740.

**F.** On or after January 1, 1994, the state minimum is \$31,290 and the federal maximum CSRA is \$72,660.

**G.** On or after January 1, 1995, the state minimum is \$31,290 and the federal maximum CSRA is \$74,820.

**H.** On or after January 1, 1996, the state minimum is \$31,290 and the federal maximum CSRA is \$76,740.

**I.** On or after January 1, 1997, the state minimum is \$31,290 and the federal maximum CSRA is \$79,020.

**J.** On or after January 1, 1998, the state minimum is \$31,290 and the federal maximum CSRA is \$80,760.

**K.** On or after January 1, 1999, the state minimum is \$31,290 and the federal maximum CSRA is \$81,960.

**L.** On or after January 1, 2000, the state minimum is \$31,290 and the federal maximum CSRA is \$84,120.

**M.** On or after January 1, 2001, the state minimum is \$31,290 and the federal maximum CSRA is \$87,000.

**N.** On or after January 1, 2002, the state minimum is \$31,290 and the federal maximum CSRA is \$89,280.

**O.** On or after January 1, 2003, the state minimum is \$31,290 and the federal maximum CSRA is \$90,660.

**P.** On or after January 1, 2004, the state minimum is \$31,290 and the federal maximum CSRA is \$92,760.

**Q.** On or after January 1, 2005, the state minimum is \$31,290 and the federal maximum CSRA is \$95,100.

**R.** On or after January 1, 2006, the state minimum is \$31,290 and the federal maximum CSRA is \$99,540.

**S.** On or after January 1, 2007, the state minimum is \$31,290 and the federal maximum CSRA is \$101,640.

**T.** On or after January 1, 2008, the state minimum is \$31,290 and the federal maximum CSRA is \$104,400.

**U.** On or after January 1, 2009, the state minimum is \$31,290 and the federal maximum CSRA is \$109,560.

**V.** On or after January 1, 2010, the state minimum is \$31,290 and the federal maximum CSRA remains \$109,560.

**W.** On or after January 1, 2011, the state minimum is \$31,290 and the federal maximum CSRA remains \$109,560.

**X.** On or after January 1, 2012, the state minimum is \$31,290

and the federal maximum CSRA is \$113,640.

**Y.** On or after January 1, 2013, the state minimum is \$31,290 and the federal maximum CSRA is \$115,920.

**Z.** On or after January 1, 2014, the state minimum is \$31,290 and the federal maximum CSRA is \$117,240.

**AA.** On or after January 1, 2015, the state minimum is \$31,290 and the federal maximum CSRA is \$119,220.

**BB.** On or after January 1, 2016, the state minimum is \$31,290 and the federal maximum CSRA is \$119,220.

**CC.** On or after January 1, 2017, the state minimum is \$31,290 and the federal maximum CSRA is \$120,900.

**DD.** On or after January 1, 2018, the state minimum is \$31,290 and the federal maximum CSRA is \$123,600.

**EE.** On or after January 1, 2019, the state minimum is \$31,290 and the federal maximum CSRA is \$126,420.

**FF.** On or after January 1, 2020, the state minimum is \$31,290 and the federal maximum CSRA is \$128,640.

**GG.** On or after January 1, 2021, the state minimum is \$31,290 and the federal maximum CSRA is \$130,380.

[8.200.510.11 NMAC - Rp, 8.200.510.11 NMAC, 7/1/2015; A/E, 1/1/2016; A/E, 3/1/2017; A/E, 8/30/2018; A/E, 4/11/2019; A, 7/30/2019; A/E, 8/11/2020; A, 12/15/2020; A/E, 4/1/2021; A, 9/1/2021]

**8.200.510.12 POST-ELIGIBILITY CALCULATION (MEDICAL CARE CREDIT):**

Apply applicable deductions in the order listed below when determining the medical care credit for an institutionalized spouse.

**DEDUCTION AMOUNT**

**A.** Personal needs allowance for institutionalized spouse: [July 1, 2019] July 1, 2020 [ \$74 ] \$76



**B.** Minimum monthly maintenance needs allowance (MMMNA):

[~~July 1, 2019~~] July 1, 2020

[~~\$2,114~~] \$2,155

**C.** The community spouse monthly income allowance (CSMIA) is calculated by subtracting the community spouse's gross income from the MMMNA:

**(1)** If allowable shelter expenses of the community spouse exceeds the minimum allowance then deduct an excess shelter allowance from community spouse's income that includes: expenses for rent; mortgage (including interest and principal); taxes and insurance; any maintenance charge for a condominium or cooperative; and an amount for utilities (if not part of maintenance charge above); use the standard utility allowance (SUA) deduction used in the food stamp program for the utility allowance.

[~~July 1, 2019~~] July 1, 2020

[~~\$635~~] \$646

**(2)** Excess shelter allowance may not exceed the maximum:

|                     |            |
|---------------------|------------|
| <u>Jan. 1, 2020</u> | <b>(a)</b> |
| \$1,103             |            |
| <u>July 1, 2019</u> | <b>(b)</b> |
| \$1,047             |            |
| <u>Jan. 1, 2019</u> | <b>(c)</b> |
| \$1,103             |            |
| <u>July 1, 2018</u> | <b>(d)</b> |
| \$1,032]            |            |
| <u>Jan. 1, 2021</u> | <b>(a)</b> |
| \$1,105             |            |
| <u>July 1, 2020</u> | <b>(b)</b> |
| \$1,062             |            |
| <u>Jan. 1, 2020</u> | <b>(c)</b> |
| \$1,103             |            |
| <u>July 1, 2019</u> | <b>(d)</b> |
| \$1,047             |            |

**D.** Any extra maintenance allowance ordered by a court of jurisdiction or a state administrative hearing officer.

**E.** Dependent family member income allowance (if applicable) calculated as follows: 1/3 X MMMNA - dependent member's income).

**F.** Non-covered medical expenses.

**G.** The maximum total of the community spouse monthly income allowance and excess shelter deduction may not exceed [~~\$3,217~~] \$3,260.  
[8.200.510.12 NMAC - Rp, 8.200.510.12 NMAC, 7/1/2015; A/E, 3/1/2017; A/E, 8/30/2018; A/E, 4/11/2019; A, 7/30/2019; A/E, 1/16/2020; A/E, 8/11/2020; A, 12/15/2020; A/E, 4/1/2021; A, 9/1/2021]

**8.200.510.13 AVERAGE MONTHLY COST OF NURSING FACILITIES FOR PRIVATE PATIENTS USED IN TRANSFER OF ASSET PROVISIONS:** Costs of care are based on the date of application registration.

**DATE**

**AVERAGE COST PER MONTH**

|  |           |
|--|-----------|
| <u>July 1, 1988 - Dec. 31, 1989</u>            | <b>A.</b> |
| \$1,726 per month                              |           |
| <u>Jan. 1, 1990 - Dec. 31, 1991</u>            | <b>B.</b> |
| \$2,004 per month                              |           |
| <u>Jan. 1, 1992 - Dec. 31, 1992</u>            | <b>C.</b> |
| \$2,217 per month                              |           |
| <u>Effective July 1, 1993, for application</u> | <b>D.</b> |
| \$2,377 per month                              |           |
| <u>Jan. 1, 1993</u>                            | <b>E.</b> |
| \$2,513 per month                              |           |
| <u>Jan. 1, 1994 - Dec. 31, 1994</u>            | <b>F.</b> |
| \$2,592 per month                              |           |
| <u>Jan. 1, 1995 - Dec. 31, 1995</u>            | <b>G.</b> |
| \$2,738 per month                              |           |

|                                     |           |
|-------------------------------------|-----------|
| <u>Jan. 1, 1997 - Dec. 31, 1997</u> | <b>H.</b> |
| \$2,889 per month                   |           |
| <u>Jan. 1, 1998 - Dec. 31, 1998</u> | <b>I.</b> |
| \$3,119 per month                   |           |
| <u>Jan. 1, 1999 - Dec. 31, 1999</u> | <b>J.</b> |
| \$3,429 per month                   |           |
| <u>Jan. 1, 2000 - Dec. 31, 2000</u> | <b>K.</b> |
| \$3,494 per month                   |           |
| <u>Jan. 1, 2001 - Dec. 31, 2001</u> | <b>L.</b> |
| \$3,550 per month                   |           |
| <u>Jan. 1, 2002 - Dec. 31, 2002</u> | <b>M.</b> |
| \$3,643 per month                   |           |
| <u>Jan. 1, 2003 - Dec. 31, 2003</u> | <b>N.</b> |
| \$4,188 per month                   |           |
| <u>Jan. 1, 2004 - Dec. 31, 2004</u> | <b>O.</b> |
| \$3,899 per month                   |           |
| <u>Jan. 1, 2005 - Dec. 31, 2005</u> | <b>P.</b> |
| \$4,277 per month                   |           |
| <u>Jan. 1, 2006 - Dec. 31, 2006</u> | <b>Q.</b> |
| \$4,541 per month                   |           |
| <u>Jan. 1, 2007 - Dec. 31, 2007</u> | <b>R.</b> |
| \$4,551 per month                   |           |
| <u>Jan. 1, 2008 - Dec. 31, 2008</u> | <b>S.</b> |
| \$4,821 per month                   |           |
| <u>Jan. 1, 2009 - Dec. 31, 2009</u> | <b>T.</b> |
| \$5,037 per month                   |           |
| <u>Jan. 1, 2010 - Dec. 31, 2010</u> | <b>U.</b> |
| \$5,269 per month                   |           |
| <u>Jan. 1, 2011 - Dec. 31, 2011</u> | <b>V.</b> |
| \$5,774 per month                   |           |
| <u>Jan. 1, 2012 - Dec. 31, 2012</u> | <b>W.</b> |
| \$6,015 per month                   |           |
| <u>Jan. 1, 2013 - Dec. 31, 2013</u> | <b>X.</b> |
| \$6,291 per month                   |           |
| <u>Jan. 1, 2014 - Dec. 31, 2014</u> | <b>Y.</b> |
| \$6,229 per month                   |           |
| <u>Jan. 1, 2015 - Dec. 31, 2015</u> | <b>Z.</b> |
| \$6,659 per month                   |           |

**AA.** Jan. 1, 2016 - Dec. 31, 2016  
\$7,786 per month

**BB.** Jan. 1, 2017 - Dec. 31, 2017  
\$7,485 per month

**CC.** Jan. 1, 2018 - Dec. 31, 2018  
\$7,025 per month

**DD.** Jan. 1, 2019 - Dec. 31, 2019  
\$7,285 per month

**EE.** Jan. 1, 2020 - Dec. 31, 2020  
\$7,480 per month

**FF.** Jan. 1, 2021 -  
\$7,590 per month  
[8.200.510.13 NMAC - Rp, 8.200.510.13 NMAC, 7/1/2015; A/E, 1/1/2016; A/E, 3/1/2017; A/E, 8/30/2018; A/E, 4/11/2019; A, 7/30/2019; A/E, 8/11/2020; A, 12/15/2020; A/E, 4/1/2021; A, 9/1/2021]

**8.200.510.14 [RESOURCE-AMOUNTS FOR-SUPPLEMENTAL SECURITY-INCOME (SSI)-RELATED-MEDICARE SAVINGS-PROGRAMS (QMB, SLIMB/QH-AND QD):** The following resource-standards are inclusive of the \$1,500 per person burial exclusion.

**A.** Individual:  
Jan. 1, 2020  
\$9,360

**B.** Couple:  
Jan. 1, 2020  
\$14,800]

**[RESERVED]**  
[8.200.510.14 NMAC - Rp, 8.200.510.14 NMAC, 7/1/2015; A/E, 8/30/2018; A/E, 4/11/2019; A, 7/30/2019; A/E, 8/11/2020; A, 12/15/2020; Repealed, 9/1/2021]

**8.200.510.15 EXCESS HOME EQUITY AMOUNT FOR LONG-TERM CARE SERVICES:**

**A.** Jan. 2020  
\$595,000

**B.** Jan. 2019  
\$585,000

**C.** Jan. 2018  
\$572,000

**D.** Oct. 2017

\$560,000  
**E.** Jan. 2017  
\$840,000  
**F.** Jan. 2016  
\$828,000  
**G.** Jan. 2015  
\$828,000  
**H.** Jan. 2014  
\$814,000  
**I.** Jan. 2013  
\$802,000  
**J.** Jan. 2012  
\$786,000  
**K.** Jan. 2011  
\$758,000  
**L.** Jan. 2010  
\$750,000  
**A.** Jan. 2021  
\$603,000  
**B.** Jan. 2020  
\$595,000  
**C.** Jan. 2019  
\$585,000  
**D.** Jan. 2018  
\$572,000  
**E.** Oct. 2017  
\$560,000  
**F.** Jan. 2017  
\$840,000  
**G.** Jan. 2016  
\$828,000  
**H.** Jan. 2015  
\$828,000  
**I.** Jan. 2014  
\$814,000  
**J.** Jan. 2013  
\$802,000  
**K.** Jan. 2012  
\$786,000  
**L.** Jan. 2011  
\$758,000  
**M.** Jan. 2010  
\$750,000

[8.200.510.15 NMAC - Rp, 8.200.510.15 NMAC, 7/1/2015; A/E, 1/1/2016; A/E, 3/1/2017; A, 3/1/18; A/E, 8/30/2018; A/E, 4/11/2019; A, 7/30/2019; A/E, 8/11/2020; A, 12/15/2020; A/E, 4/1/2021; A, 9/1/2021]

**HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION**

**This is an amendment to 8.200.520 NMAC, Sections 11, 12, 13, 15, 16 and 20, effective 9/1/2021.**

**8.200.520.11 FEDERAL POVERTY INCOME GUIDELINES:**

**A.** One hundred percent federal poverty limits (FPL):

| group month | Size of budget FPL per |
|-------------|------------------------|
| 1           | [1,064]                |
| 2           | [1,437]                |
| 3           | [1,810]                |
| 4           | [2,184]                |
| 5           | [2,557]                |
| 6           | [2,930]                |
| 7           | [3,304]                |
| 8           | [3,677]                |

Add [\$373]  
\$378 for each additional person in the budget group.

[\*Use-  
only these two standards for the-qualified medicare beneficiary (QMB) program.]  
\*FPL must be below one-hundred percent for an individual or couple for qualified medicare beneficiary (QMB) program.

**B.** One hundred twenty percent FPL: This income level is used only in the determination of the maximum income limit for specified low income medicare beneficiaries (SLIMB) applicants or eligible recipients.

| Applicant or eligible recipient   | Amount  | Applicant or eligible recipient                                     | Amount                        |   |
|---|---|---|-------------------------------|---|
| Individual  | 1   | Individual  | 1                             | 5   |
| At least <del>[\$1,064]</del>   |   | At least <del>[\$1,276]</del>                                       |                               | <del>[\$5,114]</del>                            |
| <u>\$1,074</u> per month but no more than <u>\$1,288</u> per month.   |   | <u>\$1,288</u> per month but no more than <u>\$1,436</u> per month. |                               | <u>\$5,174</u>                                  |
|   | 2   |   | 2                             | 6   |
| Couple  | At least <del>[\$1,437]</del>                   | Couple  | At least <del>[\$1,724]</del> | <del>[\$5,860]</del>                            |
| <u>\$1,452</u> per month but no more than <u>\$1,742</u> per month.   |   | <u>\$1,742</u> per month but no more than <u>\$1,940</u> per month. |                               | <u>\$5,930</u>                                  |
|   | For   | <b>E.</b> One hundred   |                               | 7   |
| purposes of this eligibility calculation, “couple” means an applicant couple or an applicant with an ineligible spouse when income is deemed. |   | eighty-five percent FPL:  |                               | <del>[\$6,607]</del>                            |
|   | <b>C.</b> One hundred thirty-three percent FPL: | Size of budget  |                               | 8   |
|   | Size of budget                                  | group   | FPL per                       | <del>[\$7,354]</del>                            |
|   | group   | month   | month                         | Add <del>[\$747]</del> <u>\$757</u>             |
|   | FPL per   |   |                               | for each additional person in the budget group. |
|   | 1   |   | 1                             | <b>G.</b> Two hundred thirty-five percent FPL:  |
| <u>\$1,428</u>  | <del>[\$1,415]</del>                            | <u>\$1,986</u>  | <del>[\$1,968]</del>          | Size of budget                                  |
|   | 2   |   | 2                             | group   |
| <u>\$1,931</u>  | <del>[\$1,911]</del>                            | <u>\$2,686</u>  | <del>[\$2,658]</del>          | month   |
|   | 3   |   | 3                             | FPL per   |
| <u>\$2,434</u>  | <del>[\$2,408]</del>                            | <u>\$3,386</u>  | <del>[\$3,349]</del>          | 1   |
|   | 4   |   | 4                             | <del>[\$2,499]</del>                            |
| <u>\$2,938</u>  | <del>[\$2,904]</del>                            | <u>\$4,086</u>  | <del>[\$4,040]</del>          | 2   |
|   | 5   |   | 5                             | <del>[\$3,377]</del>                            |
| <u>\$3,441</u>  | <del>[\$3,401]</del>                            | <u>\$4,786</u>  | <del>[\$4,730]</del>          | 3   |
|   | 6   |   | 6                             | <del>[\$4,254]</del>                            |
| <u>\$3,944</u>  | <del>[\$3,897]</del>                            | <u>\$5,486</u>  | <del>[\$5,421]</del>          | 4   |
|   | 7   |   | 7                             | <del>[\$5,131]</del>                            |
| <u>\$4,447</u>  | <del>[\$4,394]</del>                            | <u>\$6,186</u>  | <del>[\$6,112]</del>          | 5   |
|   | 8   |   | 8                             | <del>[\$6,009]</del>                            |
| <u>\$4,950</u>  | <del>[\$4,890]</del>                            | <u>\$6,886</u>  | <del>[\$6,802]</del>          | 6   |
|   |   | Add <del>[\$690]</del> <u>\$700</u>                                 |                               | 7   |
|   |   | for each additional person in the budget group.                     |                               | <del>[\$7,763]</del>                            |
|   |   | <b>F.</b> Two hundred   |                               | 8   |
|   |   | percent FPL:  |                               | <del>[\$8,641]</del>                            |
|   |   | Size of budget  |                               | <u>\$8,746</u>                                  |
|   |   | group   | FPL per                       | Add <del>[\$878]</del> <u>\$889</u>             |
|   |   | month   | month                         | for each additional person in the budget group. |
|   |   |   |                               | <b>H.</b> Two hundred fifty percent FPL:        |
|   |   |   |                               | Size of budget                                  |
|   |   |   |                               | group   |
|   |   |   |                               | month   |
|   |   |   |                               | FPL per   |
|   |   |   |                               | 1   |
|   |   |   |                               | <del>[\$2,659]</del>                            |
|   |   |   |                               | 2   |
|   |   |   |                               | <del>[\$3,592]</del>                            |
|   |   |   |                               | <u>\$2,684</u>                                  |
|   |   |   |                               | <u>\$2,684</u>                                  |
|   |   |   |                               | <u>\$3,630</u>                                  |
|   |   |   |                               | <u>\$4,117</u>                                  |

3  
[\$4,525]  
\$4,575  
4  
[\$5,459]  
\$5,521  
5  
[\$6,392]  
\$6,467  
6  
[\$7,325]  
\$7,413  
7  
[\$8,259]  
\$8,359  
8  
[\$9,192]  
\$9,305

Add [\$933] \$946

for each additional person in the budget group.

[8.200.520.11 NMAC - Rp, 8.200.520.11 NMAC, 8/28/2015; A/E, 4/1/2016; A/E, 9/14/2017; A, 2/1/2018; A/E, 5/17/2018; A, 9/11/2018; A/E, 4/11/2019; A, 7/30/2019, A/E, 8/11/2020; A, 12/15/2020; A/E, 4/1/2021; A, 9/1/2021]

**8.200.520.12 COST OF LIVING ADJUSTMENT (COLA) DISREGARD COMPUTATION:**

The countable social security benefit without the COLA is calculated using the COLA increase table as follows:

A. divide the current gross social security benefit by the COLA increase in the most current year; the result is the social security benefit before the COLA increase;

B. divide the result from Subsection A above by the COLA increase from the previous period or year; the result is the social security benefit before the increase for that period or year; and

C. repeat Subsection B above for each year, through the year that the applicant or eligible recipient received both social security benefits and supplemental security income (SSI); the final result is the countable social security benefit.

COLA Increase and disregard table

|                           | Period and year     | COLA increase | = benefit before |
|---------------------------|---------------------|---------------|------------------|
| <u>1</u>                  | 2021 Jan - Dec      | 1.3           | Jan 21           |
| <del>[1]</del> <u>2</u>   | 2020 Jan - Dec      | 1.6           | Jan 20           |
| <del>[2]</del> <u>3</u>   | 2019 Jan - Dec      | 2.8           | Jan 19           |
| <del>[3]</del> <u>4</u>   | 2018 Jan - Dec      | 2.0           | Jan 18           |
| <del>[4]</del> <u>5</u>   | 2017 Jan - Dec      | 0.3           | Jan 17           |
| <del>[5]</del> <u>6</u>   | 2016 Jan - Dec      | 0             | Jan 16           |
| <del>[6]</del> <u>7</u>   | 2015 Jan - Dec      | 1.017         | Jan 15           |
| <del>[7]</del> <u>8</u>   | 2014 Jan - Dec      | 1.015         | Jan 14           |
| <del>[8]</del> <u>9</u>   | 2013 Jan - Dec      | 1.017         | Jan 13           |
| <del>[9]</del> <u>10</u>  | 2012 Jan - Dec      | 1.037         | Jan 12           |
| <del>[10]</del> <u>11</u> | 2011 Jan - Dec      | 0             | Jan 11           |
| <del>[11]</del> <u>12</u> | 2010 Jan - Dec      | 1             | Jan 10           |
| <del>[12]</del> <u>13</u> | 2009 Jan - Dec      | 1             | Jan 09           |
| <del>[13]</del> <u>14</u> | 2008 Jan - Dec      | 1.058         | Jan 08           |
| <del>[14]</del> <u>15</u> | 2007 Jan - Dec      | 1.023         | Jan 07           |
| <del>[15]</del> <u>16</u> | 2006 Jan - Dec      | 1.033         | Jan 06           |
| <del>[16]</del> <u>17</u> | 2005 Jan - Dec      | 1.041         | Jan 05           |
| <del>[17]</del> <u>18</u> | 2004 Jan - Dec      | 1.027         | Jan 04           |
| <del>[18]</del> <u>19</u> | 2003 Jan - Dec      | 1.021         | Jan 03           |
| <del>[19]</del> <u>20</u> | 2002 Jan - Dec      | 1.014         | Jan 02           |
| <del>[20]</del> <u>21</u> | 2001 Jan - Dec      | 1.026         | Jan 01           |
| <del>[21]</del> <u>22</u> | 2000 Jan - Dec      | 1.035         | Jan 00           |
| <del>[22]</del> <u>23</u> | 1999 Jan - Dec      | 1.025         | Jan 99           |
| <del>[23]</del> <u>24</u> | 1998 Jan - Dec      | 1.013         | Jan 98           |
| <del>[24]</del> <u>25</u> | 1997 Jan - Dec      | 1.021         | Jan 97           |
| <del>[25]</del> <u>26</u> | 1996 Jan - Dec      | 1.029         | Jan 96           |
| <del>[26]</del> <u>27</u> | 1995 Jan - Dec      | 1.026         | Jan 95           |
| <del>[27]</del> <u>28</u> | 1994 Jan - Dec      | 1.028         | Jan 94           |
| <del>[28]</del> <u>29</u> | 1993 Jan - Dec      | 1.026         | Jan 93           |
| <del>[29]</del> <u>30</u> | 1992 Jan - Dec      | 1.03          | Jan 92           |
| <del>[30]</del> <u>31</u> | 1991 Jan - Dec      | 1.037         | Jan 91           |
| <del>[31]</del> <u>32</u> | 1990 Jan - Dec      | 1.054         | Jan 90           |
| <del>[32]</del> <u>33</u> | 1989 Jan - Dec      | 1.047         | Jan 89           |
| <del>[33]</del> <u>34</u> | 1988 Jan - Dec      | 1.04          | Jan 88           |
| <del>[34]</del> <u>35</u> | 1987 Jan - Dec      | 1.042         | Jan 87           |
| <del>[35]</del> <u>36</u> | 1986 Jan - Dec      | 1.013         | Jan 86           |
| <del>[36]</del> <u>37</u> | 1985 Jan - Dec      | 1.031         | Jan 85           |
| <del>[37]</del> <u>38</u> | 1984 Jan - Dec      | 1.035         | Jan 84           |
| <del>[38]</del> <u>39</u> | 1982 Jul - 1983 Dec | 1.035         | Jul 82           |
| <del>[39]</del> <u>40</u> | 1981 Jul - 1982 Jun | 1.074         | Jul 81           |
| <del>[40]</del> <u>41</u> | 1980 Jul - 1981 Jun | 1.112         | Jul 80           |
| <del>[41]</del> <u>42</u> | 1979 Jul - 1980 Jun | 1.143         | Jul 79           |
| <del>[42]</del> <u>43</u> | 1978 Jul - 1979 Jun | 1.099         | Jul 78           |
| <del>[43]</del> <u>44</u> | 1977 Jul - 1978 Jun | 1.065         | Jul 77           |





**B.** Individual receiving support and maintenance payments: For an individual or couple living in his or her own household, but receiving support and maintenance from others (such as food, shelter or clothing), subtract the value of one third reduction (VTR).

Payment amount:  $[\$783] \underline{\$794} - [\$264] \underline{\$264.66} = [\$522] \underline{\$529.34}$   
Individual

$[\$1,175] \underline{\$1,191} - [\$392] \underline{\$397} = [\$783] \underline{\$794}$  Couple

**C.** Individual or couple living household of another: For an individual or couple living in another person's household and not contributing his or her pro-rata share of household expenses, subtract the VTR.

Payment amount:  $[\$783] \underline{\$794} - [\$264] \underline{\$264.66} = [\$522] \underline{\$529.34}$   
Individual

$[\$1,175] \underline{\$1,191} - [\$392] \underline{\$397} = [\$783] \underline{\$794}$  Couple

**D.** Child living in home with his or her parent:

Payment amount:  $[\$783] \underline{\$794}$

**E.** Individual in institution:

Payment amount:  $\$30.00$

[8.200.520.15 NMAC - Rp, 8.200.520.15 NMAC, 8/28/2015; A/E, 3/1/2017; A/E, 5/17/2018; A, 9/11/2018; A/E, 4/11/2019; A, 7/30/2019; A/E, 8/11/2020; A, 12/15/2020; A/E, 4/1/2021; A, 9/1/2021]

**8.200.520.16 MAXIMUM COUNTABLE INCOME FOR INSTITUTIONAL CARE MEDICAID AND HOME AND COMMUNITY BASED WAIVER SERVICES (HCBS) CATEGORIES:** Effective

[~~January 1, 2020~~] January 1, 2021, the maximum countable monthly income standard for institutional care medicaid and the home and community based waiver categories is  $[\$2,349] \underline{\$2,382}$ .

[8.200.520.16 NMAC - Rp, 8.200.520.16 NMAC, 8/28/2015; A/E, 3/1/2017; A/E, 5/17/2018; A, 9/11/2018; A/E, 4/11/2019; A, 7/30/2019; A/E, 8/11/2020; A, 12/15/2020; A/E, 4/1/2021; A, 9/1/2021]

**8.200.520.20 COVERED QUARTER INCOME STANDARD:**

| Amount                              | Date Calendar Quarter        |
|-------------------------------------|------------------------------|
|                                     | <u>Jan. 2021 - Dec. 2021</u> |
| <u>\$1,470 per calendar quarter</u> |                              |
|                                     | Jan. 2020 - Dec. 2020        |
| \$1,410 per calendar quarter        |                              |
|                                     | Jan. 2019 - Dec. 2019        |
| \$1,360 per calendar quarter        |                              |
|                                     | Jan. 2018 - Dec. 2018        |
| \$1,320 per calendar quarter        |                              |
|                                     | Jan. 2017 - Dec. 2017        |
| \$1,300 per calendar quarter        |                              |
|                                     | Jan. 2016 - Dec. 2016        |
| \$1,260 per calendar quarter        |                              |
|                                     | Jan. 2015 - Dec. 2015        |
| \$1,220 per calendar quarter        |                              |
|                                     | Jan. 2014 - Dec. 2014        |
| \$1,200 per calendar quarter        |                              |
|                                     | Jan. 2013 - Dec. 2013        |
| \$1,160 per calendar quarter        |                              |
|                                     | Jan. 2012 - Dec. 2012        |
| \$1,130 per calendar quarter        |                              |
|                                     | Jan. 2011 - Dec. 2011        |
| \$1,120 per calendar quarter        |                              |
|                                     | Jan. 2010 - Dec. 2010        |
| \$1,120 per calendar quarter        |                              |
|                                     | Jan. 2009 - Dec. 2009        |
| \$1,090 per calendar quarter        |                              |
|                                     | Jan. 2008 - Dec. 2008        |
| \$1,050 per calendar quarter        |                              |
|                                     | Jan. 2007 - Dec. 2007        |
| \$1,000 per calendar quarter        |                              |

Jan. 2006 - Dec. 2006  
\$970 per calendar quarter  
Jan. 2005 - Dec. 2005  
\$920 per calendar quarter  
Jan. 2004 - Dec. 2004  
\$900 per calendar quarter  
Jan. 2003 - Dec. 2003  
\$890 per calendar quarter  
Jan. 2002 - Dec. 2002  
\$870 per calendar quarter

[8.200.520.20 NMAC - Rp, 8.200.520.20 NMAC, 8/28/2015; A/E, 1/1/2016; A/E, 03/01/2017; A/E, 5/17/2018; A, 9/11/2018; A/E, 4/11/2019; A, 7/30/2019; A/E, 8/11/2020; A, 12/15/2020; A/E, 4/1/2021; A, 9/1/2021]

**REGULATION AND LICENSING DEPARTMENT CANNABIS CONTROL DIVISION**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 8 COMMERCIAL AND MEDICAL CANNABIS PART 1 GENERAL PROVISIONS**

**16.8.1.1 ISSUING AGENCY:** New Mexico Regulation and Licensing Department, Cannabis Control Division. [16.8.1.1 NMAC - N, 08/24/2021]

**16.8.1.2 SCOPE:** This rule applies to all applicants for licensure pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act or division rules, and where applicable, the general public. [16.8.1.2 NMAC - N, 08/24/2021]

**16.8.1.3 STATUTORY AUTHORITY:** The requirements set forth herein are promulgated by the cannabis control division pursuant to the authority granted under the Cannabis Regulation Act and the

licensing provisions of the Lynn and Erin Compassionate Use Act. [16.8.1.3 NMAC - N, 08/24/2021]

**16.8.1.4 DURATION:** Permanent. [16.8.1.4 NMAC - N, 08/24/2021]

**16.8.1.5 EFFECTIVE DATE:** August 24, 2021, unless a later date is cited at the end of a section. [16.8.1.5 NMAC - N, 08/24/2021]

**16.8.1.6 OBJECTIVE:** The objective of Part 1 is to set forth the general provisions that apply to all of Chapter 8, and to all persons affected or regulated by Chapter 8 of Title 16. [16.8.1.6 NMAC - N, 08/24/2021]

**16.8.1.7 DEFINITIONS:** Unless otherwise defined below, terms used in Title 16, Chapter 8, have the same meanings as set forth in the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act.

**A. Definitions beginning with “A”:**  
**(1) “Advisory committee”** means the cannabis regulatory advisory committee.

**(2) “Applicant”** means any person who is seeking to become licensed pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules.

**B. Definitions beginning with “B”:** **“Batch”** means, with regard to cannabis, an identified quantity of cannabis no greater than 15 pounds that is of the same strain of cannabis, that is harvested during the same specified time period from the same specified cultivation area, and with respect to which the same agricultural practices were utilized, including the use of any pesticides; and with regard to concentrated and cannabis product, means an identified quantity that is uniform, that is intended to meet specifications for identity, strength, and composition, and that is manufactured, packaged, and labeled during a specified time period

according to a single manufacturing, packaging, and labeling protocol.

**C. Definitions beginning with “C”:**  
**(1) “Cannabis Regulation Act”** means the Cannabis Regulation Act, as enacted in Chapter 4, Sections 1 through 42 of New Mexico Laws of 2021, and as may be amended thereafter.

**(2) “Cannabis Waste”** means all parts of the plant genus Cannabis which may or may not contain a delta-9-tetrahydrocannabinol concentration of more than three-tenths percent on a dry weight basis, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin; and the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake; or the sterilized seed of the plant that is incapable of germination which has been designated as no longer usable cannabis.

**(3) “Concentrated cannabis product (“concentrate”)** means a cannabis product that is manufactured by a division approved mechanical or chemical process that separates any cannabinoid from the cannabis plant, and that contains or that is intended to contain at the time of sale or distribution, no less than thirty-percent THC by weight.

**D. Definitions beginning with “D”:**  
**(1) “Division”** means the cannabis control division.

**(2) “Diversion”** means the unlawful transfer of a cannabis plant, plant material, or cannabis product.

**(3) “Dried cannabis”** means the dried leaves, flowers, and trim of the female cannabis plant, but does not include the seeds, stalks, or roots of the cannabis plant.

**E. Definitions beginning with “E”:** [RESERVED]

**F. Definitions beginning with “F”:** [RESERVED]

**G. Definitions beginning with “G”:** [RESERVED]

**H. Definitions beginning with “H”:** [RESERVED]

**I. Definitions beginning with “I”:** [RESERVED]

**J. Definitions beginning with “J”:** [RESERVED]

**K. Definitions beginning with “K”:** [RESERVED]

**L. Definitions beginning with “L”:**  
**(1)**

**“Licensee”** means any person who holds a license issued by the division pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules.

**(2) “Limited-access area”** means an indoor or outdoor area on the premises of a licensed cannabis establishment where cannabis or cannabis products are cultivated, stored or held, weighed, packaged, manufactured, disposed or wasted, all point-of-sale (POS) areas, and any room or area storing a digital video surveillance system storage device.

**(3) “Lot”** means an identified portion of a batch, that is uniform and that is intended to meet specifications for identity, strength, and composition; or, in the case of a cannabis product or concentrate, an identified quantity produced in a specified period of time in a manner that is uniform and that is intended to meet specifications for identity, strength, and composition.

**(4) “Lynn and Erin Compassionate Use Act”** means the Lynn and Erin Compassionate Use Act, Section 26-2B-1 *et seq.*, NMSA 1978.

**M. Definitions beginning with “M”:** **“Minor”** means an individual who is less than 18 years of age.

**N. Definitions beginning with “N”:** [RESERVED]

**O. Definitions beginning with “O”:** [RESERVED]

**P. Definitions**  
**beginning with “P”:**  
 (1) **“Pesticide”** means a pesticide as defined by the New Mexico Pesticide Control Act, Section 76-4-1 *et seq.*, NMSA 1978.  
 (2) **“Plant”** means any cannabis plant, cutting, or clone that has roots or that is cultivated with the intention of growing roots.  
 (3) **“Policy”** means a written statement of principles that guides and determines present and future decisions and actions of the licensed person.  
 (4) **“POS”** means point of sale system.  
 (5) **“Person”** means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity.  
 (6) **“Produce”** means to engage in any activity related to the planting or cultivation of cannabis.

**Q. Definitions**  
**beginning with “Q”:** [RESERVED]

**R. Definitions**  
**beginning with “R”:**  
 (1) **“Recall”** means to request the return of a product after the discovery of a safety issue or product defect.  
 (2) **“RLD”** means the regulation and licensing department.

**S. Definitions**  
**beginning with “S”:**  
 (1) **“Security alarm system”** means any device or series of devices capable of alerting law enforcement, including, but not limited to, a signal system interconnected with a radio frequency method such as cellular, private radio signals, or other mechanical or electronic device used to detect or report an emergency or unauthorized intrusion.  
 (2) **“Segregate”** means to separate and withhold from use or sale batches, lots, cannabis, usable cannabis, or cannabis products in order to first determine its suitability for use through testing by an approved laboratory.

**T. Definitions**  
**beginning with “T”:**  
 (1) **“THC”** means tetrahydrocannabinol, a cannabinoid that is the primary psychoactive ingredient in cannabis.  
 (2) **“Testing”** means testing of cannabis and cannabis products consistent with division rules.  
 (3) **“Track and trace system”** means the electronic system designated by the division to track and trace the production, transportation, sale, and wastage of cannabis and cannabis products.

**U. Definitions**  
**beginning with “U”:** [RESERVED]

**V. Definitions**  
**beginning with “V”:** **“Vault”** means a limited access storage room that is within a licensed cannabis establishment and is outfitted with adequate security features for the purposes of storing cannabis, cannabis products, or cash.

**W. Definitions**  
**beginning with “W”:** **“Waste” or “wastage”** means the process of rendering cannabis or cannabis products unusable and unrecognizable, including the destruction of cannabis or cannabis products.

**X. Definitions**  
**beginning with “X”:** [RESERVED]

**Y. Definitions**  
**beginning with “Y”:** [RESERVED]

**Z. Definitions**  
**beginning with “Z”:** [RESERVED]  
 [16.8.1.7 NMAC - N, 08/24/2021]

**16.8.1.8 SOCIAL AND ECONOMIC EQUITY:**  
**A. Division**  
**mandate:** Pursuant to the Cannabis Regulation Act, Paragraphs (7) and (8) of Subsection B of Section 26-2C-3 NMSA 1978, the division must adopt procedures to promote and encourage full participation in the cannabis industry of representatives of communities that have disproportionately been harmed by rates of arrest through the enforcement of cannabis prohibitions and encourage racial, ethnic, gender,

geographic diversity, and New Mexico residency among license applicants, licensees and cannabis industry employees. Policies must also encourage representatives from rural communities that are likely to be impacted by cannabis production, including agricultural producers from economically disadvantaged communities.

**B. Division goal:**  
 To accomplish these mandates, the division establishes a goal that at least fifty percent of applicants for licensure, licensees, and cannabis industry employees will represent these groups.

**C. Social and economic equity plan:** The division, with the advice of the cannabis regulatory advisory committee, shall solicit public input to create and implement a social and economic equity plan. A plan shall be created no later than October 15, 2021, and will include guidelines to determine how to assess which communities have been disproportionately impacted, how to assess if a person is a member of a community disproportionately impacted, and proposed incentives to promote social and economic equity for applicants, licensees, and cannabis industry employees.  
 [16.8.1.8 NMAC - N, 08/24/2021]

**16.8.1.9 FEDERAL LAW:**  
 The activities described in these rules may be considered a violation of federal law. Persons cultivating, manufacturing, collecting samples of, testing, selling, purchasing or otherwise receiving cannabis or cannabis products may be subject to federal sanctions for what may otherwise be considered authorized conduct in the State of New Mexico, and compliance with the rule does not exempt licensees, their employees or customers from possible federal prosecution. The division is not responsible or liable for the actions of licensed cannabis establishments under the rule.  
 [16.8.1.9 NMAC - N, 08/24/2021]

**16.8.1.10 SEVERABILITY:**  
 If any part or application of this rule



is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of this rule legally severed shall not interfere with the remaining protections and duties provided by this rule.  
[16.8.12.10 NMAC - N, 08/24/2021]

**History of 16.8.1 NMAC:**  
**[RESERVED]**

**REGULATION AND  
LICENSING DEPARTMENT  
CANNABIS CONTROL  
DIVISION**

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL  
LICENSING  
CHAPTER 8 COMMERCIAL  
AND MEDICAL CANNABIS  
PART 2 LICENSING  
AND OPERATIONAL  
REQUIREMENTS FOR  
CANNABIS ESTABLISHMENTS**

**16.8.2.1 ISSUING**  
**AGENCY:** New Mexico Regulation and Licensing Department, Cannabis Control Division.  
[16.8.2.1 NMAC - N, 08/24/2021]

**16.8.2.2 SCOPE:** This rule applies to all licensees and applicant for licensure pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules.  
[16.8.2.2 NMAC - N, 08/24/2021]

**16.8.2.3 STATUTORY**  
**AUTHORITY:** The requirements set forth herein are promulgated by the cannabis control division pursuant to the authority granted under the Cannabis Regulation Act and the licensing provisions of the Lynn and Erin Compassionate Use Act.  
[16.8.2.3 NMAC - N, 08/24/2021]

**16.8.2.4 DURATION:**  
Permanent.  
[16.8.2.4 NMAC - N, 08/24/2021]

**16.8.2.5 EFFECTIVE**  
**DATE:** August 24, 2021, unless

a later date is cited at the end of a section.  
[16.8.2.5 NMAC - N, 08/24/2021]

**16.8.2.6 OBJECTIVE:**  
The objective of Part 2 is to ensure the safe production, testing, sale, and consumption of commercial and medical cannabis. Part 2 is not applicable to personal use of cannabis pursuant to the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act.  
[16.8.2.6 NMAC - N, 08/24/2021]

**16.8.2.7 DEFINITIONS:**  
Unless otherwise defined below, terms used in Title 16, Chapter 8, Part 1, have the same meanings as set for in 16.8.1 NMAC, the Cannabis Regulation Act, and the Lynn and Erin Compassionate Use Act.  
[16.8.2.7 NMAC - N, 08/24/2021]

**16.8.2.8 GENERAL OPERATIONAL  
REQUIREMENTS FOR  
CANNABIS ESTABLISHMENTS:**

**A. State and local laws:** Pursuant to the Cannabis Regulation Act, applicants and licensees shall comply with all applicable state and local laws that do not conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act, including laws governing food and product safety, occupational health and safety, environmental impacts, natural resource protection, construction and building codes, operation of a cannabis establishment, employment, zoning, building and fire codes, water use and quality, water supply, hazardous materials, pesticide use, wastewater discharge, and business or professional licensing.

**B. Licensure on federally recognized Indian Nation, Tribe or Pueblo:** The division shall not approve an application for licensure to operate within the exterior boundaries of a federally recognized Indian nation, tribe or pueblo located wholly or partially in the state, unless the tribal government and the department have entered an intergovernmental agreement to

coordinate the cross-jurisdictional administration of the laws of New Mexico and the laws of a tribal government relating to the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act.

**C. Age requirements:**  
All applicants for licensure, including controlling persons of applicants, must be at least twenty-one years of age. All employees of a commercial cannabis establishment must be at least twenty-one years of age.

**D. Consumption prohibited:** Licensees shall prohibit the consumption of cannabis or cannabis products on or within the licensed premises unless a cannabis consumption area has been approved by the division.

**E. Illegal sale or distribution:** Licensees shall not knowingly and intentionally sell, deliver, or transport cannabis or cannabis products to any person that is not authorized to possess and receive the cannabis or cannabis products pursuant to state law or division rules.

**F. Sales of alcoholic beverages prohibited:** Licensees are allowed to conduct other licensed activities, including activities pursuant to the Hemp Manufacturing Act, Section 76-24-3 *et seq.*, NMSA 1978, except for sales of alcoholic beverages.

**G. No guarantee of licensure:** An applicant may not exercise any of the privileges of licensure until the division approves the license application and issues a license. The submission of an application is in no way a guarantee that the application will be accepted as complete. A license shall be granted or denied within 90 days upon acceptance of a completed application. Information provided by the applicant and used by the division for the licensing process shall be accurate and truthful. The division may initiate action to deny licensure, or other administrative action against an applicant or licensee, pursuant to the Uniform Licensing Act.

**I. Computation of time:** The word “days” as used in this rule means calendar days unless otherwise noted.

**J. Display of license:**

A division license shall be displayed in a conspicuous place on the licensed premises and must be made available upon request by state and local agencies. If the licensed premises is open to the public, the license shall be displayed in an area that is within plain sight of the public.

**K. Inventory and sales equipment:** The division shall require licensees to utilize division approved track and trace equipment, software, and services.

**L. Limitation of licensed premises:** Licensees shall conduct cannabis establishment operations solely on licensed premises approved by the division.

**M. Multiple licensee premises:** Multiple licensees may occupy a single licensed premises, provided each is individually licensed by the division.

**N. Reporting of theft or security incident to division:** Licensees shall submit to the division written notification of any attempted theft, theft, assault of employees or patrons, robbery or attempted robbery, break-in, or security breach that occurs on the licensee's premises, no later than 24 hours after the licensee first becomes aware of the event. The description shall include a description of any property that was stolen or destroyed, and the quantity of any cannabis plants, cannabis and cannabis products that were stolen. The licensee must provide a copy of the police report, video footage and any other supporting evidence requested by the division. The premises must be secured prior to continuing operations, including the replacement of locks, doors, windows, repair of damaged structures or access points with comparable or more secure replacement material.

**O. Non-transferable or assignable license:** A license shall not be transferred by assignment or otherwise to other persons or locations. Unless the licensee applies for and receives an amended license, the license shall be void and returned to the division when any one of the following situations occurs:

- (1) location of the licensed premises changes;
- (2) the discontinuance of operation at a licensed premises; or
- (3) suspension or revocation of the license by the division.

**P. Online application:** All applications for initial licensure, amended licensure, additional premises, and renewal must be completed using the online application portal available on the division website. Applicants shall first register for a user account.

**Q. Complete application and fees required:** Applicants must submit a completed application to the division before it will be accepted by the division as complete and considered for approval or denial. License and additional premises application or renewal fees must be paid at the time of application submission. Annual plant fees must be paid upon the division's approval of the initial application or renewal application and approval of the number of cannabis plants that a licensee may produce.

**R. Process for incomplete application:** In the event that an application for licensure is determined by the division to be incomplete, the division shall notify the applicant by email and specify the information or materials that remain to be submitted. If the applicant does not submit the required information or materials within 90 days of receiving notice of the deficiency, the application shall be closed as incomplete and the applicant will be required to submit a new application in order to resume the application process. All licensing or renewal fees are non-refundable and must be paid for each new application.

**S. Provisional license with contingencies:** Upon written request of the applicant, the division may issue a provisional license letter with defined contingencies that the applicant must obtain documents that may be pending approval of a cannabis establishment license or must be obtained from other state

agencies or local jurisdictions for the application to be considered complete. The provisional license letter shall list the remaining items necessary for the application to be complete and shall expire six-months from the date the provisional license letter was issued to the applicant. Upon written request of the applicant, the division may extend a provisional license letter for an additional six-months. Final approval or denial of a license shall be stated on the provisional license letter as contingent on the applicant submitting all remaining items. Such a provisional license letter shall not authorize an applicant to begin licensed cannabis activity.

**T. Request for clarifying information:** Upon request of the division, an applicant shall provide additional information required to process and fully review the application. If the requested information is not received by the division within 90 days from the date the application was deemed to be complete, the division shall initiate action to deny licensure pursuant to the Uniform Licensing Act.

**U. Physical and email address:** Applicants and licensees must provide a physical mailing address and an email address. General correspondence from the division will be sent to the applicant or licensee's email address of record. Legal notice and determinations regarding an application, renewal or an administrative action, including an action taken by the division to deny, suspend, or revoke a license or impose a sanction and civil monetary penalty, shall be sent to the last mailing address and to the last email address furnished to the division. Licensees must inform the division in writing of any change to its physical mailing address or email address within 10 days of the change. If applicable, such changes may be submitted via the online licensing portal. An applicant or licensee's failure to notify the division of a change in physical or email address does not relieve the applicant or licensee from the obligation of responding to a division communication.

**V. Electronic**

**signature:** The division will accept an electronic signature that complies with the Uniform Electronic Transactions Act, Section 14-16-1 *et seq.*, NMSA 1978, or the Revised Uniform Law on Notarial Acts, or rules promulgated pursuant thereto, on any documents required to be submitted to the division and that are submitted electronically.

**W. Withdrawal of**

**Application:** An applicant may withdraw an application at any time prior to the division's issuance of a license or denial of a license. Requests to withdraw an application must be submitted to the division in writing, dated, and signed by the applicant. Withdrawal of an application shall not, unless the division has consented in writing to such withdrawal, deprive the division of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground. The division shall not refund application fees for a withdrawn application. An applicant may reapply at any time following the withdrawal of an application and shall be required to submit a new application and fee.

**X. Closure of a**

**licensed cannabis establishment:** A licensee that anticipates permanently ceasing its business operations shall notify the division no later than 30 days prior to closure. The licensee shall post public notice of the anticipated closure at all licensed premises that are accessible to the public at least 14 days prior to the closure. Any cannabis or cannabis products that are held by a licensee on behalf of the licensee ceasing its business operations shall be returned to the licensee ceasing business operations. Any cannabis or cannabis products that are held by the licensee ceasing its business operations on behalf of another licensee shall be returned to the originating licensee. Cannabis or cannabis products that are otherwise held by a licensee shall, prior to the licensee's closure, be surrendered to either state or

local law enforcement, destroyed by the licensee in accordance with the wastage standards of this rule, or donated to patients via a licensed cannabis establishment, provided that the donation has been approved in writing by the division and that the licensee has submitted documentation of the donation to the division. State and local law enforcement are authorized to remove and destroy any cannabis or cannabis products that are held by a person who has ceased to be licensed by the division.

**Y. Persons licensed**

**pursuant to the medical cannabis program:** In order to be entitled to continue operating as a cannabis establishment, a person properly licensed and in good standing pursuant to the Lynn and Erin Compassionate Use Act on June 29, 2021, must submit a completed renewal application for a cannabis establishment license, along with required fees, within 30 days of the effective date of this rule. In the event the person does not apply for such a license renewal within the required timeframe, the person shall cease all production operations immediately. Upon approval, the licensee shall operate pursuant to the Cannabis Regulation Act and rules adopted by the division pursuant thereto, provided that the licensee shall continue to operate pursuant to rules promulgated by the department of health for activities authorized by virtue of the licensee's medical program license to the extent they do not conflict with rules adopted by the division pursuant to the Cannabis Regulation Act.

**Z. Application for**

**variance:**

(1) Any applicant or licensee may seek a variance from division rule(s) and shall do so by filing a written petition with the division. The petitioner may submit with the petition any relevant documents or material, which the petitioner believes would support the petition.

(2) Petitions shall:

(a)

state the petitioner's name and address;

(b)

state the date of the petition;

(c)

describe the facility or activity for which the variance is sought;

(d)

state the address or description of the premises upon which the cannabis establishment or activity is located;

(e)

identify the rule(s) from which the variance is sought;

(f)

state in detail the extent to which the petitioner wishes to vary from the rule(s) and how the petitioner will ensure public health and safety is not negatively impacted;

(g)

state why the petitioner believes that compliance with the regulation will impose an unreasonable regulatory burden upon the cannabis establishment or activity; and

(h)

state the period of time for which the variance is desired, including all reasons, data, reports and any other information demonstrating that such time period is justified and reasonable.

(3) At

the discretion of the division, the adjudicatory procedures of the Uniform Licensing Act may be used for guidance and shall not be construed to limit, extend, or otherwise modify the authority and jurisdiction of the division.

(4) Prior to a

final decision, the division will hold a public hearing pursuant to the Open Meetings Act, Section 10-15-1 *et seq.*, NMSA 1978. The purpose of the hearing is to provide interested persons a reasonable opportunity to submit data, views or arguments orally or in writing on the proposed variance. The division, at its sole discretion, may determine whether to hold more than one hearing. The division may act as the hearing officer or designate an individual hearing officer to preside over the hearing. The hearing officer may ask



questions and provide comments for clarification purposes. The hearing officer shall identify and mark all written comments submitted during the hearing. The public comments should be labeled as exhibits for reference, but do not require formal admission into the hearing record. Individuals wishing to provide public comment or submit information at the hearing must state their name and any relevant affiliation for the record and be recognized before presenting. Public comment shall not be taken under oath. Any individual who provides public comment at the hearing may be questioned by the hearing officer. The hearing shall be conducted in a fair and equitable manner. The hearing officer may determine the format in which the hearing is conducted, but the hearing should be conducted in a simple and organized manner that facilitates public comment. The rules of evidence shall not apply and the hearing officer may, in the interest of efficiency, exclude or limit comment or questions deemed irrelevant, redundant, or unduly repetitious.

(5) The division may grant the requested variance, in whole or in part, subject to conditions, if the variance is not contrary to the Cannabis Regulation Act, or public interest, does not have a negative environmental impact, and is not detrimental to public health and safety, or the division may deny the variance. If the variance is granted in whole or in part, or subject to conditions, the division shall specify the length of time that the variance shall be in place. A permanent variance may be granted. If a permanent variance is not granted, a petitioner may reapply for a variance once the time period expires.

(6) The division shall set forth in the final order the reasons for its actions and shall not be subject to review.

**AA. Application for additional licensed premises:** Licensees must apply for the specific cannabis establishment license type intended for each additional licensed premises as defined in the Cannabis Regulation Act.

**BB. Vertically integrated cannabis establishment and integrated cannabis establishment microbusiness:**

(1) Applicants for a vertically integrated cannabis establishment or integrated cannabis establishment microbusiness must meet all qualifications for each type of cannabis establishment that is authorized pursuant to the Cannabis Regulation Act.

(2) An initial applicant for an integrated cannabis microbusiness or a vertically integrated cannabis establishment license, must submit an application for authorization to conduct one or more of the following:

- (a) production of cannabis;
- (b) manufacturing of cannabis products;
- (c) retail establishment; or
- (d) courier of cannabis products.

(3) Applicants or licensees shall request authority to add or remove a cannabis establishment activity by submitting an amended application, and any required additional fees.

(4) If a vertically integrated cannabis establishment applicant or licensee will not conduct all cannabis establishment activity on a single premises, each additional premises shall require an additional premises fee.

(5) An applicant or licensee shall not conduct any activity for which additional authority is required until it has received written approval from the division.

[16.8.2.8 NMAC - N, 08/24/2021]

**16.8.2.9 CRIMINAL HISTORY SCREENING REQUIREMENTS:**

**A. Initial licensure:** Applicants for initial licensure shall consent to and undergo a national criminal history background check and department of public safety (DPS) statewide criminal history screening

background check no more than ninety days prior to submitting an application. For purposes of this rule, background checks shall be required for:

- (1) each partner of a limited partnership;
- (2) each member of a limited liability company;
- (3) each director, officer, or trustee of a corporation or trust; and
- (4) any controlling person of the applicant.

**B. Authorized change:** If there is a change in membership of any of the above listed person(s), an amended application and background check documentation shall be submitted, and each new member must be approved by the division prior to a person assuming any duties or responsibilities for a licensee.

**C. Procedure for applicants:**

(1) an applicant shall submit a request to the federal bureau of investigation, the New Mexico department of public safety, or a designee vendor for a current criminal history report through the national crime information center (NCIC);

(2) the division shall provide applicants the division's originating agency identification (ORI) number;

(3) an applicant shall provide to the department of public safety, or its designated vendor, a criminal background screening request, fingerprints, and supporting documentation, including an authorization for release of information to the division in accordance with the procedures of the department of public safety or its designated vendor;

(4) the department of public safety or its designated vendor will review state records and shall transmit the fingerprints to the federal bureau of investigation for a national screening; and

(5) the results of the screening will be made available to the division for review.

**D. Fees:** All applicable fees associated with the national criminal history background check and



New Mexico department of public safety statewide criminal history background checks shall be paid by the applicant or licensee.

**E. Substantially related convictions:** The division shall review felony convictions pursuant to the Cannabis Regulation Act and the Criminal Offender Employment Act. The following are considered substantially related to the qualifications, functions, or duties of an applicant or person:

- (1) a felony conviction involving fraud, deceit, or embezzlement;
- (2) a felony conviction for hiring, employing, or otherwise using a person younger than eighteen years of age to:
  - (a) prepare for sale, transport or carry a controlled substance; or
  - (b) sell, give away or offer to sell a controlled substance to any person; and
- (3) a felony offense for the possession, use, manufacture, distribution or dispensing or possession with the intent to manufacture, distribute or dispense a controlled substance. For purposes of this rule, a controlled substance shall not include cannabis.

**F. Duty to report potentially disqualifying event:** Applicants and licensees must notify the division in writing within seven days of any change of fact that would potentially result in the applicant or licensee, including any of the persons listed in subsection A of this section, being disqualified from holding a license pursuant to the Cannabis Regulation Act or division rules, including a conviction for any crime specified in this section. Failure to make required notification to the division may be grounds for administrative disciplinary action. If the division has determined that the person’s conviction does not disqualify the licensee from licensure, the division shall notify the licensee in writing. The division may also initiate administrative disciplinary action pursuant to the Uniform Licensing

Act.  
[16.8.2.9 NMAC - N, 08/24/2021]

**16.8.2.10 SECURITY AND LIMITED-ACCESS AREA:** All phases where cannabis or cannabis products are cultivated, stored or held, weighed, packaged, manufactured, disposed or wasted, all point-of-sale areas, and any room or area storing a digital video surveillance system storage device shall take place in a designated limited-access area where cannabis and cannabis products are not visible from a public place without the use of binoculars, aircraft, or other optical aids. For purposes of this rule, cannabis or cannabis products are not visible if it cannot be reasonably identified. Licensees shall comply with the security requirements set out in this rule to ensure that licensed premises and limited-access areas, including a vault, are secure.

**A. Security alarm system:** Licensees shall install and maintain at each premises an operational security alarm system. The security alarm system must be continuously monitored, whether electronically, by a monitoring company, or other means determined to be adequate by the division, and provide an alert to designated employees of the licensee and, if necessary, law enforcement within 5 minutes after a notification of an alarm or a security alarm system failure, either by telephone, email, or text message. Monitored sensors are required on all perimeter entry points and perimeter windows, if applicable. The system must include an audible alarm, which must be capable of being disarmed remotely by the designated employee or the security company. Licensees shall maintain, and make available to the division upon request, a description of the location and operation of the security system, including the location of the central control, a schematic of the security zones, and the name of the security alarm company and monitoring company, if applicable.

**B. Security alarm system maintenance and failure:** Licensees shall conduct a monthly

maintenance inspection and make all necessary repairs to ensure the proper operation of the security alarm system. In the event of a security alarm system failure due to a loss of electrical power or mechanical malfunction that is expected to exceed an eight-hour period, the licensee shall immediately notify the division within 48 hours following the discovery of the failure, and provide alternative security that may include closure of the premises. All security system equipment shall be maintained in a secure location so as to prevent theft, loss, destruction and alterations.

**C. Inspection of security alarm system records:** Licensees shall maintain documentation for a period of at least 12 months of all maintenance inspections, servicing, alterations, and upgrades performed on the security alarm system. All documentation must be available during a division inspection.

**D. Digital video surveillance:** Licensees shall provide and maintain at each premises a digital video surveillance system with a minimum camera resolution of 1280 x 720 pixels. The digital video surveillance system shall further comply with the following requirements:

- (1) the digital video surveillance system shall at all times be able to effectively and clearly record images of the area under surveillance;
- (2) each camera shall be permanently mounted and in a fixed location;
- (3) cameras shall be placed in a location that allows the camera to clearly record activity occurring on the licensed premises that digital video surveillance is required under subsection E of this section, and shall provide a clear and certain identification of any person and activities in those areas.

**E. Areas of digital video surveillance:** Areas that shall be recorded on the digital video surveillance system include the following:

(1) areas where cannabis and cannabis products are cultivated, produced, manufactured, weighed, packed, stored, loaded, and unloaded for transportation, prepared, or moved within the licensed premises;

(2) limited-access areas;

(3) areas storing a digital video surveillance-system storage device;

(4) entrances and exits to the licensed premises; and

(5) all point of sale (POS) locations to capture sale transactions.

**F. Digital Video Surveillance Recording:** Licensees shall comply with the following digital video surveillance recording requirements:

(1) cameras shall record continuously 24 hours per day, or may be motion activated, and at a minimum of 15 frames per second (FPS);

(2) the physical media or storage device on which digital video surveillance recordings are stored shall be secured in a manner to protect the recording from tampering or theft;

(3) digital video surveillance recordings shall be kept for a minimum of 30 days and recordings of theft or security incidents as set forth in Subsection N of 16.8.2.8 NMAC shall be kept for a minimum of 12 months;

(4) digital video surveillance recordings are subject to inspection by the division, and shall be kept in a manner that allows the division to view and obtain copies of the recordings at the licensed premises immediately upon request;

(5) upon request, licensees shall send or otherwise provide copies of the recordings to the division within 48 hours;

(6) recorded images shall clearly and accurately display the time and date of the recording; and

(7) time shall be measured in accordance with the United States national institute standards and technology standards.

**G. Failure notification:** A digital video surveillance system shall be equipped with a failure notification system that provides notification to the licensee of any interruption or failure of the digital video surveillance system or digital video surveillance-system storage device. A digital video surveillance system failure shall be reported to the division immediately and operations shall cease as soon as safely possible until the system is again operational.

**H. Multiple licensees premises:** If multiple applicants or licensees seek to operate, or operate, within the same premises, a single security system and digital video surveillance system covering the entire premises may be used by all of the licensees under the following conditions:

(1) each applicant or licensee shall disclose on their premises diagram where the security alarm system and the digital video surveillance cameras are located and where digital video surveillance recordings are stored;

(2) each applicant or licensee shall include in their application a certification that all licensees shall be individually responsible for the operation, maintenance, and record keeping requirements of the security alarm system, and that all licensees shall have access to live monitoring of the digital video surveillance system;

(3) each applicant or licensee shall include in their application an explanation of how the security alarm system and digital video surveillance system will be shared with the division and authorities, as well as who is responsible for maintenance of the security alarm system and the digital video surveillance system, who is authorized to monitor the video footage and who is responsible for storing any digital video surveillance recordings;

(4) each applicant or licensee shall have immediate access to the digital video surveillance recordings to produce them pursuant to subsection F of this section; and

(5) each applicant or licensee shall be held responsible for any violations of the security system or digital video surveillance requirements.

**I. Locks:** Licensees shall ensure that limited-access areas can be securely locked using commercial-grade locks that meet applicable building and fire codes. Licensees shall also use commercial-grade locks that meet applicable building and fire codes on all points of entry and exit to the licensed premises and access points to areas where cannabis and cannabis products are stored.

**J. Limited-access areas:** A limited access area shall only be accessible to a licensee and its authorized employees, authorized vendors, contractors or other individuals conducting business that requires access to a limited-access area, division staff or authorized designees, state and local law enforcement authorities acting within their lawful jurisdictions, fire departments and emergency medical services acting in the course of their official capacity, or volunteers specifically permitted by the licensed cannabis establishment. Licensees shall ensure:

(1) only authorized employees of the licensee and other authorized individuals have access to the limited-access areas of the licensed premises;

(2) a daily record log, which may be a sign-in and sign-out sheet at the entrance of a premises, of all authorized employees and authorized individuals that are not employees of the licensee who enter the limited-access areas is maintained;

(3) limited-access record logs are kept for a minimum of 90 days, or 12 months if a theft or security incident occurs, and must be made available to the division within 48 hours upon request;

(4) entrances to all limited-access areas have a solid door, or if appropriate, a gate adequate to block access, and a lock meeting the requirements set forth in subsection I of this section, and unless prohibited by building or fire codes, the entrance shall remain locked when not in use during regular business hours;

(5) all limited-access areas are identified by the posting of a sign that shall be a minimum of 12" x 12" and which states: "Do Not Enter - Limited Access Area - Access Limited to Authorized Personnel Only" in lettering no smaller than one inch in height;

(6) authorized employees of the licensee visibly display an employee identification badge at all times while present within a limited-access area;

(7) other authorized individuals obtain a visitor identification badge prior to entering a limited-access area, the visitor identification badge shall be visibly displayed at all times while the visitor is in any limited access area, and all visitor identification badges shall be returned to the cannabis establishment on exit.

**K. Licensee identification badge requirement:** Licensees shall issue a laminated or plastic-coated identification badge to all agents, officers, or other persons acting for or employed by a licensee, which shall, at a minimum, include the licensee's "doing business as" name and license number, the individual's first name, an employee number exclusively assigned to that employee for identification purposes, and a color photograph of the employee that clearly shows the full front of the employee's face and that is at least 1 inch in width and 1.5 inches in height.

**L. Lighting:** Any perimeter entry point of a cannabis establishment must have lighting sufficient for observers to see, and cameras to record, any activity within 20 feet of the gate or entry; and a motion detection lighting system may

be employed to light required areas in low-light conditions.

**M. Doors and windows:** All external entrances to indoor facilities on the licensed premises must be able to be locked and all perimeter doors and windows of indoor facilities must be in good condition and lockable.

**N. Fencing requirements for outdoor areas or greenhouses:** Any licensed premises that is an outdoor area or greenhouse shall also implement security measures to ensure that the outdoor area or greenhouse is not assessable to unauthorized individuals and is secure to prevent and detect diversion, theft, or loss of cannabis, which shall at a minimum include:

(1) a perimeter security fence designed to prevent unauthorized entry to any cannabis cultivation areas and signs that shall be a minimum of 12" x 12" and which states: "Do Not Enter - Limited Access Area - Access Limited to Authorized Personnel Only" in lettering no smaller than one inch in height; and

(2) a cover that obscures cannabis cultivation areas from being readily viewed from outside of the fenced area.

**O. Security guards:** Security guards are permitted but not required. Contract security guards must be licensed under the Private Investigations Act, Section 61-27B-1 *et seq.*, NMSA 1978. Security guards must not consume cannabis or cannabis products or be intoxicated while performing any duties for a licensee. Security guards must comply with all laws related to firearms and other weapons.

**P. Vault:** Licensees may store all non-growing cannabis, cannabis products, or cash not being actively handled for purposes of cultivating, packaging, processing, transporting, or selling within an adequately sized vault.

[16.8.2.10 NMAC - N, 08/24/2021]

**16.8.2.11 RECALL OF CANNABIS:**

**A. Written**

**procedures:** Licensees shall establish and implement written procedures for recalling cannabis and cannabis products that have been sold or otherwise distributed to the public or other cannabis establishments. Recall procedures shall be made available for the division's inspection upon request.

**B. Recall procedures:** The recall procedures shall identify:

(1) the circumstances in which a recall will be conducted, including the circumstances involving the mislabeling or contamination of products;

(2) personnel responsible for implementing the recall procedures;

(3) procedures for notification of all customers who have, or reasonably could have, obtained an affected product, including communication and outreach via broadcast media, as appropriate;

(4) procedures for notification of any other cannabis establishment that supplied or received the recalled product;

(5) instructions to be provided to customers or other cannabis establishments for the return or destruction of the recalled product; and

(6) procedures for the collection and wastage (as may be required by the division) of any recalled product.

**C. Destruction of recalled product:** All recalled products that are intended to be destroyed shall be wasted in accordance with the wastage requirements of the division.

**D. Division notification:** The licensee shall notify the division of any recall within 24 hours of initiating the recall.

**E. Division recall order:** The division may order the immediate recall of cannabis or cannabis products if it deems such action necessary to protect public health and safety.

[16.8.2.11 NMAC - N, 08/24/2021]

**16.8.2.12 CHAIN OF CUSTODY:**

**A.** Licensees shall adopt, maintain, and enforce chain of custody procedures and documentation requirements to ensure appropriate tracking and tracing of cannabis and cannabis products. Licensees shall use a paper-based or electronic chain of custody form that documents the possession of cannabis or cannabis products, and includes the following:

- (1) the originating location of the cannabis or cannabis products;
- (2) the time and date of transfer of the cannabis or cannabis products;
- (3) the size, number of boxes, and number of pieces of cannabis or cannabis products;
- (4) the internal batch or lot numbers, and if different, the track and trace batch or lot numbers;
- (5) a dated signature of the person receiving the cannabis or cannabis products; and
- (6) for cannabis samples, in addition to the above, the types of containers, mode of collection, the authorized individual who collected the sample, the date and time of collection, preservation, and requested analyses of the sample.

**B.** Licensees shall also adopt, maintain, and enforce security requirements to ensure security and the safety of cannabis and cannabis products and transport personnel.

[16.8.2.12 NMAC - N, 08/24/2021]

**16.8.2.13 REQUIREMENTS FOR THE TRANSPORTATION OF CANNABIS:**

**A. General requirements:** The following requirements apply when disposing of wasted cannabis or cannabis plants or transporting cannabis or cannabis products between licensees or licensed premises:

- (1) transportation of cannabis or cannabis products shall only be conducted by persons holding a cannabis establishment license under

the Cannabis Regulation Act or designated employees, or contractors, of a licensee;

- (2) prior to transporting any cannabis or cannabis products to another licensee, the licensee shall have a completed transfer or sales invoice or receipt and a chain of custody form, the licensee shall only transport cannabis or cannabis products listed on the invoice or receipt and chain of custody form, and the invoice or receipt and chain of custody form may not be altered or changed once transport begins;

(3) transportation of cannabis or cannabis products by means of a human powered vehicle or unmanned vehicle is prohibited;

- (4) cannabis or cannabis products shall only be transported inside of a motor vehicle or trailer in reasonable operating condition and shall not be visible or identifiable from outside of the vehicle or trailer;

(5) cannabis or cannabis products shall be locked in a box, container, or cage that is secured within the inside of the vehicle or trailer, including when such a box, container, or cage is located inside of the trunk;

(6) vehicles and trailers shall be locked and secured while left unattended;

(7) licensees shall not leave a vehicle or trailer containing cannabis or cannabis products unattended in a residential area;

(8) vehicles shall have a vehicle alarm system ;

(9) packages or containers holding cannabis or cannabis products shall not be tampered with, or opened, during transport;

(10) when engaged in the transportation of cannabis or cannabis products, a licensee shall only travel between licensees shipping or receiving cannabis or cannabis products and its own licensed premises;

(11) licensees may transport multiple shipments of cannabis or cannabis products at one time in accordance with applicable laws;

(12) licensees shall not deviate from the travel requirements described in this section, except for necessary rest, fuel, or vehicle repair stops;

(13) under no circumstances may alcoholic beverages be transported with cannabis or cannabis products;

(14) vehicles and trailers transporting cannabis or cannabis products are subject to inspection by the division at any licensed premises or during transport at any time;

(15) notwithstanding subsection A of this section, cannabis or cannabis products may be transported by foot, hand truck, forklift, or other similar means if it is not operationally feasible to transport cannabis products inside of a vehicle or trailer because the licensed premises that the cannabis products will be transported from and the licensed premises that will be receiving the cannabis products are located within the same building or on the same premises;

(16) storage and transportation of cannabis and cannabis products shall be under conditions that will maintain and protect the cannabis or cannabis products against physical, chemical, and microbial contamination as well as against deterioration of the cannabis or cannabis products and the container;

(17) the vehicle must be properly registered with the New Mexico motor vehicle division; and

(18) the driver of the vehicle must be prepared to show proper identification, including a licensee employee badge, driver's license, vehicle registration and proof of insurance, and the appropriate shipping manifest and chain of custody form to law enforcement and the division when requested.



**B. Shipping manifest:**

Prior to transporting cannabis or cannabis products, a licensee shall generate a shipping manifest through the track and trace system for the following activities:

- (1) testing and sampling of cannabis or cannabis products;
- (2) sale of cannabis or cannabis products to a licensee;
- (3) destruction, wastage, or disposal of cannabis or cannabis products; and
- (4) any other activity, as required by the division or any other government authority.

**C. Transmittal of manifest:**

Licensees shall transmit the shipping manifest to the division and (if applicable) the licensee that will receive the cannabis or cannabis products via the online track and trace portal prior to transporting the cannabis or cannabis products.

**D. Verification of manifest:**

Licensees shall ensure and verify that the cannabis or cannabis products being taken into possession for transport at the originating licensed premises are described and accurately reflected in the shipping manifest. For purposes of this section, the licensee may verify that the cannabis or cannabis products are accurately reflected in the shipping manifest by confirming that the number of boxes of cannabis or cannabis products, type of cannabis or cannabis products, or the units of cannabis or cannabis products matches the label on the boxes containing the cannabis or cannabis products.

**E. Rejection of shipment:**

Licensees shall not take into possession or transport:

- (1) Any cannabis or cannabis products that are not on the shipping manifest; or
- (2) Any cannabis or cannabis products that are less than or greater than the amount reflected on the shipping manifest, with the exception of marginal weight difference due to curing during transport.

**F. Responsibility**

**for discrepancy:** The licensee transporting the cannabis or cannabis product is responsible for any discrepancies between the shipping manifest and the cannabis or cannabis products in its possession during transport, and subject to any enforcement or disciplinary action related to such discrepancy.

**G. Void or change prohibited:** Licensees shall not void or change a shipping manifest after departing from the originating licensed premises.

**H. Documentation of all transport:** A shipping manifest and chain of custody form shall accompany every transport of cannabis products.

**I. Alternative notice of shipment:** Notwithstanding any provision of this section to the contrary, if a transporting licensee cannot obtain access to the track and trace system, the licensee shall complete the shipping manifest outside of the track and trace system and promptly transmit it to the division and the licensee receiving the shipment by electronic mail. If the transporting licensee has access to the track and trace system and the licensee receiving the shipment does not have access to the track and trace system, the transporting licensee shall complete the shipping manifest in the track and trace system, transmit it to the division, and send a copy to the licensee receiving the shipment by electronic mail.

[16.8.2.13 NMAC - N, 08/24/2021]

**16.8.2.14 LICENSURE PERIOD, EXPIRATION AND RENEWAL:**

**A. License period:** The licensure period of a license shall be from the date of approval of the license application for a period of 12 months.

**B. Automatic expiration of license:** Unless otherwise renewed, suspended, or revoked, a license shall expire at 11:59 p.m. on the day indicated on the license as the expiration date or other written notification by the division.

**C. License renewal:**

To timely renew a license, a completed license renewal application and annual license fee set forth in 16.8.11 NMAC shall be received by the division from the licensee no earlier than 60 calendar days before the expiration of the license and no later than 30 days before the expiration of the license through the division's electronic licensing portal. Failure to receive a notice for license renewal from the division does not relieve a licensee of the obligation to renew all licenses as required. In the event a license renewal application is not submitted and approved prior to the license expiration date, the licensee must not sell, transfer, transport, manufacture, test, or distribute any medical or commercial cannabis or cannabis products until the license is renewed. Upon the nonrenewal of a license, the division may initiate disciplinary action pursuant to the Uniform Licensing Act, Section 61-1-1 *et seq.*, NMSA 1978.

[16.8.2.14 NMAC - N, 08/24/2021]

**16.8.2.15 WASTAGE OF CANNABIS OR CANNABIS PRODUCTS; PERMITTED METHODS:**

Licensees that waste cannabis or cannabis products shall do so by rendering the cannabis or cannabis products unusable and unrecognizable prior to removal from licensed premises. The wastage of cannabis or cannabis products shall be documented, tracked by batch, and recorded in an electronic track and trace system specified by the division. Wastage of cannabis or cannabis products shall occur only within the licensee's ordinary business hours. Licensees shall dispose of wasted cannabis or cannabis products and shall not attempt to incorporate wasted cannabis or cannabis plants into any product intended for human consumption.

**A. Permitted methods of wastage:** Wastage of cannabis or cannabis plants shall be accomplished by grinding and incorporating the cannabis into other ground material, such as soil, compost material, or leaf

and yard waste, so that the resulting mixture is at least fifty percent non-cannabis material by volume;

**B. Disposal of wasted cannabis:** Disposal of wasted cannabis or cannabis plants shall be conducted in accordance with all applicable waste disposal laws, including hazardous waste disposal laws.

**C. Holding time:** Cannabis or cannabis products that a licensee intends to waste shall be held in a secured designated holding area for a minimum of 72-hours prior to being wasted. Licensees shall affix to each batch that is held for wasting documents that record information concerning the batch, including batch number or code, plant number, and weight. The batch to be wasted shall not be handled, moved, or wasted during the 72-hour period, unless by specific instruction of the division. Cannabis or cannabis products that are intended to be wasted may be subject to inspection by the division.

**D. Documentation of wastage; retention:** Licensees shall record the wastage of cannabis or cannabis products, including batch number, weight, plant number, the name of the receiving solid waste facility, dates of wastage and disposal, and any test results associated with a wasted batch, using an electronic system specified by the division, and shall deduct any wasted usable cannabis or cannabis plants from the licensee's inventory. The electronic record shall be retained for no less than two years following the disposal. Licensees shall additionally document the wastage of any cannabis using a video recording and shall retain the video recording of the destruction for no less than 120 days. Licensees shall make the video recording of the destruction available for the division's inspection and copying upon the division's request.

**E. Notice to division:** Licensees shall notify the division of the wastage of cannabis within five business days of the wastage. [16.8.2.15 NMAC - N, 08/24/2021]

**16.8.2.16 QUALITY ASSURANCE TESTING; COMPLAINT PROCEDURE:**

**A. Quality assurance testing by the division:** The division or its representative may conduct quality assurance sampling and testing of cannabis or cannabis products, and may require a licensee to provide samples of cannabis or cannabis products for this purpose. The division may additionally adopt and enforce a randomized testing schedule for the sampling and testing of cannabis or cannabis products. The division may prohibit the sale or transfer of cannabis or cannabis products that are determined by the division to contain prohibited levels of contaminants, or that is found to have been improperly tested, or may require remediation of such cannabis that is consistent with the remediation standards of the division.

**B. Complaints:** If the division receives a verified complaint regarding the presence of mold, bacteria, or another contaminant in cannabis or cannabis products, or if the division has reason to believe that the presence of mold, bacteria, or another contaminant may jeopardize public health and safety, the division or its representative may conduct an inspection and may require a licensee to provide samples of cannabis or cannabis products for testing by the division. Licensees shall allow the division or its representative access to a facility or to collect cannabis or cannabis product samples. To be considered verified, a complaint must be made on a form provided by the division that at a minimum identifies:

- (1) date the complaint is filed;
- (2) location of the cannabis or cannabis product;
- (3) any identifiable features of the cannabis or cannabis product at issue, including the type and amount;
- (4) the nature of the complaint;
- (5) name and contact information of the complainant; and

(6) complaint must be emailed to the licensee within 5 business days of the division receiving the complaint.

**C. Division sampling and testing requirements:** Division employees may possess cannabis samples for the sole purposes of establishing compliance with the Cannabis Regulation Act or division rules. The division shall comply with the following testing requirements:

- (1) the division shall maintain chain of custody documentation for any cannabis or cannabis product samples taken;
- (2) a written receipt shall be given to the licensee for all testing samples;
- (3) all testing samples shall be placed into a sealed container and clearly labeled;
- (4) all testing samples shall be tested by the division or a designated testing facility; and
- (5) the quantity of cannabis or cannabis products that is gathered by the division from a licensee for testing purposes shall not exceed the applicable sample sizes required by division rules.

**D. Cost of testing:** The licensee shall bear the cost of any testing required by the division. [16.8.2.16 NMAC - N, 08/24/2021]

**16.8.2.17 FIRE SAFETY LAWS:** Licensees shall ensure all licensed premises are compliant with Article 52 of the New Mexico Statutes Annotated and any associated rules, including rules governing: posting of address, exit signs, emergency lighting, egress paths, evaluation plan, electrical wiring and lighting, exits and exit access, doors, egress hardware, aisle width, chemical storage, fire extinguishers, fire alarm, sprinkler system and fire suppression system, firewalls, combustible waste and housekeeping, storage, access from the exterior, and weeds, grass, vines or other growth capable of igniting. [16.8.2.17 NMAC - N, 08/24/2021]

**16.8.2.18 CONSTRUCTION OR ALTERATION OF CANNABIS ESTABLISHMENT BUILDINGS:**

If applicable, licensees shall ensure that all licensed premises are in compliance with the Construction Industries Licensing Act, Section 60-13-1 *et seq.*, NMSA 1978 and the LPG and CNG Act, Section 70-5-1 *et seq.*, NMSA 1978, including associated rules, as well as applicable codes, standards, zoning laws, licensing laws, and fire codes. If applicable, licensees shall further ensure that each structure, including manufactured homes used pursuant to Subsection S of Section 60-14-4 NMSA 1978, obtains a Certificate of Occupancy pursuant to 14.5.3.13 NMAC prior to occupancy and use of the structure.

[16.8.2.18 NMAC - N, 08/24/2021]

**16.8.2.19 OCCUPATIONAL SAFETY:**

Licensees shall comply with the Occupational Health and Safety Act, Section 50-9-1 *et seq.*, NMSA 1978 and any associated rules.

[16.8.2.19 NMAC - N, 08/24/2021]

**16.8.2.20 MONITORING OF LICENSEE:**

**A. Monitoring:**

The division may perform on-site assessments of an applicant or licensee during normal business hours to determine compliance with the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules.

**B. Record access and review:**

The division may review any and all records related to the operations of the licensee and may require and conduct interviews with such persons or entities and persons affiliated with such entities, for the purpose of determining compliance with division rules or applicable laws. The division shall have access to the financial records of a licensee, including sales records and data from point-of-sale systems, and shall be granted immediate access to inspect or copy those records upon request.

**C. Access to premises:**

Licensees shall provide the division timely access to any material and information necessary for determining

compliance with division rules or applicable laws. Failure by a licensee to provide the division access to the premises or materials may result in disciplinary action.

**D. Monitoring documents:**

Any failure to adhere to division rules or applicable laws documented by the division during monitoring may result in disciplinary action.

**E. Report to law enforcement:**

The division shall refer suspected criminal activity or complaints alleging criminal activity that are made against a licensee to appropriate federal, state, or local law enforcement authorities.

**F. Financial records:**

Licensees shall maintain detailed sales records in a manner and format approved by the division, inform the division of the location where such records are kept, and promptly update the division if the records are removed.

**G. Audit:**

Licensees shall submit the results of a biennial audit to the division. The audit shall be conducted by an independent certified public accountant; the costs of which shall be borne by the licensee. Results of the audit shall be forwarded to the division. The division may extend, in writing, a licensee's audit requirement to three years following the timely submission of two biennial unqualified audits or two biennial unqualified reports.

**H. Producer reports:**

A cannabis producer licensee shall submit reports on an annual basis, or as otherwise reasonably requested, and in the format specified by the division. The annual report shall include:

- (1) number of cannabis plants and cannabis inventory;
- (2) revenue from the wholesale of cannabis;
- (3) total number of transactions;
- (4) number of units provided without charge;
- (5) number of cannabis plants in production, including mature and immature plants;
- (6) number of cannabis plants harvested;

(7) total yield of usable cannabis harvested from cannabis plants (in grams);

(8) average yield per plant (in grams);

(9) amount of cannabis (in grams) sold by wholesale;

(10) amount of cannabis (in grams) purchased by wholesale;

(11) number of live cannabis plants (including clones) and cannabis seeds sold;

(12) amount of dried cannabis leaves and flowers in stock;

(13) average price per gram of dried cannabis leaves and flowers;

(14) total amount of dried cannabis leaves and flowers sold (in units);

(15) total sales of dried cannabis leaves and flowers (in dollars and units);

(16) actual water and energy use in the preceding 12 months;

(17) demographic information required pursuant to the Cannabis Regulation Act, including data as defined by the applicant's social and economic equity plan, and the divisions published social and economic equity plan; and

(18) all quality testing reports, to be included as attachments.

[16.8.2.20 NMAC - N, 08/24/2021]

**16.8.2.21 CANNABIS PRODUCER LICENSURE; GENERAL PROVISIONS:**

**A. License types:**

The division may license two classes of producers:

- (1) A cannabis producer; and
- (2) A cannabis producer microbusiness.

**B. Division**

**application forms:** All applications for licensure authorized pursuant to the Cannabis Regulation Act shall be made upon current forms prescribed by the division using the online application portal.

**C. License required:**  
 Unless licensed pursuant to the Cannabis Regulation Act or division rules, a person shall not cultivate cannabis, including planting, growing, and harvesting cannabis, except for personal use as provided by the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act.

**D. Other activities prohibited:** Except as provided in subsection BB of 16.8.2.8 NMAC, no cannabis producer establishment licensee may manufacture cannabis products, courier cannabis or cannabis products, or engage in the retail sale of cannabis or cannabis products unless the licensee has properly applied for, and the division has approved, the applicable license type required for those activities.

**E. Vertically integrated cannabis establishment and integrated cannabis establishment microbusiness:**  
 Applicants for a vertically integrated cannabis establishment or integrated cannabis establishment microbusiness must meet all qualifications for a cannabis producer or cannabis producer microbusiness to be approved for, and authorized to conduct, cannabis producer activities. [16.8.2.21 NMAC - N, 08/24/2021]

**16.8.2.22 APPLICATION REQUIREMENTS FOR CANNABIS PRODUCER LICENSE:**

**A.** An initial application or renewal for cannabis producer licensure shall include the following:

- (1) Contact information for the applicant and the cannabis establishment, to include:
  - (a) applicant’s full legal name;
  - (b) applicant’s date of birth, if applicable;
  - (c) applicant’s mailing address;
  - (d) applicant’s contact telephone number;
  - (e) applicant’s contact email address;
  - (f) applicant’s business physical address and mailing address, if different;

- (g) applicant’s business legal name, including a DBA name if applicable;
- (h) applicant’s business web address, if applicable;
- (i) applicant’s business hours of operation;
- (j) name and contact information for each controlling person; and
- (k) demographic data pursuant to the Cannabis Regulation Act;
- (2) proof the applicant or each controlling person is at least 21 years of age, which shall include identification issued by a federal or state government that includes the name, date of birth, and picture of the applicant or controlling person;
- (3) legible and accurate diagram and description of the location of the land or facility to be used for the cannabis establishment and the method(s) to be used to produce cannabis in a portable document format (.pdf), and if requested by the division, digital photographic photos;
- (4) fully executed and dated documentation of the applicant’s ownership or legal authority to use the property, buildings, or other facilities, establishing the applicant is, or will be, entitled to possession of the premises for which the application is made;
- (5) demonstration of a legal right to use the quantity of water that the division determines is needed for cannabis production, as evidenced by either:
  - (a) documentation from a water provider that the applicant has the right to use water from the provider and that the use of water from cannabis production is compliant with provider’s rules, or
  - (b) documentation from the office of the state engineer showing that the applicant has a valid and existing water right, or a permit to develop a water right, for irrigation purposes for outdoor cultivation, or a commercial purpose for indoor cultivation at the proposed place of use of the cannabis establishment. The documentation

may include any of the following:

- (i) a state engineer permit or license in good standing, but not including a permit issued pursuant to Sections 72-12-1, -1.1, -1.2, or -1.3, NMSA 1978;
- (ii) a subfile order or decree issued by a water rights adjudication court;
- (iii) the findings of an office of the state engineer hydrographic survey; or
- (iv) other documentation the office of the state engineer has deemed in writing as acceptable to the office of the state engineer under this rule.
- (6) a plan to use, or certification that the applicant cannot feasibly use, energy and water reduction opportunities, including:
  - (a) drip irrigation and water collection;
  - (b) natural lighting and energy efficiency measures;
  - (c) renewable energy generation; and
  - (d) estimated water and energy use related to the applicants cultivation plan;
- (7) a copy of a current business license, fire inspection report, and zoning approval;
- (8) if applicable, certification the applicant is in good standing with the New Mexico secretary of state, including all documents filed with the New Mexico secretary of state;
- (9) a list of all controlling persons, a list of other current or prior licensed cannabis businesses, documentation of the applicant’s or a controlling person legal name change, and criminal history screening documents as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;
- (10) a detailed description of any criminal convictions of the applicant and any controlling person, including the date of each conviction, dates of incarceration, probation or parole, if applicable, description of the offense,



and statement of rehabilitation of each conviction;

(11) if applicable, a description and legible electronic image of the labeling and packaging of the cannabis or cannabis products that the producer shall utilize, which satisfies the labeling requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, division rules, and other state or federal rules applicable to labeling and packaging;

(12) if applicable, a sample of the record form(s), which shall identify (among other items) the name of the wholesale purchaser, the date of the sale, the quantity, and price of medical or commercial cannabis sold;

(13) the initial number of mature cannabis plants, and immature cannabis plants, the applicant proposes for production and the amount of water the applicant plans to use on a monthly basis for a twelve month period;

(14) a summary of the proposed operations, including a list of cannabis or cannabis products produced at the location;

(15) certification the applicant will adhere to production requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including creating and maintaining a cultivation plan, and cannabis waste procedures for cannabis or cannabis products;

(16) certification the applicant will adhere to cannabis transport requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including the transport of unprocessed cannabis or cannabis products to other cannabis establishments;

(17) certification the applicant will adhere to New Mexico department of agriculture (NMDA) pesticide registration, licensing, and use requirements to ensure a safe product and environment;

(18) certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including requirements relating to safety and security procedures, security devices to be used, placement of security devices, personal safety, and crime prevention techniques;

(19) certification the applicant will adhere to quality assurance requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including requirements relating to routine testing by a licensed testing laboratory, division inspection of licensed premises during normal business hours, and testing of cannabis;

(20) certification the applicant will adhere to applicable federal, state and local laws governing the protection of public health and the environment, including occupational health and safety, food safety, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;

(21) certification the applicant has never been denied a license or had a license suspended or revoked by the division or any other state cannabis licensing authority or a detailed description of any administrative orders, civil judgements, denial or suspension of a cannabis license, revocation of a cannabis license, or sanctions for unlicensed medical or commercial cannabis activity by any state licensing authority, against the applicant, controlling person, or a business entity in which the applicant or controlling person was a controlling person within the three years immediately preceding the date of the application;

(22) applicant's social and economic equity plan to encourage economic and social diversity in employment, including race, ethnicity, gender, age, and

residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or the locations where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grant-merced, federally designated opportunity zone, or other rural historic communities;

(23) an attestation of the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that a misrepresentation of fact or violation of these rules may result in denial of the license application or revocation of a license issued; and

(24) payment of any required application or licensure fees as set forth in 16.8.11 NMAC. Cannabis plant fees, if applicable, shall be accessed by the division upon approval of an initial application, additional premises application or renewal application. The division must receive payment of cannabis plant fee prior to cultivation of cannabis plants or, if applicable, at the time of renewal.

**B. Verification of information:** The division may verify information contained in each application and accompanying documentation, including:

(1) contacting the applicant or controlling person by telephone, mail, or electronic mail;

(2) conducting an on-site visit;

(3) requiring a face-to-face or virtual meeting and the production of additional documentation; or

(4) consulting with state or local governments.

[16.8.2.22 NMAC - N, 08/24/2021]

**16.8.2.23 SUBMITTAL OF APPLICATION FOR AMENDED CANNABIS PRODUCER LICENSE: A.**

**Application:** A licensed producer shall submit to the division an

application form for an amended license, pay the required fee, and must obtain approval from the division, prior to implementing any of the following:

- (1) material or substantial change of the size or location of the premises;
- (2) change of licensee’s legal or business name;
- (3) change in water source, or licensee’s water and energy conservation plan, including, the reuse of water and disposal of effluent;
- (4) increase in plant count beyond which licensee is currently licensed to produce;
- (5) addition of a controlling person;
- (6) material or substantial change to a license’s security system;
- (7) material or substantial modification of the premises; or
- (8) engaging in an activity which requires an addition or change of a license type.

**B. Amended license not required:** Changes to standard operating policies and procedures may be made without providing notification to the division, provided that licensee shall maintain at each licensed premises a copy of all current and prior operating policies and procedures.

**C. Requirements and processing of application for amended license:** The application for amended license must comply with all requirements applicable to initial applications, except that the application shall be clearly designated as one for an amended license. The division shall prorate required fees to align with the expiration date of the licensee’s original license, which shall be the expiration date of the licensee’s amended license, if approved. The division shall approve or deny an application for amended license within 90 days of receiving a completed application. Denial of an application for amendment shall be pursuant to the Uniform Licensing Act.

**D. Material or substantial change:** Material or substantial changes requiring approval include:

- (1) increase or decrease in the size of the premises, including the sale of property used for the cannabis establishment, the purchase of additional property for the use of the cannabis establishment, or a change in the location of the cannabis establishment;
- (2) a change in the licensee’s access to the water source submitted with an application for initial, amended, or renewal licensure or a 10 percent, or more, increase in the licensee’s water usage;
- (3) change to a license’s security system, including relocation or security points or installation of a new security system; or
- (4) modification of the premises to relocate cannabis activities.

[16.8.2.23 NMAC - N, 08/24/2021]

**16.8.2.24 PRODUCER PREMISES DIAGRAM:**

**A.** An applicant must submit to the division, with the application, a complete and detailed diagram of the proposed premises. The diagram shall be used by the division to determine whether the premises meets the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules. The division shall deny an application if the premises does not qualify for licensure pursuant to federal, state or local laws.

**B.** The diagram shall show the boundaries of the property and the proposed premises to be licensed, the dimensions of each area that cannabis plants will be cultivated, the location(s) and the dimensions of other areas where other horticulture will be cultivated, if applicable. The diagram shall also include, as applicable, any equipment to be used, entrances and exits, interior partitions, location of lights in the cannabis plant cultivation area(s) and the maximum wattage or wattage equivalent, walls,

rooms, windows, and doorways. The diagram shall include a brief statement or description of the principal activity to be conducted in each area on the premises.

**C.** The diagram shall show where all cameras are located and assign a number to each camera for identification purposes.

**D.** The diagram shall be to scale.

**E.** The diagram shall not contain any highlighting and the markings on the diagram shall be in black-and-white print.

**F.** If the proposed premises consists of only a portion of a property, the diagram must be labeled indicating which part of the property is the proposed premises and what the remaining property is used for.

**G.** If the proposed premises consists of only a portion of a property that will contain two or more licensed premises, then the diagram shall be supplemented with a description of how two or more licensed premises will be managed on the property.

**H.** If a proposed premise is located on only a portion of a property that also includes a residence, the diagram shall clearly show the designated buildings for the premises and the residence.  
[16.8.2.24 NMAC - N, 08/24/2021]

**16.8.2.25 PHYSICAL MODIFICATION OF PRODUCER PREMISES**

**A.** Licensees shall not, without the prior written approval of the division, make a physical change, alteration, or modification of the licensed premises that materially or substantially alters the licensed premises or the use of the licensed premises from the premises diagram filed with the division.

**B.** Licensees whose licensed premises is to be materially or substantially changed, modified, or altered is responsible for filing a request for premises modification with the division.

**C.** Material or substantial changes, alterations, or

modifications requiring approval include:

(1) when a building or structure will be erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted or demolished, as defined and described in the applicable building codes, which require a permit from the construction industries division or the appropriate local jurisdiction;

(2) when electrical wiring, plumbing or mechanical work and LP gas work, as defined and described in the applicable construction codes for those trades, is to be installed, repaired or maintained in or on such building or structure, which require a permit from the construction industries division or the appropriate local jurisdiction;

(3) re-roofing and application of roof coatings that requires a building permit and inspections; or

(4) changing the occupancy activities conducted in or the use of an area identified in the last premises diagram provided to the division that requires a new certificate of occupancy or fire inspection.

**D.** Licensees shall request approval of a material or substantial physical change, alteration, or modification in writing, and the request shall include:

(1) a new premises diagram that conforms to requirements set forth in 16.8.2.18 NMAC;

(2) a copy of the applicable building permit; and

(3) a new certificate of occupancy, if applicable.

**E.** Licensees shall immediately notify the division within 24 hours if a federal or state authority requires a change to the premises;

**F.** Licensees shall promptly provide additional documentation requested by the division to evaluate the licensee's request to modify the licensed premises; and

**G.** The division shall notify the licensee, in writing, of

approval or denial of a request for physical modification no later than 10 days after receiving a request. [16.8.2.25 NMAC - N, 08/24/2021]

**16.8.2.26 CANNABIS PRODUCER POLICIES AND PROCEDURES:**

**A. Minimum policy and procedure requirements:** A producer shall develop, implement, and maintain on the licensed premises, standard policies and procedures, which shall include the following:

(1) cannabis testing criteria and procedures, which shall be consistent with the testing requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, and shall include at a minimum, the following topics:

(a) employee health and safety training materials;

(b) training requirements for the proper use of health and safety measures and controls;

(c) representative sampling and analytical testing of cannabis or cannabis products for contaminants prior to wholesale or transfer to another cannabis establishment;

(d) recordkeeping and chain of custody protocols for transportation of cannabis or cannabis product samples to a cannabis testing laboratory;

(e) recordkeeping and chain of custody protocols for transportation of cannabis or cannabis products to another cannabis establishment for any purpose;

(f) protocols to ensure that cannabis or cannabis products, including any samples of cannabis or cannabis products, are transported and stored in a manner that prevents degradation, contamination, tampering, or diversion;

(g) protocols for testing sample collection that ensures accurate test results; and

(h) procedures for remedial measures to bring cannabis or cannabis products into compliance with division standards or destruction of a tested batch of cannabis or cannabis products if the testing samples from the tested batch indicate noncompliance with applicable health and safety standards;

(2) employee policies and procedures to address the following minimum requirements:

(a) adherence to state and federal laws;

(b) responding to an emergency, including robbery or a serious accident;

(c) alcohol and drug-free workplace policies and procedures;

(d) safety and security procedures;

(e) occupational safety;

(f) crime prevention techniques; and

(g) if applicable, confidentiality laws, including the Health Insurance Portability and Accountability Act of 1996; and

(3) training documentation prepared for each employee and statements signed by employees indicating the topics discussed, names and titles of presenters, and the date, time, and place the employee received said training.

**B. Retention of training documentation:** Licensees shall maintain documentation of an employee's training for a period of five years for current employees and at least six months after the termination of an employee's employment. [16.8.2.26 NMAC - N, 08/24/2021]

**16.8.2.27 MINIMUM REQUIREMENTS FOR THE PRODUCTION OF CANNABIS:**

**A. General requirements:** Licensees shall ensure the following:

(1) all production activities are done on premises that are in compliance with

state and local laws that do not conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Acts;

(2) the licensee’s right to use the quantity of water sufficient to meet the production facility’s needs remains in good standing;

(3) plumbing shall be of adequate size and design, adequately installed, and maintained to carry sufficient quantities of water to required locations throughout the facility, including sufficient quantities of water to properly convey sewage and liquid disposable waste from the facility; and

(4) all weighting or measuring devices that are used in the wholesale of cannabis be appropriately documented as having undergone certified registration and calibration that is in accordance with applicable requirements of the New Mexico department of agriculture.

**B. Cultivation plan:**

Licensees shall create and maintain a cultivation plan, which shall include all of the following:

(1) a detailed premises diagram showing all cultivation activity areas, boundaries, and dimensions in feet.

(2) square foot measurement of mature cannabis plant cultivation area(s), including aggregate square footage if the mature cannabis plant cultivation areas are noncontiguous;

(3) area(s) outside of the mature cannabis plant cultivation areas where only immature plants shall be maintained, if applicable;

(4) designated pesticide and other agricultural chemical storage area(s);

(5) designated processing area(s) if the licensee will process on site;

(6) designated packaging area(s) if the licensee will package products on site;

(7) designated composting area(s) if the licensee will compost plant or cannabis waste on site;

(8) designated secured area(s) for cannabis waste if different than composting area(s);

(9) designated area(s) for harvested cannabis storage;

(10) designated seed production area(s) which may contain mature plants for nursery purposes only.

**C. Lighting:** For indoor and mixed-light cultivation, a licensee shall create and maintain a lighting diagram, which shall include the following:

(1) location of all lights in the cannabis plant cultivation area(s); and

(2) maximum wattage, or wattage equivalent, of each light.

**D. Pest management:** Licensees shall create and maintain a pest management plan, which shall include product name and active ingredient(s) of all pesticides to be applied to cannabis during any stage of plant growth. Licensees are encouraged to create and implement integrated pest management protocols, including chemical, biological, and cultural methods to control or prevent the introduction of pests on the cultivation site.

**E. Cannabis waste:** Licensees shall create and maintain cannabis waste procedures meeting the requirements set forth in 16.8.2.22 NMAC.

**F. Safety and health requirements:** Licensees shall ensure the following:

(1) all equipment, implements, and fixtures that are used for the production of cannabis shall be used exclusively for the production of cannabis and meet sanitation and safety standards required by the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, division rules, and any other state or federal laws;

(2) production is conducted in a manner that does not allow cross-contamination from chemical or biological hazards;

(3) any person who, by medical examination or supervisory observation, is

shown to have, or appears to have, an illness, open lesion, including a boil, sore, or infected wound, or any other abnormal source of microbial contamination for whom there is a reasonable possibility of contact with preparation surfaces for cannabis, shall be excluded from any operations which may be anticipated to result in such contamination until the condition is corrected;

(4) hand-washing facilities are provided that are adequate, accessible, furnished with running water at a suitable temperature, conveniently located in indoor production facilities, in restrooms, and wherever good sanitary practices require employees to wash or sanitize their hands, and stocked with effective hand-cleaning and sanitizing preparations, and sanitary towel service or suitable drying devices;

(5) all persons involved in preparing or handling cannabis conform to hygienic practices while on duty, including:

(a) maintaining adequate personal cleanliness;

(b) wearing gloves while handling processed cannabis or unpackaged but processed cannabis products;

(c) possessing a valid New Mexico environment department food handler card if handling processed cannabis or unpackaged but processed cannabis products; and

(d) washing hands thoroughly in an adequate hand-washing facility before starting work, at any other time when the hands may have become soiled or contaminated, and both before putting gloves on and after removal of gloves, if the person is handling processed cannabis or unpackaged but processed cannabis products;

(6) operating systems for waste disposal are maintained in an adequate manner so that they do not constitute a source of contamination in areas where cannabis is exposed;

(7) water damage is properly and timely



treated to protect health and safety of employees and the public, and that fiberglass and other insulation material is not exposed;

(8) adequate safety-type lighting in all areas where cannabis is produced or stored, if applicable, and where equipment is cleaned;

(9) rubbish is disposed of so as to minimize the development of odor, minimize the potential for the waste becoming an attractant and harborage, or breeding place for pests;

(10) premises, fixtures, and physical facilities where cannabis or cannabis products are produced are maintained to ensure the health and safety of employee and the public;

(11) contact surfaces, including utensils and equipment used for preparation of cannabis or cannabis products, are cleaned and sanitized as frequently as necessary to protect against contamination;

(12) only environmental protection agency (EPA) registered sanitizing agents are used in production operations and that they are used in accordance with labeled instructions;

(13) toxic cleaning compounds, sanitizing agents, and pesticide chemicals shall be identified, held, and stored in a manner that protects against contamination of cannabis or cannabis products and that otherwise satisfies the requirements of this rule;

(14) storage and transportation of cannabis and cannabis products is accomplished under conditions that will maintain security and protect the cannabis or cannabis products against physical, chemical, and microbial contamination, as well as against deterioration of the cannabis or cannabis products and the container; and

(15) that there is sufficient space for placement of equipment and storage of material as is necessary for the maintenance of sanitary operations for production of cannabis.

[16.8.2.27 NMAC - N, 08/24/2021]

**16.8.2.28 USE OF PESTICIDES BY LICENSED PRODUCERS:**

The use of any pesticide by a licensed producer in the growth of cannabis shall be in accordance with the New Mexico Pesticide Control Act, Section 76-4-1 *et seq.*, NMSA 1978, and any associated rules.

[16.8.2.28 NMAC - N, 08/24/2021]

**16.8.2.29 SEVERABILITY:**

If any part or application of this rule is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of this rule legally severed shall not interfere with the remaining protections and duties provided by this rule.

[16.8.2.29 NMAC - N, 08/24/2021]

**History of 16.8.2 NMAC: [RESERVED]**

**REGULATION AND LICENSING DEPARTMENT CANNABIS CONTROL DIVISION**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 8 COMMERCIAL AND MEDICAL CANNABIS PART 8 C A N N A B I S PLANT LIMITS AND PROCESS TO ADDRESS SHORTAGE OF CANNABIS SUPPLY IN THE MEDICAL CANNABIS PROGRAM**

**16.8.8.1 ISSUING**

**AGENCY:** New Mexico Regulation and Licensing Department, Cannabis Control Division.

[16.8.8.1 NMAC - N, 08/24/2021]

**16.8.8.2 SCOPE:** This rule applies to all persons licensed or seeking to be licensed to produce, manufacture, and sell cannabis pursuant to the Cannabis Regulation Act.

[16.8.8.2 NMAC - N, 08/24/2021]

**16.8.8.3 STATUTORY**

**AUTHORITY:** The requirements set forth herein are promulgated by the cannabis control division pursuant to the authority granted under the Cannabis Regulation Act, and the Lynn and Erin Compassionate Use Act.

[16.8.8.3 NMAC - N, 08/24/2021]

**16.8.8.4 DURATION:**

Permanent.

[16.8.8.4 NMAC - N, 08/24/2021]

**16.8.8.5 EFFECTIVE**

**DATE:** August 24, 2021, unless a different date is cited at the end of a section.

[16.8.8.5 NMAC - N, 08/24/2021]

**16.8.8.6 OBJECTIVE:**

The objective of Part 8 is to establish the limit of mature cannabis plants a licensee is authorized to cultivate pursuant to the Cannabis Regulation Act.

[16.8.8.6 NMAC - N, 08/24/2021]

**16.8.8.7 DEFINITIONS:**

Unless otherwise defined in Title 16, Chapter 8, Part 1, terms used in Title 16, Chapter 8, have the same meanings as set forth in the Cannabis Regulation Act and the licensing authority under the Lynn and Erin Compassionate Use Act.

[16.8.8.7 NMAC - N, 08/24/2021]

**16.8.8.8 GENERAL PROVISIONS FOR PLANT COUNT:**

**A. Cannabis plant**

**growth cycle:** For purposes of this rule, the cannabis plant growth cycle is based on the following four stages:

- (1) germination stage includes a seed sprouting to form a seedling;
- (2) seedling stage includes a shoot emerging from the soil surface, eventually forming the first leaves;
- (3) vegetative stage is the period of growth between germination and the beginning of flowering, including cloned cannabis plants; and

(4) flowering stage is the reproductive state of the cannabis plant in which there are physical signs of flower budding out of the nodes in the stem.

**B. Mature cannabis plant:** For purposes of this rule, a mature cannabis plant shall be a female cannabis plant in the flowering stage.  
[16.8.8.8 NMAC - N, 08/24/2021]

**16.8.8.9 CANNABIS PLANT LIMIT TIER LEVELS:**

**A. Initial license designation:** For the purpose of determining the number of mature cannabis plants a licensee may be allocated to cultivate, all cannabis producer and vertically integrated cannabis establishment licenses issued on or after August 15, 2021, will be designated by the division as a level 1, level 2, level 3, or level 4. Cannabis plant count level placement shall be based on the following factors:

- (1) applicant's requested mature cannabis plant limit level;
- (2) applicant's demonstration of a legal right to use the quantity of water needed for the level of mature cannabis plants cultivated based on the applicant's cannabis cultivation plan;
- (3) applicant's facility diagram and canopy size;
- (4) if applicable, whether the applicant's reported number of mature cannabis plants harvested in the preceding six months was a minimum of eighty percent of applicant's authorized mature plant count limit;
- (5) if applicable, whether the applicant's total cannabis sales were a minimum of seventy-five percent of applicant's reported production of cannabis during the six months preceding applicant's request; and
- (6) applicant's social equity plan, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or

the locations where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grant-merced, federally designated opportunity zone, or other rural historic communities.

**B. Designated mature cannabis plant levels:**

- (1) Level 1:  
201 – 1,000 mature cannabis plants;
- (2) Level 2:  
1,001 – 3,000 mature cannabis plants;
- (3) Level 3:  
3,001 – 6,000 mature cannabis plants; or
- (4) Level 4:  
6,001 – 8,000 mature cannabis plants.

**C. Incremental increase:** A licensee may increase the number of mature cannabis plants, at the time of renewal and one other time per year. An authorized mature cannabis plant count increase shall only be approved in increments of 500 mature cannabis plants.

**D. Limit of incremental increase:** A licensee may be allowed to increase its authorized mature cannabis plant count up to four increments at a time upon application and approval by the division.

**E. Immature Plants:** For purposes of calculating the maximum number of authorized mature cannabis plants, the germination, seedling, and vegetative stages are classified as immature cannabis plants and are excluded from a licensee's approved cannabis plant level.

**F. Maximum cannabis plant count:** In no event shall a licensee be permitted to grow more than 10,000 mature cannabis plants at one time.

[16.8.8.9 NMAC - N, 08/24/2021]

**16.8.8.10 PLANT INCREASE REQUEST:**

**A.** A licensee may request an increase of the number of mature plants licensed at the time of renewal and at one other time per year. To be considered for approval by the division, the licensee shall provide, in addition

to required fees set forth in 16.8.11 NMAC, the following information to demonstrate the licensee's capacity for a mature cannabis plant count increase, licensee's compliance with the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules:

- (1) a current inventory of mature cannabis plants and harvested cannabis;
- (2) applicant's demonstration of a legal right to use the quantity of water needed for the level of mature plants to be cultivated based on the applicant's cultivation plan;
- (3) applicant's facility diagram and canopy size;
- (4) applicant's reported number of plants harvested in the preceding three months;
- (5) applicant's medical cannabis and commercial cannabis sales in the preceding three months;
- (6) applicant's total cannabis sales; and
- (7) progress on implementation of applicant's social equity plan, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or the locations where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grant-merced, or other rural historic communities.

**B.** The division shall make a determination to approve or deny a licensee's request to increase mature cannabis plant count based on the information provided and the following factors:

- (1) the licensee has met the required minimum sale of medical cannabis each month for the last 3 months it has operated;
- (2) the licensee has sold at least eighty percent of its cannabis or cannabis products each month for the last 3 months it has operated;

(3) the existence of any pending or final enforcement action taken by the division against the licensee;

(4) whether there is a shortage of cannabis in the medical cannabis program during the most recent 6-month period, including throughout the state and in underserved geographical regions;

(5) whether the licensee’s cultivation plan to increase mature cannabis plants meets the requirements for licensure, including access to water and water usage; and

(6) the completeness of information and data provided to the division.

**C. Ground for**

**Denial:** The division may deny a request for additional mature cannabis plants based on the information provided or for violating the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including the licensee exceeding its authorized mature cannabis plant count during the prior three-month period.  
[16.8.8.10 NMAC - N, 08/24/2021]

**16.8.8.11 ADDRESSING A SHORTAGE OF MEDICAL CANNABIS:**

**A.** Upon the division allowing commercial cannabis retail sales, cannabis retail establishments shall make reasonable efforts to sell a minimum of twenty-five percent of their monthly cannabis sales to qualified patients, primary caregivers, and reciprocal participants, or to other licensed cannabis retail establishments that meet or exceed the twenty-five percent sales to qualified patients, primary caregivers, and reciprocal participants until December 31, 2022.

**B.** Upon the division allowing commercial cannabis retail sales, licensed cannabis producers, including cannabis producer microbusinesses, vertically integrated cannabis establishments, and integrated cannabis microbusinesses, and cannabis manufactures shall make reasonable effort to sell

wholesale to licensed cannabis retail establishments that meet or exceed the twenty-five percent sales to qualified patients, primary caregivers and reciprocal participants until December 31, 2022.

**C.** After December 31, 2022, the division may take the following measure to address a shortage of cannabis supply in the medical cannabis program:

(1) require all licensed cannabis retail establishments to ensure that at least ten percent of their cannabis and cannabis products in stock on a monthly basis is designated for sale to qualified patients, primary caregivers, and reciprocal participants; or

(2) reduce the per plant fee for designated medical cannabis plants to incentivize increased production of cannabis plants to remedy a shortage of cannabis supply in the medical cannabis program; and

(3) after having first exhausted measures to increase production of cannabis plants, the division may exclude commercial cannabis activity from the scope of new licenses issued to initial applicants for a vertically integrated cannabis establishment, cannabis producer, integrated cannabis microbusiness, cannabis producer microbusiness, or cannabis manufacturer license, which limitation shall be in force for a period of at least six months; and

(4) require licensees who are licensed to produce cannabis to produce a specified quota of mature cannabis plants to be designated for use in the medical cannabis program, provided that:

(a) the division may require a licensee to devote no more than twenty-five percent of the licensee’s cultivated cannabis plants on a monthly basis for use in the medical cannabis program; and

(b) the division may require additional specific tracking of cannabis plants.  
[16.8.8.11 NMAC - N, 08/24/2021]

**16.8.8.12 SEVERABILITY:**

If any part or application of this rule is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of this rule legally severed shall not interfere with the remaining protections and duties provided by this rule.

[16.8.8.12 NMAC - N, 08/24/2021]

**History of 16.8.8 NMAC:**  
**[RESERVED]**

**REGULATION AND LICENSING DEPARTMENT CANNABIS CONTROL DIVISION**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING  
CHAPTER 8 COMMERCIAL AND MEDICAL CANNABIS  
PART 11 FEES**

**16.8.11.1 ISSUING**

**AGENCY:** New Mexico Regulation and Licensing Department, Cannabis Control Division.  
[16.8.11.1 NMAC - N, 08/24/2021]

**16.8.11.2 SCOPE:** This rule applies to all applicants and licensees applying for licensure and renewal of licensure under all license types as set forth in the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act.  
[16.8.11.2 NMAC - N, 08/24/2021]

**16.8.11.3 STATUTORY**

**AUTHORITY:** The requirements set forth herein are promulgated by the cannabis control division pursuant to the authority granted under the Cannabis Regulation Act and the licensing provisions of the Lynn and Erin Compassionate Use Act.  
[16.8.11.3 NMAC - N, 08/24/2021]

**16.8.11.4 DURATION:**

Permanent.  
[16.8.11.4 NMAC - N, 08/24/2021]

**16.8.11.5 EFFECTIVE**

**DATE:** August 24, 2021, unless

a later date is cited at the end of a section.  
[16.8.11.5 NMAC - N, 08/24/2021]

**16.8.11.6 OBJECTIVE:** The objective of Part 11 is to establish a uniform schedule of fees applicable to licenses issued under the Cannabis Regulation Act.  
[16.8.11.6 NMAC - N, 08/24/2021]

**16.8.11.7 DEFINITIONS:** Unless otherwise defined below, terms used in Title 16, Chapter 8, Part 1, have the same meanings as set forth in 16.8.1 NMAC, the Cannabis Regulation Act, and the Lynn and Erin Compassionate Use Act.  
[16.8.11.7 NMAC - N, 08/24/2021]

**16.8.11.8 GENERAL PROVISIONS FOR FEES: [RESERVED]**  
[16.8.11.8 NMAC - N, 08/24/2021]

**16.8.11.9 ANNUAL LICENSING FEES:** Every application for the issuance or renewal of the following licenses shall be accompanied by an annual licensing fee in the following specified amounts:

**A. Cannabis courier license:**  
\$250 annually

Each additional licensed premises of the licensee:  
\$100 annually

**B. Cannabis testing laboratory license:**  
\$2,500 annually

Each additional licensed premises of the licensee:  
\$1,000 annually

**C. Cannabis manufacturer license:**  
\$2,500 annually

Each additional licensed premises of the licensee:  
\$1,000 annually

**D. Cannabis producer license:**  
\$2,500 annually

Each additional licensed premises of the licensee:  
\$1,000 annually

**E. Cannabis retailer license:**  
\$2,500 annually

Each additional licensed premises of the licensee:  
\$1,000 annually

**F. Cannabis research laboratory license:**  
\$2,500 annually

Each additional licensed premises of the licensee:  
\$1,000 annually

**G. Vertically integrated cannabis establishment license:**  
\$7,500 annually

Each additional licensed premises of the licensee:  
\$1,000 annually

**H. Cannabis producer microbusiness license:**  
License fees for cannabis producer microbusinesses shall be determined by the number of plants growing under each license.

**(1) Licensees growing 100 plants or less:**  
\$500 annually

**(2) Licensees growing 101 to 200 plants:**  
\$1,000 annually

**I. Integrated cannabis microbusiness license:**  
License fees for integrated cannabis microbusinesses shall be determined by the number of activities conducted under each license. Activities considered are defined by the Cannabis Regulation Act and entail:

**(1)** production of cannabis at a single licensed premises, provided that the person shall not possess more than two hundred total mature cannabis plants at any one time;

**(2)** manufacture of cannabis products at a single licensed premises;

**(3)** sale and transportation of only cannabis products produced or manufactured by that person;

**(4)** operation of only one retail establishment; or

**(5)** couriering of cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers.

**(a)**

Two activities:

\$1,000 annually  
**(b)**

Three activities:  
\$1,500 annually  
**(c)**

Four activities:  
\$2,000 annually  
**(d)**

Five activities  
\$2,500 annually

**J. Cannabis consumption area:**

\$2,500 annually  
[16.8.11.9 NMAC - N, 08/24/2021]

**16.8.11.10 ANNUAL LICENSING FEE PRORATION:**

Licensees submitting an amended application to add or change a license type shall only be required to pay the difference between the fee for the original license type and the fee for the amended license type, provided that the division will not issue any refunds. The division shall prorate the fee to align with the expiration date of the licensee's original license.

[16.8.11.10 NMAC - N, 08/24/2021]

**16.8.11.11 ANNUAL PER PLANT FEE:**

**A. Commercial cannabis plants:** Except for cannabis producer microbusinesses and integrated cannabis microbusinesses, a licensee cultivating commercial cannabis plants shall be assessed an additional annual fee per mature cannabis plant at the time of licensing, incremental increase as set forth in 16.8.8.10 NMAC, and licensure renewal as set forth in 16.8.2.17 NMAC. Plant fee shall be assessed based on the plant limit license designation as set forth in subparagraph A in 16.8.8.9 NMAC, as follows:

**(1) Level 1:**  
\$10.00 per mature cannabis plant;

**(2) Level 2:**  
\$10.00 per mature cannabis plant;

**(3) Level 3:**  
\$10.00 per mature cannabis plant; and



(4) Level 4  
and above: \$10.00 per mature  
cannabis plant.

**B. Medical cannabis plants:** Except for cannabis producer microbusinesses and integrated cannabis microbusinesses, a licensee cultivating solely medical cannabis plants shall be assessed an additional annual fee per mature cannabis plant at the time of licensing, incremental increase as set forth in 16.8.8.10 NMAC, and licensure renewal as set forth in 16.8.2.17 NMAC. Plant fees shall be assessed based on the plant limit license designation as set forth in subparagraph A in 16.8.8.9 NMAC, as follows:

(1) Level 1:  
\$5.00 per mature cannabis  
plant;

(2) Level 2:  
\$5.00 per mature cannabis  
plant;

(3) Level 3:  
\$5.00 per mature cannabis  
plant; and

(4) Level 4  
and above: \$5.00 per mature  
cannabis plant.  
[16.8.11.11 NMAC - N, 08/24/2021]

**16.8.11.12 FEE LIMITATIONS:** Application, license, premises and plant fees, or license renewal, premises renewal and annual plant fees shall not exceed \$125,000 for a vertically integrated cannabis establishment license for both medical cannabis activity and commercial cannabis activity. License fees or renewal fees for a license that authorizes only medical cannabis activity shall be one-half the fee applicable to a license authorizing both medical cannabis activity and commercial cannabis activity.  
[16.8.11.12 NMAC - N, 08/24/2021]

**16.8.11.13 PROHIBITED ACTIVITY AND IMPACTS ON FEES:** Cannabis producer microbusiness or integrated cannabis microbusinesses entering into a business arrangement with another licensee with the purpose or having the effect of evading the limitations of the licensee’s license shall not be

eligible for the lower fee prescribed in Subsections H and I of 16.8.11.9 NMAC. Upon entering into such an arrangement, the licensees shall immediately pay the per-plant fee as set forth in 16.8.11.11 NMAC and the applicable fee for a producer license or vertically integrated cannabis establishment license as set forth in 16.8.11.9 NMAC.  
[16.8.11.13 NMAC - N, 08/24/2021]

**16.8.11.14 FEE PAYMENT TYPES ACCEPTED:** The division shall accept payment for annual licensing fees and annual per plant fees from sources including credit cards, debit cards, electronic checks, electronic bank transfers, automated clearing house payments, or cashier’s checks. Other forms of payment, including cash, shall not be accepted.  
[16.8.11.14 NMAC - N, 08/24/2021]

**16.8.11.15 RENEWAL FEE COLLECTION TIMING:** The division shall collect all renewal fees, including annual per plant fees, at the time of renewal of a license.  
[16.8.11.15 NMAC - N, 08/24/2021]

**16.8.11.16 SEVERABILITY:** If any part or application of this rule is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of this rule legally severed shall not interfere with the remaining protections and duties provided by this rule.  
[16.8.11.16 NMAC - N, 08/24/2021]

**History of 16.8.11 NMAC:**  
[RESERVED]

**SECRETARY OF STATE,  
OFFICE OF THE**

**TITLE 1 GENERAL GOVERNMENT ADMINISTRATION  
CHAPTER 10 ELECTIONS AND ELECTED OFFICIALS  
PART 19 SECURED CONTAINERS**

**1.10.19.1 ISSUING AGENCY:** Office of the Secretary of State  
[1.10.19.1 NMAC – N, 8/24/2021]

**1.10.19.2 SCOPE:** This rule applies to any election covered under the Election Code, Section 1-1-19 NMSA 1978.  
[1.10.19.2 NMAC - N, 8/24/2021]

**1.10.19.3 STATUTORY AUTHORITY:** This rule is authorized by Section 1-2-1 NMSA 1978.  
[1.10.19.3 NMAC - N, 8/24/2021]

**1.10.19.4 DURATION:** Permanent.  
[1.10.19.4 NMAC - N, 8/24/2021]

**1.10.19.5 EFFECTIVE DATE:** August 24, 2021, unless a later date is cited at the end of a section.  
[1.10.19.5 NMAC - N, 8/24/2021]

**1.10.19.6 OBJECTIVE:** The objective of this rule is to provide clear guidance and uniform standards in the application, operation, and interpretation of the law related to secured containers and mailed ballot delivery as prescribed by Section 1-6-9 NMSA 1978.  
[1.10.19.6 NMAC - N, 8/24/2021]

**1.10.19.7 DEFINITIONS:**  
**A. “Permanent ballot drop box”** means the same thing as “secured container,” and the terms may be used synonymously.

**B. “Secured container”** means a permanent and secure receptacle, that meets the requirements of Subsection E of Section 1-6-9 NMSA 1978, and is established by the county clerk whereby voters and those authorized to deliver a voted mailed ballot pursuant to Section 1-6-10.1 NMSA 1978 may return an official mailing envelope to the election official from whom it was obtained.

**C. “Temporary ballot drop box”** means a secure receptacle supervised by election workers or county employees located inside

the office of the county clerk, an alternate voting location, a mobile voting location, or election day voting location to collect official mailing envelopes dropped off pursuant to Subsection D of Section 1-6-9 NMSA 1978.

[1.10.19.7 NMAC – N, 8/24/2021]

**1.10.19.8 CAPACITY REQUIREMENTS:**

**A.** To meet the requirement of Subsection E of Section 1-6-9 NMSA 1978, which provides that all voters have the option to use a secured container to return official mailing envelopes, county clerks shall provide one ballot box per 25,000 registered voters in the county with a minimum of two secured containers required per county. County clerks may request a waiver from the secretary of state to the minimum requirement set by the formula with consideration given for special geographic or security constraints.

**B.** Secured containers shall be located in a manner that provides the greatest convenience and accessibility to voters. County clerks may consider providing secured containers at main county or city office buildings. Other locations to consider include college campuses, libraries, community centers, and other public buildings with adequate accessibility, lighting, and the ability to install the required video surveillance system.

**C.** When possible, secured containers should be placed in such a way to be accessible to voters with disabilities. For example, the secured container should be placed along an accessible path near an Americans with Disabilities (ADA) parking space. If there is no accessible pathway from the parking lot, there should be signs directing the voter to the nearest accessible secured container.

**D.** In accordance with Paragraph (1) of Subsection E of Section 1-6-9 NMSA 1978, the county clerk shall set the days and times the secured containers are available. To maximize the convenience to

the voters, the county clerk shall, whenever possible, make secured containers available for use by a voter 24 hours a day starting 28 days before an election and on election day.

**E.** A temporary ballot drop box shall be made available to drop off official mailing envelopes inside all in-person voting locations pursuant to Subsection D of Section 1-6-9 NMSA 1978. This is to ensure that a dedicated receptacle is available to secure and isolate voted mailed ballots being returned to a voting location.

**F.** Only ballots secured in the absentee official mailing envelope placed inside of a permanent and temporary ballot drop box shall be counted. Under no circumstance should provisional ballots, hand tally sheets, or ballots voted in person be intermingled with voted mailed ballots collected in the drop boxes. [1.10.19.8 NMAC – N, 8/24/2021]

**1.10.19.9 SECURED CONTAINER SECURITY REQUIREMENTS:**

**A.** A secured container shall be permanently bolted to the ground in accordance with the instructions provided by the container manufacturer. A secured container shall be constructed of weather-resistant metal and capable of securely receiving and holding voted mailed ballots. A county clerk shall request approval from the secretary of state prior to installation of a secured container to ensure it meets minimum security requirements.

**B.** A secured container shall be secured and locked at all times. Only the county clerk or deputy county clerk shall have access to the keys or combination of the lock. In addition to locks, all secured containers shall be sealed with one or more tamper-evident seals while in use.

**C.** Secured containers shall be installed in a lighted area and monitored by a centralized video surveillance camera system provided by the secretary of state. The video surveillance system shall otherwise be monitored and controlled by the

county clerk. The county clerk shall, at a minimum, review and monitor video surveillance footage upon receiving a report of an irregular or illegal incident or upon receipt of a system alert.

**D.** When secured containers are not in use and immediately after 7:00 P.M. on election day as is practical, the county clerk shall install the slot closer on the secured container to prevent access. Covers may also be placed over the secured container to protect the container when not in use.

[1.10.19.9 NMAC – N, 8/24/2021]

**1.10.19.10 VIDEO SURVEILLANCE RECORD RETENTION:**

**A.** Video recordings shall operate during the start of absentee voting through election day for all elections conducted under the election code.

**B.** Video recordings shall be maintained as a record related to voting pursuant to the provisions of Section 1-12-69 NMSA 1978, except that recordings shall be retained beyond the normal retention period pending the resolution of any reported incident.

**C.** The relevant county clerk is responsible for maintaining all camera recordings, is the proper custodian of these recordings, and is responsible for fulfilling public record requests associated with these video recordings.

[1.10.19.10 NMAC – N, 8/24/2021]

**1.10.19.11 SECURED CONTAINER ELECTION PREPARATIONS:**

Prior to every election, county clerks shall conduct the following preparations to ensure secured containers are available:

**A.** Provide notice to voters pursuant to Paragraph (1) of Subsection E of Section 1-6-9 NMSA 1978;

**B.** Recruit, hire, and train additional staff members to monitor, maintain, and collect ballots;

**C.** Plan daily driving routes for ballot collection;

**D.** Ensure video surveillance system is working properly;

**E.** Ensure adequate supplies are available including security seals, keys, chain of custody logs, and ballot transport containers; and

**F.** Inspect, clean, and otherwise ensure the secured container is in proper working order to receive ballots as soon as ballots are mailed.

[1.10.19.11 NMAC – N, 8/24/2021]

**1.10.19.12 TEMPORARY BALLOT DROP BOX REQUIREMENTS:**

**A.** A temporary ballot drop box shall be under the direct supervision of county clerk staff or election board member.

**B.** When not in use, a temporary ballot drop box shall be placed in an area that is inaccessible to the public and otherwise secured and safeguarded.

**C.** A temporary ballot drop box shall be secured and locked at all times. Only an election official, messenger, or someone designated to retrieve ballots shall have access to the keys or combination of the lock. In addition to locks, all temporary ballot drop boxes shall be sealed with one or more tamper-evident seals.

**D.** All temporary ballot drop boxes shall be emptied by the end of each day in accordance with a defined chain of custody process in Subsection D of Section 1.10.19.13 NMAC. Only personnel designated to retrieve the ballots may transport the retrieved ballots.

[1.10.19.12 NMAC – N, 8/24/2021]

**1.10.19.13 BALLOT RETRIEVAL PROCEDURES:**

**A.** Paragraph (5) of Subsection E of Section 1-6-9 NMSA 1978, the county clerk or a full-time deputy county clerk shall collect the ballots from a secured container. One or more full-time deputy county clerks may be hired by the county clerk on a temporary basis to fulfill this requirement for the time period in which a secured container is available

for use. Only personnel designated to retrieve the ballots may transport the retrieved ballots.

**B.** The county clerk shall provide the approximate time the ballots will be collected from a secured container. Ballots shall be collected at least once a day every day beginning 28 days prior to election day through 7:00 P.M. on election day.

**C.** Ballots shall be transported in a secure ballot transport container.

**D.** A chain of custody form shall be completed by the person collecting the ballots every time ballots are collected. A separate chain of custody form is required for each permanent or temporary drop box. The chain of custody form shall be prescribed by the secretary of state and shall include:

- (1) the location of the drop box;
- (2) date and time of arrival;
- (3) number of ballots retrieved;
- (4) security seal number when box is opened;
- (5) security seal number when box is locked and sealed again;
- (6) full name of the person retrieving the ballots; and
- (7) any other observations of note to include any appearance of tampering or damage to the drop box.

**E.** The person collecting the ballots from the permanent or temporary drop box shall also record the date, time, drop box location, and identity of the person collecting the boxes on each of the official mailing envelopes collected.

**F.** Upon the arrival of the collected ballots at the office of the county clerk or other designated ballot intake or central count location, the county clerk or designee shall receive the ballots and complete the bottom of the chain of custody form to include:

- (1) date and time of receipt;
- (2) number of ballots received (which should match the number in the upper section of the form provided by the person collecting the ballots);
- (3) a verified comparison to the previous days seal number, if applicable; and
- (4) full name and signature of the receiving staff member.

**G.** Any ballots retrieved from a permanent or temporary ballot drop box shall be processed and secured in the same manner as those absentee ballots otherwise delivered to the office of the county clerk, such as by the United States Postal Service.

**H.** All temporary ballot drop boxes and ballot transport containers shall be numbered and kept in a log to ensure all are returned at the end of a voting day and on election night.

[1.10.19.13 NMAC – N, 8/24/2021]

**1.10.19.14 REIMBURSEMENT BY THE SECRETARY OF STATE:**

**A.** County clerks may request reimbursement from the secretary of state for the costs of hiring additional staff necessary for:

- (1) monitoring secured container video surveillance,
- (2) installing and maintaining secured containers, and
- (3) collecting ballots from permanent and temporary ballot drop boxes.

**B.** County clerks may request reimbursement from the secretary of state for purchasing approved containers and supplies related to maintaining permanent and temporary ballot drop boxes.

**C.** Requests for reimbursement made to the secretary of state are required to be submitted in a manner prescribed by the secretary of state no later than 45 days after election day.

**D.** The secretary of state shall reimburse county clerks for



all expenses deemed by the secretary of state to be in compliance with this section.

[1.10.19.14 NMAC – N, 8/24/2021]

**History of 1.10.19 NMAC:**  
[RESERVED]

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## SECRETARY OF STATE, OFFICE OF THE

**This is an amendment to 1.10.15 NMAC, Sections 3, 6, 8, 9 and 10, effective 8/24/2021.**

### 1.10.15.3 STATUTORY

**AUTHORITY:** This rule is authorized by [Sections] Section 1-2-1 [and 1-12-72,] NMSA 1978 of the Election Code.

[1.10.15.3 NMAC - N, 9/29/2020; A, 8/24/2021]

### 1.10.15.6 OBJECTIVE :

The purpose of this rule is to provide a uniform system of [conducting a general election based on legislative changes in] handling and challenging mailed ballots consistent with the Election Code.

[1.10.15.6 NMAC - N, 9/29/2020]

### 1.10.15.8 ~~COUNTY CLERK MAILED BALLOT REJECTION OF QUALIFICATION:~~

~~**A.** Upon receipt of a mailed ballot, the county clerk shall remove the privacy flap to verify that the voter signed the official mailing envelope and to confirm that the last four digits of the social security number provided by the voter matches the information on the voter's certificate of registration.~~

~~**B.** If either the voter's signature is missing or the last four digits of the voter's social security number are not provided or do not match, the county clerk shall reject the mailed ballot and make the appropriate notation in the absentee ballot register and shall transfer the ballot to the special deputy for mailed ballots for delivery to the absent voter election board. Mailed ballots that~~

~~are rejected must be secured and kept separate from the accepted mailed ballots.~~

~~**C.** If the mailed ballot is rejected, the county clerk shall within one working day send the voter a notice of rejection, in the voter's preferred language, along with information regarding how the voter may cure the reason for the rejection.~~

~~**D.** If the last four digits of the voter's social security number are either missing or does not match, the county clerk shall send a notice via electronic mail, or regular mail if no email address is on file, to the voter instructing them on how to cure the discrepancy.~~

~~**E.** If the signature is missing, the county clerk shall send notice via electronic mail instructing them to sign an affidavit and return it via email to the county clerk's office. This affidavit of cured mailed ballot should contain a space for the voter to provide the voter's signature and attest that this constitutes the required voter identification to cure the rejected mailed ballot. If the voter does not have an email address, the county clerk shall send a notice containing a signature form and a prepaid envelope for the voter to return and must indicate that the voter may also appear in person at the county clerk's office to cure the rejected mailed ballot.~~

~~**F.** The county clerk has a duty to attempt to contact any voter twice whose mailed ballot is rejected by either telephone, electronic mail, or mailed notice within one working day of rejection. If attempting to call by telephone the county clerk shall leave a message if there is an ability to do so.~~

~~**G.** If the voter cures the violation either electronically, by mail or in person the county clerk shall mark "accepted" in the absentee ballot register and shall transfer the ballot and any document that evidences the cured mailed ballot to the special deputy for mailed ballots for delivery to the absent voter election board.~~

~~**H.** The determination of the county clerk to accept or reject~~

~~a mailed ballot is subject to a later challenge before the absent voter election board.] [RESERVED]~~  
[1.10.15.8 NMAC - N, 9/29/2020; Repealed, 8/24/2021]

### 1.10.15.9 INTERPOSING ELECTION CHALLENGES:

**A.** A properly appointed challenger or member of the election board may interpose challenges only for the specific reasons outlined in Sections 1-12-20 and Subsection C of Section 1-6-14 NMSA 1978.

~~**B.** For the purposes of interposing challenges, a challenger's permitted activities are those listed in Section 1-2-23, NMSA 1978. No other written information will be provided to challengers by election board members. A challenger will not be allowed to view a voter's full date of birth or any portion of the voter social security number except as provided on the official mailing envelope pursuant to Subsection C of Section 1-6-14 NMSA 1978.]~~

~~**B.** The election board [must] shall allow a challenger to view the application to vote form, signature roster, precinct voter list, and the voting machine pursuant to Section 1-2-23 NMSA 1978. The county clerk and the presiding judge have the discretion regarding whether the signature roster or precinct voter list be provided in electronic or paper form, however, under no circumstance will a challenger be allowed to view a voter's full date of birth or any portion of the voter's social security number. A challenger may view a voting machine only before the polls are opened to ensure that the public counter is at zero, that the results tape contains no votes and that there are no voted ballots in the voting machine bins.~~

~~**C.** In accordance with Subsection C of Section 1-6-14 NMSA 1978, a challenger may view the official mailing envelope prior to the time that it is opened by the election board.~~

~~**D.** Challengers must conduct themselves in an orderly manner at all times. A challenger~~



can be expelled from the precinct for unnecessarily obstructing or delaying the work of the election inspectors; touching ballots, election materials or voting equipment; campaigning; or acting in a disorderly manner.

**E.** Challenges may not be made indiscriminately or without good cause. Doing so constitutes disrupting a polling place.

**F.** Challengers do not have the authority to approach voters or talk to voters inside the polling location.

**G.** Challengers do not have the right to use video cameras or recording devices inside a polling location.

~~**H.**—If two challengers are representing a political party, candidate, or election related organization in a polling location, only one of the challengers may hold the authority to challenge at any given time. The challengers may alternate the authority to challenge at their discretion. The challengers must advise the precinct board each time the authority is alternated. This provision does not apply to challengers' conduct pursuant to Paragraph (6) of Subsection A of Section 1-2-25 NMSA 1978.]~~

~~**H.**~~ **H.** County clerks must ensure that they include training on the rules and statutes relating to interposing election challenges at their school of instruction for all election board members. [1.10.15.9 NMAC - N, 9/29/2020; A, 8/24/2021]

**1.10.15.10 ABSENT VOTER ELECTION BOARD; CHALLENGES; DISPOSITION:**

**A.** Challenges in front of the absent voter election board are handled in accordance with ~~[Section 1-2-22]~~ Subsections C and D of Section 1-6-14 NMSA 1978.

**B.** If a challenge is made in front of the absent voter election board, a designated election board member ~~[may]~~ shall notate ~~[the challenge]~~ “challenged” on the absentee ballot envelope but the absent voter election board does not have to rule on the challenge at

that time, and may do so when it is otherwise convenient.

**C.** If the challenge is unanimously affirmed by the ~~[absentee]~~ absent voter election board, an election board member shall mark “affirmed” on the ballot envelope and ~~[indicate this in the absent voter record]~~ mark “rejected” on the absent voter’s record on the absentee register. A unanimously affirmed challenged ballot shall not be opened but placed in a container provided for challenged ballots.

~~**D.**—Any unanimously affirmed challenged mailed ballots shall be given to the special deputy for mailed ballots for delivery to the County Clerk. Once received, the county clerk must comply with Subsections C—G of 1.10.15.8 NMAC, to attempt to have the voter cure the reason the challenge was affirmed.~~

~~—~~ **D.** If the reason for the challenge is satisfied by the voter before the conclusion of the county canvass or as part of an appeal, the voter’s record on the absentee ballot register shall be changed from “rejected” to “accepted,” the notation “challenge affirmed” on the absentee ballot envelope shall be crossed out and signed and dated by the presiding judge and the county clerk, and the official mailing envelope shall be opened and the vote counted by ~~[the county canvass board]~~ an election board convened by the county clerk. If the ballot is hand tallied it shall be recorded in the absentee by-mail hand tally counting group. If the ballot is tabulated by a voting tabulator, it shall be recorded in the absentee by-mail machine counting group. If the ballot is counted after the county canvass report has been adopted, the county canvass board shall reconvene to amend the report prior to the state canvassing board convening. If the county canvass board is unable to convene prior to the date of the meeting of the state canvassing board due to the date of the appeal, the county clerk shall provide the information to the secretary of state to present to the state canvassing board. The state canvassing board shall

review and adopt the change to the county canvass report in lieu of the county canvass board reconvening, however, if the change results in a change to the winner of a single-county candidate contest or ballot question, the state canvassing board shall order the county canvassing board to reconvene to adopt the change to the county canvassing report.

~~**F.**—If the voter cures the reason for the challenge, the voter’s record on the absentee ballot register shall be changed to “accepted,” and the notation “challenged-affirmed” on the mailed ballot envelope shall be crossed out, signed and dated by either the presiding judge of the absentee precinct board or a member of the county canvassing board, dependent upon when the voter satisfies the reason for the not affirmed challenge.]~~ [1.10.15.10 NMAC - N, 9/29/2020; A, 8/24/2021]

**History of 1.10.15 NMAC:**  
**[RESERVED]**

**History of Repealed Material:**  
1.10.15.8 NMAC: County Clerk Mailed Ballot Rejection of Qualification, filed 9/29/2020; Repealed 8/24/2021.

**End of Adopted Rules**

## Other Material Related to Administrative Law

**GOVERNOR,  
OFFICE OF THE****EXECUTIVE ORDER 2021-049****RENEWING THE STATE  
OF PUBLIC HEALTH  
EMERGENCY INITIALLY  
DECLARED IN EXECUTIVE  
ORDER 2020-004, OTHER  
POWERS INVOKED IN  
THAT ORDER, AND ALL  
OTHER ORDERS AND  
DIRECTIVES CONTAINED IN  
EXECUTIVE ORDERS TIED  
TO THE ONGOING PUBLIC  
HEALTH EMERGENCY**

On December 31, 2019, several cases of pneumonia with an unknown cause were detected in Wuhan City, Hubei Province, China, and reported to the World Health Organization (“WHO”). The underlying virus giving rise to those reported instances of respiratory illness was later identified as a novel coronavirus disease which has been referred to as “COVID-19.”

By the time the first COVID-19 cases had been confirmed in New Mexico, on March 11, 2020, COVID-19 had already spread globally and throughout the United States. At that time, more than 100,000 people had been infected globally and there were more than 1,000 cases in the United States, spread out over 39 states. The President of the United States declared a national state of emergency for COVID-19 on March 13, 2020. As of August 13, 2021 the Centers for Disease Control and Prevention (“CDC”) reported over 36 million people have been infected in the United States, with over 600,000 related deaths, and the New Mexico Department of Health has reported 218,569 positive COVID-19 cases and 4,446 related deaths in New Mexico.

Public health organizations have implemented emergency

measures intended to slow the spread of COVID-19. For example, on January 20, 2020, the CDC activated its Emergency Operations Center in response to the COVID-19 outbreak. The WHO declared a Public Health Emergency of International Concern shortly thereafter. All of our sister states subsequently declared a state of emergency and implemented significant measures and deployed substantial resources to fight the spread of COVID-19; many, if not most, have kept such states of emergency in place.

New Mexico has taken aggressive measures to reduce the spread of COVID-19 and to mitigate its impacts. I have been in frequent contact with federal and state agencies and officials who are coordinating their efforts and resources to fight COVID-19. Various state agencies have been at the forefront of our State’s response to COVID-19, particularly the New Mexico Department of Health. The hard work of a variety of state employees has made a difference in our fight against COVID-19. Due to the continued spread of COVID-19, it is necessary for all branches of State government to continue taking actions to minimize transmission of COVID-19 and to reduce its attendant physical and economic harms.

Therefore, for the reasons above, I, Michelle Lujan Grisham, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and laws of the State of New Mexico, hereby **ORDER** and **DIRECT**:

1. In consultation with the New Mexico Department of Health, I have determined that the statewide public health emergency proclaimed in Executive Order 2020-004, and renewed in Executive Orders 2020-022, 2020-026, 2020-030, 2020-036, 2020-053, 2020-55, 2020-059, 2020-064, 2020-073, 2020-080, 2020-085, 2021-001, 2021-004, 2021-010, 2021-011,

2021-012, 2021-023, 2021-030, and 2021-044 shall be renewed and extended through September 15, 2021.

2. All other powers, directives, and orders invoked in Executive Order 2020-004 remain in effect.

3. All other Executive Orders with a duration that was tied to the COVID-19 public health emergency or that was not explicitly stated shall continue with the same effect, including any orders appropriating emergency funding as well as Executive Orders 2020-016, 2020-020, 2020-021, 2020-025, and 2020-039.

This Order supersedes any previous orders, proclamations, or directives in conflict. This Order shall take effect on August 16, 2021 and shall remain in effect until September 15, 2021 unless renewed, modified, or until the Governor rescinds it.

**DONE AT THE EXECUTIVE  
OFFICE THIS 16TH DAY OF  
AUGUST 2021**

**ATTEST:**

**/S/MAGGIE TOULOUSE OLIVER  
SECRETARY OF STATE**

**WITNESS MY HAND AND THE  
GREAT SEAL OF THE STATE OF  
NEW MEXICO**

**/S/MICHELLE LUJAN  
GRISHAM  
GOVERNOR**

**HEALTH,  
DEPARTMENT OF**

**PUBLIC HEALTH ORDER  
NEW MEXICO DEPARTMENT  
OF HEALTH  
ACTING SECRETARY DAVID  
R. SCRASE, M.D.**

**August 17, 2021**

**Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending Prior Public Health Emergency Orders to Impose County-by-County Restrictions Due to COVID-19**

**PREFACE**

The purpose of this amended Public Health Emergency Order is to amend restrictions on mass gatherings and business operations, which were implemented in response to the spread of the Novel Coronavirus Disease 2019 (“COVID-19”). While vaccines are the most effective method to prevent the spread of COVID-19, masks, social distancing and self-isolation measures continue to be necessary to protect New Mexicans who are ineligible to receive a COVID-19 vaccine or who choose not to receive a vaccine. All New Mexicans should continue to adhere to social distancing protocols when required to protect our State as a whole. In accordance with these purposes, this Order and its exceptions should be narrowly construed to encourage New Mexicans continue social distancing measures.

It is hereby **ORDERED** that

1. All current guidance documents and advisories issued by the Department of Health remain in effect.
2. The following Public Health Emergency Orders remain in effect through the current Public Health Emergency and any subsequent renewals of that Public Health Emergency or until they are amended or rescinded:

A. December 15, 2020 Amended Public Health Emergency Order Implementing Additional Contact Tracing Information Requirements for All Laboratories and Submitters

Submitting Notifiable Condition COVID- 19 Test Results to the New Mexico Epidemiology and Response Division;

B. January 8, 2021 Emergency Order Implementing Administration and Reporting Requirements for All COVID-19 Vaccine Providers;

C. April 5, 2021 Amended Public Health Emergency Order Temporarily Limiting Long-Term Care Facilities Visitation Due to COVID-19; and

D. February 26, 2021 Public Health Emergency Order Implementing Administration Requirements for all COVID-19 Vaccine Providers and Requiring Accurate Information be Provided by Individuals Registering to Receive the COVID-19 Vaccine.

3. The June 30, 2021 Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending Prior Public Health Emergency Orders to Impose County-by-County Restrictions Due to COVID-19 is hereby amended as follows:

**ORDER**

**WHEREAS**, on March 11, 2020, because of the spread of the novel Coronavirus Disease 2019 (“COVID-19”), Michelle Lujan Grisham, the Governor of the State of New Mexico, declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

**WHEREAS**, Governor Michelle Lujan Grisham has renewed the declaration of a Public Health Emergency through September 15, 2021;

**WHEREAS**, confirmed cases in the United States have risen to more than 36 million and confirmed COVID-19 infections in New Mexico have risen to over 220,000;

**WHEREAS**, COVID-19 is a deadly virus and has taken the lives of over 600,000 Americans and over 4,402 New Mexicans;

**WHEREAS**, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), potential displacement of persons, and closures of schools or other places of public gathering;

**WHEREAS**, vaccination, social distancing and the consistent and proper use of face coverings in public spaces are the most effective ways New Mexicans can minimize the spread of COVID-19 and mitigate the potentially devastating impact of this pandemic in New Mexico; and

**WHEREAS**, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-10A-1 to -19, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by the Department for the protection of public health.

**NOW, THEREFORE**, I, David R. Scrase, M.D., Acting Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her emergency powers under the All Hazard Emergency Management



Act, do hereby declare the current outbreak of COVID-19 a condition of public health importance, as defined in NMSA 1978, Section 24-1-2(A) as an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community, and that poses an imminent threat of substantial harm to the population of New Mexico.

**I HEREBY DIRECT AS FOLLOWS:**

(1) Beginning Friday August 20, 2021, unless a healthcare provider instructs otherwise, all individuals age 2 years and older shall wear a mask or multilayer cloth face covering in all indoor public settings except when eating or drinking. Nothing in this Order shall be construed as prohibiting any business, house of worship, non-profit entity, or other entity from imposing more stringent requirements. The masking provision in Section (1) of the July 30, 2021 Public Health Order shall remain in effect until Friday August 20, 2021.

(2) Any business, establishment, or non-profit (other than those which are a healthcare operation, utility, or indigent care services) which members of the public regularly visit must report to the New Mexico Environment Department when there is an occurrence of a rapid response. The New Mexico Environment Department shall monitor when an entity has four (4) or more rapid responses within a fourteen (14) day period. For purposes of this directive, rapid responses will be counted on a rolling basis. Businesses, establishments, or non-profits with four or more rapid responses shall not be required to cease operations. However, the rapid responses must be reported to the Environment Department so that the public may be made aware of the positive cases.

(3) All businesses, establishments, and non-profit entities must adhere to the pertinent COVID-Safe Practices

(4) Private educational institutions serving children and young adults from pre-Kindergarten through 12th Grade, including homeschools serving children who are not household members, shall adhere to the face covering and other COVID-Safe Practices requirements for in person instruction contained in the New Mexico's Public Education Department's "Reentry Guidance" and "COVID-19 Response Toolkit for New Mexico's Public Schools", available at <https://webnew.ped.state.nm.us/reentry-district-and-school-guidance/>, and may operate up to maximum capacity. Private educational institutions shall follow the reporting, testing, and closure requirements set forth by the Public Education Department in the Reentry Guidance and COVID-19 Response Toolkit for New Mexico's Public Elementary Schools.

**I FURTHER DIRECT** as follows:

(1) This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.

(2) This Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the Public Health Act.

(3) Nothing in this Order is intended to restrain or preempt local authorities from enacting more stringent restrictions than those required by the Order.

(4) This Order shall take effect immediately and remain in effect through September 15, 2021.

(5) The New Mexico Department of Health, the New Mexico Department of Public Safety, the New Mexico Department of Homeland Security and Emergency Management, the New

Mexico Environment Department, and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.

(6) Any and all State officials authorized by the Department of Health may enforce this Public Health Order by issuing a citation of violation, which may result in civil administrative penalties of up to \$5,000 for each violation under Section 12-10A-19.

**DONE AT THE EXECUTIVE OFFICE THIS 17TH DAY OF AUGUST 2021**

**ATTEST:**

**/S/MAGGIE TOULOUSE OLIVER  
SECRETARY OF STATE**

**WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF NEW MEXICO**

**/S/DAVID R. SCRASE, M.D.  
ACTING SECRETARY OF THE NEW MEXICO DEPARTMENT OF HEALTH**

**HEALTH,  
DEPARTMENT OF**

**PUBLIC HEALTH ORDER  
NEW MEXICO DEPARTMENT  
OF HEALTH  
ACTING SECRETARY DAVID  
R. SCRASE, M.D.**

**August 17, 2021**

**Public Health Emergency Order  
Requiring All School Workers  
Comply with Certain  
Health Requirements and  
Requiring Congregate Care  
Facility Workers, Hospital  
Workers, and  
Employees of the Office of the  
Governor Be Fully Vaccinated**

**WHEREAS**, on January 30, 2020, the World Health Organization announced the



emergence of a novel Coronavirus Disease 2019 (“COVID-19”) that had not previously circulated in humans, but has been found to have adapted to humans such that it is contagious and easily spread from one person to another and one country to another;

**WHEREAS**, COVID-19 has been confirmed in New Mexico since March 11, 2020, when the New Mexico Department of Health confirmed the first cases of individuals infected with COVID-19 in New Mexico and additional cases have been confirmed each day since then;

**WHEREAS**, on March 11, 2020, because of the spread of COVID-19, Governor Michelle Lujan Grisham issued Executive Order 2020-004 declaring that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the NI Hazards Emergency Management Act;

**WHEREAS**, Governor Michelle Lujan Grisham has renewed the declaration of a Public Health Emergency through September 15, 2021;

**WHEREAS**, over 36 million people have been infected with COVID-19 in the United States, with over 615,000 related deaths, and the New Mexico Department of Health has reported 220,000 positive COVID-19 cases and 4,450 related deaths in New Mexico;

**WHEREAS**, the currently available COVID-19 vaccines are safe and the most effective way of preventing infection, serious illness, and death;

**WHEREAS**, widespread vaccination protects New Mexico’s health care system as vaccines decrease the need for emergency services and hospitalization;

**WHEREAS**, the refusal to receive the COVID-19 vaccine not only endangers the individual but the entire community, and further jeopardizes the progress the State has made against the pandemic

by allowing the virus to transmit more freely and mutate into more transmissible or deadly variants;

**WHEREAS**, one such highly transmissible variant, B.1.617.2, commonly known as the Delta variant, now accounts for the majority of new infections in the United States;

**WHEREAS**, New Mexico has recorded a significant increase in new COVID-19 cases in recent weeks, with cases expected to rise even further in the Fall and Winter months;

**WHEREAS**, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, and wellbeing of children who are not yet eligible to receive a vaccine; persons who cannot be vaccinated due to medical reasons; immunocompromised individuals; and vulnerable persons including persons in hospitals, long-term care facilities, and other congregate care facilities; and

**WHEREAS**, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-10A-1 to -19, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government, to preserve and promote public health and safety, to maintain and enforce rules for the control of a condition of public health importance, and issue rules for immunization against conditions of public health importance.

**NOW, THEREFORE**, I, David R. Scrase, M.D., Acting Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of emergency powers under the All Hazard Emergency Management Act, do hereby declare the current outbreak of COVID-19 a condition

of public health importance, as defined in NMSA 1978, Section 24-1-2(A), and hereby **ORDER** and **DIRECT** as follows:

**DEFINITIONS**

For the purposes of this Order, the following term shall have the meaning given to them, except where the context clearly requires otherwise:

(1) “Congregate care facility” means nursing homes, assisted living facilities, adult day cares, hospice facilities, rehabilitation facilities, State correctional facilities, juvenile justice facilities, residential treatment centers, the New Mexico State Veterans’ Home, and community homes.

(2) “Congregate care facility worker” means any paid or unpaid individuals working in a congregate care facility. This includes workers providing services who have the potential for direct or indirect exposure to patients or residents in a congregate care facility. A congregate care facility worker includes contractors who perform services on-site at the congregate care facility.

(3) “Fully vaccinated” means two weeks after an individual completed the entire recommended series of vaccination with a vaccine approved by the Food and Drug Administration (FDA), including on an emergency use basis, to prevent COVID-19. An individual will be fully vaccinated two weeks after the second dose of the Pfizer-BioNTech or Moderna COVID-19 vaccines. An individual will be fully vaccinated two weeks after a single-dose Johnson and Johnson’s Jassen COVID-19 vaccine.

(4) “Hospital” means any public hospital, profit or nonprofit private hospital, general hospital, or special hospital.

(5) “Hospital Worker” means all paid and unpaid individuals who work on-site in a hospital in a setting where care is provided to patients or patients have access for any purpose. This

includes workers who have the potential for direct or indirect exposure to patients or COVID-19 airborne aerosols. Hospital workers include, but are not limited to, nurses, physicians nursing assistants, technicians, therapists, phlebotomists, pharmacists, students and trainees, contractual staff not employed by the hospital, and persons not directly involved in patient care, but who could be exposed to infection agents that can be transmitted in the hospital (e.g. clerical, dietary, environmental services, laundry, security, and volunteer personnel).

(6) "School worker" means all paid and unpaid adults serving in a private school, public school, or charter school.

(7) "Qualifying medical condition" means a permanent or temporary medical condition recognized by the FDA or Centers for Disease Control and Prevention (CDC) as a contra-indication to COVID-19 vaccination.

**DIRECTIVES**

**I HEREBY DIRECT AS FOLLOWS:**

(1) Beginning Monday August 23, 2021, all school workers in any private school, public school, or charter school who are not fully vaccinated against COVID-19 or are unwilling to provide proof of vaccination to their respective supervisors shall:

a. Provide adequate proof that the school worker has tested negative for COVID-19 on a weekly basis; and

b. Wear a mask or multilayer cloth face covering at all times indoors during the course and scope of their employment except when eating or drinking. An unvaccinated school worker will only be exempt from wearing a mask indoors if adequate proof is provided that the school worker has been instructed otherwise by a licensed healthcare provider.

(2) All private schools, public schools, and charter schools shall maintain records of school worker vaccination status in accordance with applicable privacy laws and regulations. The records regarding a worker's vaccination status shall be provided to the Department of Health promptly upon request.

(3) All hospital workers, congregate care facility workers, and employees of the Office of the Governor Michelle Lujan Grisham are required to be fully vaccinated against COVID-19 unless they qualify for an exemption. If an individual does not qualify for an exemption, the individual shall:

a. Receive the first dose of a COVID-19 vaccine within 10 days of the effective date of this Order and their second dose within 40 days of their first dose of a COVID-19 vaccine; and

b. Provide proof of vaccination to the appropriate person or supervisor:

i. Hospital workers and congregate care facility workers shall provide proof of vaccination or exemption to their respective supervisors.

ii. Contractors who are hospital workers shall provide proof of vaccination to the operator of the hospital in which the contractor provides on-site services.

iii. Employees of the Office of Governor Michelle Lujan Grisham shall provide proof of vaccination to the Chief Operations Officer.

(4) The workers subject to Section (3) of this Order may be exempt from the COVID-19 vaccination requirement set forth above if they have a qualifying medical condition which immunization would endanger their health, or they are entitled under the Americans With Disabilities Act (ADA), Title VII of the Civil Rights Act of 1964 (Title VII), or any other applicable law to a disability-

related reasonable accommodation or a sincerely held religious belief accommodation. Nothing in this Order precludes the entities which employ or contract with these workers from providing disability-related reasonable accommodations and religious accommodations to the requirements of this Order as required by law.

a. To be eligible for an exemption due a qualifying medical condition, the individual must provide their employer or operator of the facility they contract with a statement from a physician, nurse practitioner, or other medical professional licensed to practice in New Mexico stating that the individual qualifies for the exemption and indicating the probable duration of the individual's inability to receive the vaccine;

b. To be eligible for an exemption due to a disability, the individual must provide their employer or the operator of the hospital or congregate care facility they contract with accommodation documentation from a physician, nurse practitioner, or other medical professional licensed to practice in New Mexico stating that the individual has a disability that necessitates an accommodation and the probable duration of the need for the accommodation; or

c. To be eligible for an exemption due to a sincerely held religious belief, the individual must document that the request for an accommodation has been made and provide their employer or the operator of the facility they contract with a statement regarding the manner in which the administration of a COVID-19 vaccine conflicts with the religious observance, practice, or belief of the individual.

(5) If an operator of a hospital, operator of a congregate care facility, or the Office of Governor Michelle Lujan Grisham determines a worker to have met the requirements of an exemption pursuant to Section (4), the

unvaccinated exempt worker shall:

a. Provide adequate proof that the individual has tested negative for COVID- 19 on a weekly basis; and

b. Wear a mask or multilayer cloth face covering at all times indoors at the hospital or congregate care facility except when eating or drinking. An unvaccinated worker will only be exempt from wearing a mask indoors if adequate proof is provided that the individual has been instructed otherwise by a licensed healthcare provider.

(6) The operator of a hospital, operator of a congregate care facility, and the Office of Governor Michelle Lujan Grisham shall maintain records of all workers' vaccination or exemption status in accordance with applicable privacy laws and regulations. If a worker is exempt pursuant to Section (4), then the operator or employer also must maintain records of the worker's testing results pursuant to Section (5). The records regarding a worker's vaccination or exemption status shall be provided to the Department of Health promptly upon request.

(7) Hospital workers, congregate care facility workers, and employees of the Office of the Governor Michelle Lujan Grisham shall provide proof of vaccination or records of their exemption status to the Department of Health if requested.

(8) All persons who are eligible to receive a COVID-19 vaccine and enter the grounds of the New Mexico State Fair from September 9-19, 2021 must provide adequate proof of being fully vaccinated against COVID-19 to a State Fair official unless the individual qualifies for an exemption. A person may be exempt from the COVID-19 vaccination requirement set forth in this section if they have a qualifying medical condition which immunization would endanger their health, or they are entitled under the ADA, Title VII, or any

other applicable law to a disability related reasonable accommodation or a sincerely held religious belief accommodation. Nothing in this Order precludes the New Mexico State Fair from providing disability-related reasonable accommodations and religious accommodations to the requirements of this Order as required by law. The requirements for an exemption are as follows:

a. To be eligible for an exemption due a qualifying medical condition, the individual must provide a State Fair official with a statement from a physician, nurse practitioner, or other medical professional licensed to practice in New Mexico stating that the individual qualifies for the exemption and indicating the probable duration of the individual's inability to receive the vaccine;

b. To be eligible for an exemption due to a disability, the individual must provide a State Fair Official with accommodation documentation from a physician, nurse practitioner, or other medical professional licensed to practice in New Mexico stating that the individual has a disability that necessitates an accommodation and the probable duration of the need for the accommodation; or

c. To be eligible for an exemption due to a sincerely held religious belief, the individual must document that the request for an accommodation has been made and provide a State Fair official a statement regarding the manner in which the administration of a COVID-19 vaccine conflicts with the religious observance, practice, or belief of the individual.

(9) If a State Fair official determines an individual entering the grounds of the New Mexico State Fair has met the requirements of an exemption pursuant to Section (8), the unvaccinated individual shall provide adequate proof that they have tested negative for COVID- 19 within 48 hours prior to entering the fair grounds.

(10) New Mexico State Fair officials shall maintain records of the vaccination or exemption status of all persons entering the grounds New Mexico State Fair in accordance with applicable privacy laws and regulations. The records regarding an individual's vaccination or exemption status shall be provided to the Department of Health promptly upon request. All individuals entering the grounds of the New Mexico State Fair shall provide proof of vaccination or records of their exemption status and negative test to the Department of Health, if requested.

**I FURTHER DIRECT** as follows:

(1) This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.

(2) Nothing in this Order is intended to restrain or preempt local authorities from enacting more stringent restrictions than those required by the Order.

(3) The New Mexico Department of Health, the New Mexico Department of Public Safety, the New Mexico Public Education Department and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.

(4) Any person, hospital, or congregate care facility who willfully violates this Order may be subject to civil administrative penalties available at law.

(5) This Order shall take effect on August 17, 2021 and remain in effect for the duration of the public health emergency first declared in Executive Order 2020-004 and any subsequent renewals of that public health emergency declaration, unless otherwise rescinded

**DONE AT THE EXECUTIVE OFFICE THIS 17TH DAY OF AUGUST 2021**

ATTEST:  
/S/MAGGIE TOULOUSE OLIVER  
SECRETARY OF STATE

WITNESS MY HAND AND THE  
GREAT SEAL OF THE STATE OF  
NEW MEXICO

/S/DAVID R. SCRASE, M.D.  
ACTING SECRETARY OF THE  
NEW MEXICO DEPARTMENT  
OF HEALTH.

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**End of Other  
Material Related to  
Administrative Law**



# 2021 New Mexico Register

## Submittal Deadlines and Publication Dates

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| <b>Issue</b>    | <b>Submittal Deadline</b> | <b>Publication Date</b> |
|-----------------|---------------------------|-------------------------|
| <b>Issue 1</b>  | <b>January 4</b>          | <b>January 12</b>       |
| <b>Issue 2</b>  | <b>January 14</b>         | <b>January 26</b>       |
| <b>Issue 3</b>  | <b>January 28</b>         | <b>February 9</b>       |
| <b>Issue 4</b>  | <b>February 11</b>        | <b>February 23</b>      |
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| <b>Issue 7</b>  | <b>March 25</b>           | <b>April 6</b>          |
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