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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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Notices of Rulemaking and Proposed Rules

FINANCE AND ADMINISTRATION, DEPARTMENT OF

NOTICE OF PROPOSED RULEMAKING AND PUBLIC RULE HEARING

NOTICE OF PROPOSED RULEMAKING AND PUBLIC RULE HEARING

The New Mexico Department of Finance and Administration (DFA) hereby gives notice as required under Section 14-4-5.2 NMSA 1978 and 1.24.25.11 NMAC that it proposes amending sections 5, 7, 8, 9, 11 and 12 of existing rule 2.42.2 NMAC - REGULATIONS GOVERNING THE PER DIEM AND MILEAGE ACT by a repeal and replacement of the entire rule, pursuant to Subsection C of 1.24.11.9 NMAC. By publishing this notice, the DFA resolves to undertake the rulemaking in conformity with the Per Diem and Mileage Act, Sections 10-8-1 to -8 NMSA 1978 (1953, as amended through 2021), the State Rules Act, Sections 14-4-1 to -11 NMSA 1978 (1967, as amended through 2017), and the Default Procedural Rule for Rulemaking, 1.24.25 NMAC (4/10/2018).

Purpose of Proposed Rule

Amendments. The purposes of the amendment of existing sections of the rule is to: (1) enhance clarity by providing additional definitions, (2) increase the flexibility of the DFA to change per diem amounts and reimbursements in lieu of per diem paid to public officers and employees to be in alignment with current prices, (3) provide updated per diem payments for meetings attended by nonsalaried public officials, (4) increase mileage reimbursements to public officers and employees to match the Internal Revenue Service standard mileage rate, and (5) to provide increased reimbursements for certain actual expenses paid by public officers and employees.

Summary of Proposed Rule

Amendments. The following sections of existing rule 2.42.2 NMAC are amended as follows:

Section 5 is amended to reflect the effective date of the proposed amendments.

Section 7 is amended to include definitions for the terms “attend,” “occasionally and irregularly,” and “normal work day,” and to expand the definitions of “Home” to mean the area within a 50-mile radius of the place of legal residence, instead of a 35-mile radius, and “Travel” to mean at least 50 miles from the designated post of duty of the public officer or employee, instead of 35 miles.

Section 8 is amended to (1) replace the existing specific dollar amounts for per diem rates depending on hours travelled beyond the normal work day and the areas of travel to overnight with rates published on the DFA website on May 1st for the preceding fiscal year, (2) provide that nonsalaried public officers can receive \$95.00 for physically attending a meeting for four or more hours in a day or \$45.00 for physically attending a meeting for less than four hours in a day or virtually attending a meeting, instead of providing \$95.00 per meeting day for any duration, and (3) expand the state special area to encompass Santa Fe County.

Section 9 is amended to replace the existing specific dollar amounts for the reimbursement of actual expenses in lieu of per diem rates with rates published on the DFA website on May 1st for the preceding fiscal year.

Section 11 is amended to change the mileage reimbursement from 80% to 100% of the Internal Revenue Service standard mileage rate for privately owned vehicles.

Section 12 is amended to provide that state officers and employee may receive full reimbursement for taxi or transportation fares incurred at the

destination, allowed gratuities, not to exceed 20% per transaction, and parking fees, provided that receipts for such expenses are attached to the reimbursement voucher. The existing rule limits such reimbursements to \$6.00 per day or \$30.00 per trip and does not require that receipts be provided. Section 12 is also amended to remove the reference to Appendix B. The amendment deletes Appendix B which is a sample affidavit for lost receipts.

Statutory Authority. The DFA is authorized to promulgate rules and regulations to carry out the duties of the DFA and its divisions by Subsection E of Section 9-6-5 NMSA 1978 (1977). More specifically, the DFA is authorized to promulgate rules to implement the Per Diem and Mileage Act, Sections 10-8-1 to -8 NMSA 1978 (1953, as amended through 2021) by Section 10-8-5 NMSA 1978 (1953, as amended through 2018).

Technical Information that Served as a Basis for the Amendments.

IRS Local Travel Guide, 1.32.1.8 (10-21-2023) Per Diem Expenses for Local Travel, accessible at https://irs.gov/irm/part1/irm_01-032-001. The full text of this Technical Information can also be obtained in the same manner as the full text of the proposed rule, as specified below.

Access to Full Text of Proposed Rule.

The full text of the proposed rule may be obtained by contacting Mark Melhoff, Acting State Controller, Financial Control Division, Department of Finance & Administration, 407 Galisteo Street, Santa Fe, NM 87501, (505) 827-3625, to request a copy of the rule. The full text and this notice are also available on DFA’s website: <https://www.nmdfa.state.nm.us/> and at DFA’s Financial Control Division office located at 407 Galisteo Street, Santa Fe, NM 87501.

Public Comment. A person may submit, by mail or electronic form,

written comments on the proposed rule through the end of the public comment period, which ends [December 21, 2023]. Written comments should be submitted to Mark Melhoff, Acting State Controller, Financial Control Division, Department of Finance & Administration, 407 Galisteo Street, Santa Fe, NM 87501. Written comments also will be accepted by email: MarkS.Melhoff@dfa.nm.gov, or by fax: (505) 827-4984. All written comments received by the agency will be posted on <https://www.nmdfa.state.nm.us/> no more than 3 business days following receipt to allow for public review. Written comments will also be available for public inspection at DFA's Financial Control Division office located at 407 Galisteo Street, Santa Fe, NM 87501.

Public Hearing. A public rule hearing on the proposed rule will be held before Albert J. Lama, Hearing Officer on December 21, 2023 from 9:30 a.m. at the Bataan Memorial Building (Conference Room), 407 Galisteo Street, Room 191, Santa Fe, NM 87501. Individuals may submit data, views or arguments orally or in writing to the 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 proposed rule in an accessible form may contact Acting State Controller Mark Melhoff (505-827-3625) at least 10 days before the hearing.

HIGHER EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Higher Education Department (NMHED or Department) will hold a public rulemaking hearing on January 10, 2024. The hearing will

begin at 9:00 a.m. and will be held via Microsoft Teams and in person at the New Mexico Higher Education Department. The purpose of the hearing is to take public comment regarding proposed amendments to **5.7.18 NMAC, RESIDENCY FOR TUITION PURPOSES.**

Join via Microsoft Teams:
https://teams.microsoft.com/1/meetup-join/19%3ameeting_MzkwN2FIZmMtOGY2OC00NGMwLWEyNDUtYjdiMzEyOTE4N2Mw%40thread.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%22Oid%22%3a%22c327f958-5970-4536-8f6b-03d48b60d29e%22%7d

Or call in (audio only)
+1 (505) 312-4308
Phone Conference ID: 454 401 153#

Purpose:
The purpose of the proposed amendment is to align 5.7.18 NMAC with Statute. The current rule contradicts statute in terms of the availability of state-funded financial aid regardless of an individual's immigration status. This amendment would put the rule in compliance with the statute.

Summary of proposed rule:
The amendment to Section 10 of 5.7.18 NMAC clarifies that students receiving the non-discrimination waiver may receive state funded financial aid.

Details for Obtaining a Copy, Public Hearing and Comments:
The proposed rule is posted on the NMHED website and may be accessed at <http://www.hed.nm.gov> under the "Events" section. To request that a copy of the proposed rule be sent to you by mail or e-mail, please contact HigherEd.Info@hed.nm.gov or (505)476-8411.

A public hearing will be held on January 10, 2024 from 9:00 a.m. until 9:30 a.m. via Microsoft Teams and in person at the NMHED Office located at **2044 Galisteo Street,**

Suite 4, Santa Fe, NM 87505. Any person who is or may be affected by this proposed rule may participate. Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or HigherEd.Info@hed.nm.gov. **Written comments must be received no later than 4:00 p.m. on January 5, 2023.** Please note that any written or verbal comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal, and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Section 9-25-1 et seq. NMSA 1978, Section 21-1-3 NMSA 1978, and Section 21-1-4.6 NMSA 1978.

Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 476-8411 or email HigherEd.Info@hed.nm.gov ten (10) business days prior to the hearing.

HIGHER EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Higher Education Department (NMHED or Department) will hold a public rulemaking hearing on January 10, 2024. The hearing will begin at 9:30 a.m. and will be held via Microsoft Teams and in person at the New Mexico Higher Education Department. The purpose of the hearing is to take public comment regarding proposed amendments to **5.7.34 NMAC, TEACHER PREPARATION**

AFFORDABILITY SCHOLARSHIP PROGRAM

Join via Microsoft Teams:
https://teams.microsoft.com/l/meetup-join/19%3ameeting_NzUwNjI5OGUtZDM3Yi00ZDYzLWE1NjktZTE4YzJlYzQyNzA4%40thread.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%22Oid%22%3a%22c327f958-5970-4536-8f6b-03d48b60d29e%22%7d

Or call in (audio only)
 +1 (505) 312-4308
 Phone Conference ID: 731 239 734#

Purpose:
 The purpose of the proposed amendment is to align 5.7.34 NMAC with the statute. The current rule contradicts the statute in terms of when a student may become eligible for the scholarship. This amendment would put the rule in compliance with the statute and expand student eligibility.

Summary of proposed rule:
 The amendment to Section 8 of 5.7.34 NMAC corrects the applicable student eligibility timeframe from “no later than 120 days following high school graduation” to “at any time later than 120 days following high school graduation”.

Details for Obtaining a Copy, Public Hearing and Comments:
 The proposed rule is posted on the NMHED website and may be accessed at <http://www.hed.nm.gov> under the “Events” section. To request that a copy of the proposed rule be sent to you by mail or e-mail, please contact HigherEd.Info@hed.nm.gov or (505)476-8411.

A public hearing will be held on January 10, 2024 from 9:30 a.m. until 10:00 a.m. via Microsoft Teams and in person at the NMHED Office located at **2044 Galisteo Street, Suite 4, Santa Fe, NM 87505**. Any person who is or may be affected by this proposed rule may participate. Interested persons may submit written

comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or HigherEd.Info@hed.nm.gov. **Written comments must be received no later than 4:00 p.m. on January 5, 2023.** Please note that any written or verbal comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal, and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Section 9-25-1 et seq. NMSA 1978 and Sections 21-210-1 et seq. NMSA 1978.

Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 476-8411 or email HigherEd.Info@hed.nm.gov ten (10) business days prior to the hearing.

HIGHER EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

Join via Microsoft Teams:
https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZTk0YjJkNzctOGI1My00NTVjLTk5NWYtYzhmZTNkYjAwNDc4%40thread.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%22Oid%22%3a%22c327f958-5970-4536-8f6b-03d48b60d29e%22%7d

Or call in (audio only)
 +1 (505) 312-4308
 Phone Conference ID: 616 879 727#

Purpose:
 The purpose of the proposed amendment is to expand scholarship

eligibility for adult students who have recently completed a high school equivalency credential. Currently, adult students must meet New Mexico Legislative Lottery Scholarship Program requirements or wait two years after getting a high school equivalency credential to become eligible for the New Mexico Opportunity Scholarship Program. This change would allow individuals over twenty-one years of age to benefit from the Opportunity Scholarship Program upon completion of a high school equivalency credential.

Summary of proposed rule:
 The amendment to Section 7 of 5.7.37 NMAC adds language to the definition of “Recent graduate learner” which specifies that students over the age of twenty-one years of age that have earned a high school equivalency credential while maintaining residency in New Mexico may qualify for the New Mexico Opportunity Scholarship Program.

Details for Obtaining a Copy, Public Hearing and Comments:
 The proposed rule is posted on the NMHED website and may be accessed at <http://www.hed.nm.gov> under the “Events” section. To request that a copy of the proposed rule be sent to you by mail or e-mail, please contact HigherEd.Info@hed.nm.gov or (505)476-8411.

A public hearing will be held on January 10, 2024 from 10:00 a.m. until 10:30 a.m. via Microsoft Teams and in person at the NMHED Office located at **2044 Galisteo Street, Suite 4, Santa Fe, NM 87505**. Any person who is or may be affected by this proposed rule may participate. Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or HigherEd.Info@hed.nm.gov. **Written comments must be received no later than 4:00 p.m. on January 5, 2023.** Please note that any written or verbal comments received will become part of the rulemaking record, be posted to the

New Mexico Sunshine Portal, and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Section 9-25-1 et seq. NMSA 1978 and Section 21-21R-1 et seq. NMSA 1978.

Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 476-8411 or email HigherEd.Info@hed.nm.gov ten (10) business days prior to the hearing.

**HUMAN SERVICES
DEPARTMENT
INCOME SUPPORT DIVISION**

NOTICE OF PUBLIC HEARING

Each year the Department is required to update the SNAP, NMW, Education Works Program, and General Assistance Programs income limits for participation, resource eligibility standards and deduction amounts available to otherwise eligible households. These amounts are determined by the United States Department of Agriculture (USDA) and Food and Nutrition Services (FNS). The Department received notification of the adjusted amounts on August 3, 2023, and made the adjustments effective for benefit month October 2023 for Federal Fiscal Year (FFY) 2024 to comply with federal law and regulations.

HSD is proposing amendments to update annual adjustments to the income limits found in 8.102.500 NMAC and 8.106.500 NMAC and to update language for the Elderly and Disabled State SNAP supplement amount which can be found in 8.139.502.9 NMAC. The language

change allows for the Department to issue the supplement amount based on the federal minimum SNAP monthly benefit, and the amount budgeted by the State for the Supplement as well as available funding. The amount of the state supplement is determined by the Departments Operating Budget that is determined every State Fiscal Year (SFY).

A hybrid public hearing to receive testimony on this proposed rule will be held, pursuant to Section 14-4-5.6 NMSA 1978, on Friday, December 22, 2023, at 11:00 a.m. - 12:00 p.m. You may join in person, virtually, or by phone.

You may join in person at:
HSD Administrative Services (ASD) conference room, 1474 Rodeo Road, Santa Fe, NM 87505.

You may join virtually from your computer, tablet or smartphone:
Get the app now and be ready when your first meeting starts: <https://meet.goto.com/install>

On the day of the meeting log into:
<https://meet.goto.com/223826941>

You may join by phone:
United States: +1 (224) 501-3412:
Access Code: 223-826-941
Get the app now and be ready when your first meeting starts: <https://meet.goto.com/install>

Written comment may be dropped off during the scheduled hearing time at the HSD Administrative Services Division (ASD) conference room, 1474 Rodeo Road, Santa Fe, NM 87505 if the individual wishes to provide written comment during the scheduled hearing. All written comments will be posted on the agency website within 3 days of receipt.

Individuals wishing to testify may contact the Income Support Division (ISD), P.O. Box 2348, Santa Fe, NM 87504-2348, or by calling 505-469-9569.

Individuals who do not wish to attend

the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 p.m. on the date of the hearing, December 22, 2023. Please send comments to:

Human Services Department
P.O. Box 2348
Santa Fe, NM 87504-2348

Recorded comments may be left at (505) 469-9569. You may send comments electronically to: HSD-isdrules@hds.nm.gov. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the American Disabilities Act Coordinator, at Office-505-709-5468, Fax-505-827-6286 or through the New Mexico Relay system, toll free at #711. The Department requests at least a 10-day advance notice to provide the requested alternative formats and special accommodations.

**PUBLIC EMPLOYEES
RETIREMENT
ASSOCIATION**

**NOTICE OF PERA
RULEMAKING**

The Public Employees Retirement Association ("PERA") will consider changes to its rules promulgated under the Public Employees Retirement Act ("PERA Act"). Changes are proposed for the following rule:

1. Rule 2.80.200 - Organization and Operation of the Public Employees Retirement Board;

The proposed amendments provide factors that would disqualify a person from eligibility to be a candidate in an election of the PERA Board

(Board), to clarify that appointed Board members meet the same eligibility requirements as elected Board members, and to outline the vacancy procedure if a Board member is removed from the Board. The proposed amendments ensure consistent use of language and also codify the existing practice that PERA members can only vote in the Board election for their designated membership group. The proposed amendments provide that certain powers that are currently exercised by the election committee shall be exercised by the Board and delegate to the election committee the discretion to make certain recommendations to the Board. The amendments also clarify that in the event of a vacancy on the Board, a quorum of the remaining members is required to appoint an individual to fill that vacancy, and provide the Board with flexibility to fill a Board vacancy at a special board meeting. The rule is reformatted as necessary.

The purpose of the proposed rule changes would be to disqualify candidates for election or appointment to a Board Member position if a candidate has previously served on the Board and has been subject to three or more formal disciplinary actions or has been previously removed from the Board. The purpose of the remaining changes are to update the PERA Board election procedures to align with the new eligibility requirements, to ensure the Board has adequate authority to efficiently fill vacancies and administer elections, to ensure that the Board has the authority to make final determinations regarding election decisions while maintaining an advisory role for the election committee, and to clarify language that currently exists in rule.

A formal rulemaking hearing will be held on January 9, 2024, at 9:00 a.m. in the Fabian Chavez Jr. Board Room of the PERA Building, 33 Plaza La Prensa, Santa Fe, New Mexico, 87507. The rulemaking hearing will also be accessible through Zoom. The Zoom access link will be published

on PERA’s website listed below prior to the hearing. Oral comments will be taken at the public hearing. Final action on the rules will occur at the January 25, 2024 Board meeting of the PERA Board which will be held in the Fabian Chavez Jr. Board Room of the PERA Building, 33 Plaza La Prensa, Santa Fe, New Mexico at a date and time specified in the Board’s Public Meeting Notice. The purpose of the rulemaking hearing is to obtain public input on the proposed amendments to the above-referenced rules. The public hearing allows members of the public an opportunity to submit data, testimony, and arguments on the proposed rule changes.

The authority for the proposed rule changes is NMSA 1978, Section 10-11-130 of the PERA Act and Rule 20.80.200.10 NMAC, which authorizes the adoption and promulgation of rules and regulations necessary to carry out the purposes of the PERA Act and additionally provides that elections shall be conducted according to rules the retirement board adopts from time to time.

Copies of the draft rules are available in PERA’s Office of General Counsel. Written comments, inquiries or requests for copies should be directed to Geraldine Garduno at PERA’s Office of General Counsel, 33 Plaza La Prensa, Santa Fe, N.M., 87507, or geraldine.garduno@pera.nm.gov or 505-476-9351. Written comments should be submitted by the close of business on January 9, 2024. The full text of the proposed rule changes, as well as the Zoom access link for the public hearing, can be found here: <https://www.nmpera.org/about/rule-proposal/>.

Any person with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Patricia Winter at 505-795-0712 or patriciab.winter@pera.nm.gov at least one

week prior to the public hearing, or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact Ms. Winter if a summary or other type of accessible format is needed.

**REGULATION
AND LICENSING
DEPARTMENT
CONSTRUCTION INDUSTRIES
DIVISION**

NOTICE OF PUBLIC HEARING

The Construction Industries Commission will convene a public hearing for the repeal and replacement of 14.7.6 NMAC - 2018 New Mexico Residential Energy Conservation Code and 14.7.9 NMAC - 2018 New Mexico Commercial Energy Conservation Code. The hearing will be held before a hearing officer, at which time any interested person is invited to submit data, views, or arguments on the proposed changes, either orally or in writing, and to examine witnesses testifying at the hearing. The hearing is scheduled for Wednesday, January 3, 2024.

The purpose of this public rule hearing is to receive public comments regarding the repeal the 2018 New Mexico Energy Conservation Codes and replaced with the 2021 Energy Conservation Codes. The Energy Conservation Codes establish minimum standards for energy conservation for residential and commercial construction in New Mexico.

The statutory authority for this rulemaking is found in the New Mexico Construction Industries Licensing Act, Subsections F and K of Section 60-13-9 and Section 60-13-44 NMSA 1978.

The hearing is scheduled as follows:

An in-person hearing shall be held on Wednesday, January 3, 2024, at the Regulation and Licensing

Department, 5500 San Antonio Drive NE, Albuquerque, NM, Sandia Conference room, starting at 9:30 a.m. The hearing will remain open until 10:00 a.m. or until participants have an opportunity to make public comments, whichever is longer.

Interested persons may obtain copies of the proposed rule changes by logging onto the Construction Industries Division website (<https://www.rld.nm.gov/construction-industries>) to download the proposed rules or by written request to the Albuquerque CID Office – Regulation and Licensing Department, 5500 San Antonio Drive NE, Suite F, Albuquerque, NM 87109, attention: Quindi Otero-Robertson.

You may send written comments to: Construction Industries Division, – Regulation and Licensing Department, 5500 San Antonio Drive NE, Suite F, Albuquerque, NM 87109, Attention: Public Comments. Written comments may also be faxed to (505) 765-5670 or submitted to Quindi Otero-Robertson at her email address: Quindi.Otero@rld.nm.gov. All written comments must be received no later than 5:00 p.m., on Tuesday, January 2, 2024. You may also review submitted comments by requesting copies from Quindi Otero-Robertson at her email address above. Public comments will be posted on the division’s website (<https://www.rld.nm.gov/construction-industries>). Written comments may also be received by the Commission at the in-person hearing until the hearing is closed. All public comments received shall be admitted into the record during the public hearing.

If you require special accommodation to attend the hearing, please notify CID by phone, email, or fax, of such needs as soon as possible to ensure adequate accommodation. Telephone: (505) 546-2195. Email: Quindi.Otero@rld.nm.gov; Fax No. (505) 765-5670.

Summary of the Proposed Changes to the Administrative Codes:

Repeal of the 2018 New Mexico Residential Energy Conservation Code and the 2018 New Mexico Commercial Energy Conservation Code and replaced with the 2021 New Mexico Residential Energy Conservation Code and the 2021 New Mexico Commercial Energy Code.

Modifications from the International Energy Conservation Code to the 2021 New Mexico Residential Energy Conservation Code include:

14.7.6.9 ADMINISTRATION

A. R101- General Provisions include references to scope, objective, and compliance materials specific to the division’s responsibilities pursuant to the Construction Industries Licensing Act while allowing code officials to approve specific computer software, worksheets, compliance manuals and other similar materials that meet the intent of the New Mexico code.

B. R103 Construction Documents. See this section of the IECC except as provided in code section.

C. R104 [Fees], R105 [Inspections], R106 [Notice of Approval], R107 [Validity], R108 [Referenced Standards], R109 [Stop Work Order] and R110 [Means of Appeals] refer to specific sections of the NMAC already enacted for those specific topics.

14.7.9.10: R201 through R202 – DEFINITIONS – This section explains that definitions in New Mexico construction codes shall prevail over IECC definitions, includes acronyms used throughout the part and adds two new definitions, for Electric Vehicle, and Electric Vehicle Supply Equipment.

14.7.9.11 R301 – CLIMATE ZONES based on heating and cooling degree days, sets out the climate zones for the majority of localities in New Mexico and when used in conjunction with Table 301.3(2) determine the applicable requirements for the processes outlined in Chapter 4.

14.7.9.12 R401 through R408.2.10 – RESIDENTIAL ENERGY EFFICIENCY

Section R401.2 Application. Delete this section of the IECC and substitute with the following: Residential buildings shall comply with one of the following sections: R401.2.1, R401.2.2, R401.2.3, or 401.2.4. Exception: Additions, alterations, repairs, and changes of occupancy to existing buildings complying with Chapter 5. Makes mandatory compliance with sections.

Table 402.1.3 Insulation minimum R-values and fenestration requirements by component. See this table in the IECC except as provided below. See this table in the IECC except in the ceiling R-value column change 49 to 38 in climate zone 3.

See this table in the IECC except in the ceiling R-value column change 60 to 49 in climate zones 4 except marine, 5 and marine 4, 6, 7 and 8. See this table in the IECC except in the slab R-value and depth column change 10ci, 4ft to 10ci, 2ft in climate zones 4 except marine, 5 and marine 4.

Based on Building science the additional insulation adds no value other than cost. This will also be changed in the IECC 2024 code cycle.

Section 402.4.1.2 Testing. See this section of the IECC except delete the last paragraph of the section and substitute with the following: Mechanical ventilation shall be provided in accordance with chapter 4 of the uniform mechanical code, as applicable, or with other approved means of ventilation. Must be completed in accordance with UMC.

Section R402.4.1.4 Visual Inspection Option. Add the following section to the IECC: Building envelope tightness, and insulation installation shall be considered acceptable with the items listed in table 402.1.2 or table 402.1.3 applicable to the method of construction. It shall be field verified by the code official as part of the inspection process,

and the builder or an energy rater may also field verify using the state of New Mexico acceptable processes. Acceptable processes include but are not limited to the following: construction industries division thermal bypass visual inspection checklist, a thermal bypass certification or checklist from a HERS rater, a build green NM checklist, or an energy star program checklist from the New Mexico energy, minerals, and natural resources department. Significant change in code section added inspection shall be field verified by the code official this would be the only change.

Section R404.4 Electric Vehicle Power Transfer Infrastructure. Add this section to the IECC. New residential automobile parking spaces for residential buildings shall be provided with electric vehicle power transfer infrastructure in accordance with

Section R404.4.1 and Section R404.4.2. The Advanced Clean Cars & Advanced Trucks rule will require manufacturers to ensure at least 43% of all cars and at least 15% of all trucks sold in New Mexico are electric models by the 2026 calendar year. Over time, those percentage levels will grow to 82% for cars and between 40% and 75% for trucks, with rates depending on their class, by 2034.

Section R408.2 Additional efficiency package options. Delete this section of the IECC and substitute with the following: Additional efficiency package options are set forth in Sections R408.2.1 through R408.2.10. Standardizing codes and standards for all-electric buildings will ensure that the transition to electrification is seamless and efficient. It will also provide clarity and guidance to builders, contractors, and developers, making it easier for them to comply with the new requirements. Moreover, having consistent codes and standards will promote competition and innovation in the market for electric appliances and equipment, driving

down costs and making electrification more accessible for everyone.
Additional efficiency package option.

14.7.6.13 CHAPTER 5 [RE] EXISTING BUILDINGS: See this Chapter of the IECC.

14.7.6.14 CHAPTER 6 [RE] REFERENCED STANDARDS: See this Chapter of the IECC.

Modifications from the IECC to the 2021 New Mexico Commercial Energy Conservation Code include:

14.7.9.9 ADMINISTRATION
A. C101 general provisions include references to scope, objective, and compliance materials specific to the division’s responsibilities pursuant to the Construction Industries Licensing Act while allowing code officials to approve specific computer software, worksheets, compliance manuals and other similar materials that meet the intent of the New Mexico code.

B. C103 Construction documents refers specifically to the current NMAC provisions as to permitting, referring to the NM Mechanical Code, 14.9.2, Chapters 6 and 17 as to installation of ducts and requiring that construction documents specify that all documents shall be provided to owner/owner’s agent.

C. C104 [Fees], C105 [Inspections], C106 [Validity], C108 [Referenced Standards] and C109 [Stop Work Orders] C110 [Board of Appeals] refer to specific sections of the NMAC already enacted for those specific topics.

14.7.9.10: C201 through C202 – DEFINITIONS This section explains that definitions in New Mexico construction codes shall prevail over IECC definitions, includes acronyms used throughout the part and adds new definitions, including unconditioned space and vapor retarder class.

14.7.9.11 C301 – CLIMATE ZONES based on heating and cooling degree days, sets out the climate zones for the majority of localities in New

Mexico and when used in conjunction with Table 301.3(2) determine the applicable requirements for the processes outlined in Chapter 4.

14.7.9.12 C402 through C408 COMMERCIAL ENERGY EFFICIENCY

* Section C405.13.1 Quantity. **Add this section to the IECC.** The number of **required EV spaces EV capable spaces** shall be determined in accordance with this section and Table C405.13.1 based on the total number of automobile parking spaces and shall be rounded up to the nearest whole number. For R-2 buildings, the table requirements shall be based on the total number of dwelling units or the total number of automobile parking spaces, whichever is less.

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TABLE C405.13.1 REQUIRED EV POWER TRANSFER INFRASTRUCTURE

| Occupancy | EVSE Spaces | *EV Capable Spaces |
|--------------------------------------|-------------|--------------------|
| Group A | 5% | 10% |
| Group B | 5% | 5% |
| Group E | 5% | 5% |
| Group F | 2% | 5% |
| Group H | 1% | 0% |
| Group I | 5% | 10% |
| Group M | 5% | 10% |
| Group R-1 | 5% | 15% |
| Group R-2 | 5% | 15% |
| Group R-3 and R-4 | 2% | 5% |
| Group S exclusive of Parking Garages | 1% | 0% |
| Group S-2 Parking Garages | 5% | 10% |

14.7.9.13 CHAPTER 5 EXISTING BUILDINGS: See this Chapter of the IECC.

End of Notices of Rulemaking

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.

GAME AND FISH DEPARTMENT

**TITLE 19 NATURAL
RESOURCES AND WILDLIFE
CHAPTER 31 HUNTING AND
FISHING
PART 11 BEAR AND
COUGAR**

19.31.11.1 ISSUING
AGENCY: New Mexico department of game and fish.
[19.31.11.1 NMAC - Rp, 19.31.11.1 NMAC, 4/1/2024]

19.31.11.2 SCOPE:
Sportspersons interested in bear and cougar management and hunting. Additional requirements may be found in Chapter 17 NMSA 1978 and Title 19 NMAC.
[19.31.11.2 NMAC - Rp, 19.31.11.2 NMAC, 4/1/2024]

19.31.11.3 STATUTORY
AUTHORITY: Sections 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds and fish.
[19.31.11.3 NMAC - Rp, 19.31.11.3 NMAC, 4/1/2024]

19.31.11.4 DURATION:
April 1, 2024 through March 31, 2028.
[19.31.11.4 NMAC - Rp, 19.31.11.4 NMAC, 4/1/2024]

19.31.11.5 EFFECTIVE
DATE: April 1, 2024, unless a later date is cited at the end of a section.
[19.31.11.5 NMAC - Rp, 19.31.11.5 NMAC, 4/1/2024]

19.31.11.6 OBJECTIVE:
Establishing open hunting seasons and regulations, rules and procedures governing the distribution and issuance of bear and cougar licenses and permits by the department.
[19.31.11.6 NMAC - Rp, 19.31.11.6 NMAC, 4/1/2024]

19.31.11.7 DEFINITIONS:
A. “Bear entry permit” shall mean a permit awarded through a public drawing which entitles the holder of an over-the-counter bear license to hunt in a limited entry area during season dates established in rule.

B. “Bear zones” shall mean hunt areas consisting of one or more game management units as described in 19.30.4 NMAC.

C. “Cougar zones” shall mean hunt areas consisting of one or more game management units as described in 19.30.4 NMAC.

D. “Department” shall mean the New Mexico department of game and fish.

E. “Director” shall mean the director of the New Mexico department of game and fish.

F. “Game management unit” or “GMU” shall mean those areas as described in 19.30.4 NMAC.

G. “Wildlife management areas” or “WMAs” shall mean those areas as described in 19.34.5 NMAC.
[19.31.11.7 NMAC - Rp, 19.31.11.7 NMAC, 4/1/2024]

19.31.11.8 ADJUSTMENT OF LICENSES, PERMITS AND HARVEST LIMITS:

A. The director, with verbal concurrence of the chairperson or their designee, may adjust the number of licenses, permits or harvest limits, up or down by no more than twenty percent within a bear zone

or cougar zone, to address critical department management needs, significant changes in population levels or habitat availability. This adjustment may be applied within the specified zones to any or all of: the specific hunt codes; total harvest limits; or female harvest sub-limits.

B. The director, with verbal concurrence of the chairperson or their designee, may take management actions independent of seasons and restrictions, harvest limits or female sub-limits for population management, or to address critical situations including ungulate population protection, depredation, human health and safety or other wildlife management issues. The decision to take management actions pursuant to this subsection shall be reported to the commission.
[19.31.11.8 NMAC - Rp, 19.31.11.8 NMAC, 4/1/2024]

19.31.11.9 [RESERVED]
[19.31.11.9 NMAC - Repealed, 4/1/2024]

19.31.11.10 BEAR AND COUGAR ZONE CLOSURES, BAG LIMITS AND RESTRICTIONS:

A. Zone closures:
Bear and cougar may be hunted or taken only in zones designated as open on the department hotline or website. Zones will close within 72 hours of when the reported number of bears or cougars harvested is within ten percent of the total limit or female sub-limit for that zone, whichever occurs first.

B. Bag limit: The bag limit for bear is one; the bag limit for cougar is two. It is unlawful to kill a bear sow with cub(s) or any bear cub less than one year old, or to kill a spotted cougar kitten or any female cougar accompanied by spotted kitten(s).

C. Limited entry hunt areas: It shall be unlawful to hunt bear or cougar in designated WMAs or other specifically designated special entry hunt areas with the following exceptions:

(1) Legally licensed bear hunters possessing a valid bear entry hunt permit may hunt bears in the area(s) specified on the permit, or as otherwise allowed by rule. Bear entry hunters shall be allowed to hunt in any other open bear zone provided they have a valid bear license.

(2) Legally licensed deer and elk hunters whose license is valid on a WMA or the Valle Vidal and are in possession of a valid over-the-counter bear or cougar license, may hunt bear or cougar in the WMA or the Valle Vidal as specified on their deer or elk license. Deer or elk hunters choosing to hunt bear or cougar under this provision may not use dogs, may hunt only in open bear or cougar zones, and must adhere to the weapon type restriction and season dates as specified by their deer or elk licenses.

D. Cougar hunting requirements and restrictions:

(1) All persons shall complete the mandatory cougar identification course offered on the department’s website prior to purchasing a cougar license.

(2) Cougar hunting is closed in the Florida mountains hunt area during any open Persian ibex season, except by legally licensed Persian ibex hunters in possession of a valid cougar license. Persian ibex hunters may hunt cougar only if the cougar zone is open, and must adhere to the weapon type restrictions and season dates as specified by their Persian ibex license.

[19.31.11.10 NMAC - Rp, 19.31.11.10 NMAC, 4/1/2024]

19.31.11.11 BEAR HUNTING SEASONS:

A. Over-the-counter bear hunts for the 2024-25 through 2027-28 seasons: The following table lists bear zones, open GMUs, sporting arm restrictions, season dates, total harvest limits and female harvest sub-limits

| Bear zone | open GMUs | bow only | any big game sporting arms | 2024-25 total limit (female) | 2025-26 total limit (female) | 2026-27 total limit (female) | 2027-28 total limit (female) |
|-----------|--|----------|------------------------------|------------------------------|------------------------------|------------------------------|------------------------------|
| 1 | 4, 5, 6, 7, 51, 52 | 9/1 - 24 | 9/25 - 11/15 | 168 (67) | 168 (67) | 168 (67) | 168 (67) |
| 2 | 2 | 9/1 - 24 | 9/25 - 11/15 | 15 (6) | 15 (6) | 15 (6) | 15 (6) |
| 3 | 49, 50, 53 | 9/1 - 24 | 8/16 - 8/31 and 9/25 - 11/15 | 65 (26) | 65 (26) | 65 (26) | 65 (26) |
| 4 | 45, 46, 48 | 9/1 - 24 | 8/16 - 8/31 and 9/25 - 11/30 | 109 (43) | 109 (43) | 109 (43) | 109 (43) |
| 5 | 54, 55, 57 | 9/1 - 24 | 8/16 - 8/31 and 9/25 - 11/15 | 108 (43) | 108 (43) | 108 (43) | 108 (43) |
| 6 | 39, 40, 41, 42, 43, 47, 56, 58, 59 | 9/1 - 24 | 8/16 - 8/31 and 9/25 - 11/15 | 51 (20) | 51 (20) | 51 (20) | 51 (20) |
| 8 | 8 | 9/1 - 24 | 10/15 - 11/15 | 11 (4) | 11 (4) | 11 (4) | 11 (4) |
| 9 | 9, 10 | 9/1 - 24 | 8/16 - 8/31 and 9/25 - 11/15 | 36 (14) | 36 (14) | 36 (14) | 36 (14) |
| 10 | 12, 13, 15, 16, 17, 18, 20, 21, 22, 23, 24, 26, 27 | 9/1 - 24 | 9/25 - 12/15 | 197 (79) | 197 (79) | 197 (79) | 197 (79) |
| 11 | 37, 38 | 9/1 - 24 | 8/16 - 8/31 and 9/25 - 11/30 | 36 (14) | 36 (14) | 36 (14) | 36 (14) |
| 12 | 34 | 9/1 - 24 | 8/16 - 8/31 and 9/25 - 12/15 | 33 (13) | 33 (13) | 33 (13) | 33 (13) |
| 13 | 36 | 9/1 - 24 | 8/16 - 8/31 and 9/25 - 11/30 | 16 (6) | 16 (6) | 16 (6) | 16 (6) |
| 14 | 14 | 9/1 - 24 | 10/15 - 11/15 | 19 (7) | 19 (7) | 19 (7) | 19 (7) |

B. Entry hunts for the 2024-25 through 2027-28 seasons shall be as indicated below, listing the open GMUs and areas, eligibility requirements or restrictions, hunt dates, hunt codes, legal sporting arms and number of permits.

| open GMUs and areas | 2024-25 hunt dates | 2025-26 hunt dates | 2026-27 hunt dates | 2027-28 hunt dates | hunt code | permits |
|---|---------------------------|---------------------------|---------------------------|---------------------------|------------------|----------------|
| 2: youth only | 8/1-8/31 | 8/1-8/31 | 8/1-8/31 | 8/1-8/31 | BER-1-100 | 5 |
| 4: Sargent WMA only | 8/1-8/31 | 8/1-8/31 | 8/1-8/31 | 8/1-8/31 | BER-1-101 | 10 |
| 4: Humphries WMA only | 8/1-8/31 | 8/1-8/31 | 8/1-8/31 | 8/1-8/31 | BER-1-102 | 5 |
| 9: Marquez/LBar WMA only | 8/1-8/31 | 8/1-8/31 | 8/1-8/31 | 8/1-8/31 | BER-1-103 | 10 |
| 54:55: Uracca, E.S. Barker, and Colin Neblett WMAs, and Valle Vidal | 8/1-8/31 | 8/1-8/31 | 8/1-8/31 | 8/1-8/31 | BER-1-104 | 60 |
| 55: Valle Vidal | 4/15-5/20 | 4/15-5/20 | 4/15-5/20 | 4/15-5/20 | BER-1-105 | 20 |
| 57: Sugarite Canyon State Park/ bow only | 8/1-8/31 | 8/1-8/31 | 8/1-8/31 | 8/1-8/31 | BER-2-106 | 5 |

[19.31.11.11 NMAC - Rp, 19.31.11.11 NMAC, 4/1/2024]

19.31.11.12 COUGAR HUNTING SEASONS:

A. Over-the-counter cougar hunting season shall be from April 1 through March 31, or until the total harvest limit or female sub-limit, whichever comes first, is met in any given cougar zone.

B. The following table lists cougar zones, open GMUs, total harvest limits and female harvest sub-limits for the 2024-25 to 2027-28 seasons.

| zone | open GMUs | 2024-25 total limit (female) | 2025-26 total limit (female) | 2026-27 total limit (female) | 2027-28 total limit (female) |
|-------------|------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|
| A | 2, 7 | 42 (13) | 42 (13) | 42 (13) | 42 (13) |
| B | 5, 6, 50, 51 | 25 (8) | 25 (8) | 25 (8) | 25 (8) |
| C | 43, 45, 46, 48, 49, 53 | 57 (17) | 57 (17) | 57 (17) | 57 (17) |
| D | 41, 42, 47,59 | 15 (5) | 15 (5) | 15 (5) | 15 (5) |
| E | 9, 10 | 43 (13) | 43 (13) | 43 (13) | 43 (13) |
| G | 13, 17 | 50 (15) | 50 (15) | 50 (15) | 50 (15) |
| H | 18, 19, 20 | 29 (9) | 29 (9) | 29 (9) | 29 (9) |
| I | 36, 37, 38 | 24 (7) | 24 (7) | 24 (7) | 24 (7) |
| J | 15, 16, 21 | 84 (25) | 84 (25) | 84 (25) | 84 (25) |
| K | 22, 23, 24 | 45 (14) | 45 (14) | 45 (14) | 45 (14) |
| L | 25, 26, 27 | 19 (6) | 19 (6) | 19 (6) | 19 (6) |
| M | 31, 32, 33, 39, 40 | 25 (7) | 25 (7) | 25 (7) | 25 (7) |
| N | 4, 52 | 13 (4) | 13 (4) | 13 (4) | 13 (4) |
| O | 12 | 17 (5) | 17 (5) | 17 (5) | 17 (5) |
| P | 56, 57, 58 | 14 (7) | 14 (7) | 14 (7) | 14 (7) |
| Q | 28, 29, 30, 34 | 17 (6) | 17 (6) | 17 (6) | 17 (6) |
| R | 54, 55 | 26 (8) | 26 (8) | 26 (8) | 26 (8) |
| S | 8, 14 | 17 (5) | 17 (5) | 17 (5) | 17 (5) |

[19.31.11.12 NMAC - Rp, 19.31.11.12 NMAC, 4/1/2024]

HISTORY OF 19.31.11 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives under:

Regulation No. 482, Establishing Seasons on Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared and

Chickaree Squirrel, and Barbary Sheep, filed 5/31/1967;
 Regulation No. 487, Establishing 1967 Seasons on Javelina and Barbary Sheep, filed 12/15/1967;
 Regulation No. 489, Establishing Turkey Seasons for the Spring of 1968, filed 3/1/1968;
 Regulation No. 491, Establishing Big Game Seasons for 1968 for Jicarilla Reservation, filed 3/1/1968;
 Regulation No. 492, Establishing Seasons on Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared and Chickaree Squirrel, and Barbary Sheep, filed 6/6/1968;
 Regulation No. 495, Establishing a Season on Bighorn Sheep, filed 10/2/1968;
 Regulation No. 496, Establishing an Elk Season in the Tres Piedras Area, Elk Area P-6, filed 12/11/1968;
 Regulation No. 502, Establishing Turkey Seasons for the Spring Of 1969, filed 3/5/1969;
 Regulation No. 503, Establishing 1969 Deer Seasons for Bowhunting Only and Big Game Seasons for the Jicarilla Indian Reservation, filed 3/5/1969;
 Regulation 504, Establishing Seasons on Deer, Bear, Turkey, Dusky Grouse, Chickaree and Tassel-Eared Squirrel, and Barbary Sheep, filed 6/4/1969;
 Regulation No. 507, Establishing a Season on Bighorn Sheep, filed 8/26/1969;
 Regulation No. 512, Establishing Turkey Season for the Spring Of 1970, filed 2/20/1970;
 Regulation No. 513, Establishing Deer Season for Bowhunting Only in Sandia State Game Refuge, filed 2/20/1970;
 Regulation No. 514, Establishing Seasons on Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared and Chickaree Squirrel, Barbary Sheep and Bighorn Sheep, filed 6/9/1970;
 Regulation No 520, Establishing Turkey Seasons for the Spring of 1971, filed 3/9/1971;
 Regulation No. 522, Establishing 1971 Seasons on Deer, Bear, Turkey, and Elk on the Jicarilla Apache Indian Reservation, filed 3/9/1971;
 Regulation No. 523, Establishing

Seasons on Deer, Turkey, Bear, Cougar, Dusky Grouse, Tassel-Eared and Chickaree Squirrel, Elk, Antelope, Barbary Sheep and Bighorn Sheep, filed 6/9/1971;
 Regulation No. 531, Establishing a Season on Javelina, filed 12/17/1971;
 Regulation No. 532, Establishing Turkey Seasons for the Spring of 1972, filed 3/20/1972;
 Regulation No. 534, Establishing 1972 Seasons on Deer, Bear, Turkey, and Elk on the Jicarilla Apache Indian Reservation, filed 3/20/1972;
 Regulation No. 536, Establishing Seasons on Deer, Turkey, Bear, Cougar, Dusky Grouse, Chickaree and Tassel-Eared Squirrel, Elk, Antelope, Barbary Sheep and Bighorn Sheep, filed 6/26/1972;
 Regulation No. 542, Establishing a Season on Javelina, filed 12/1/1972;
 Regulation No. 545, Establishing Turkey Seasons for the Spring Of 1973, filed 2/26/1973;
 Regulation No. 546, Establishing 1973 Seasons on Deer, Bear, Turkey, and Elk on the Jicarilla Apache Indian Reservation, filed 2/26/1973;
 Regulation No. 547, Establishing Seasons on Deer, Turkey, Bear, Cougar, Dusky Grouse, Chickaree and Tassel-Eared Squirrel, Elk, Antelope, Barbary Sheep and Bighorn Sheep, and Javelina, filed 5/31/1973;
 Regulation No. 554, Establishing Special Turkey Seasons for the Spring of 1974, filed 3/4/1974;
 Regulation No. 556, Establishing 1974 Seasons on Deer, Bear, Turkey, and Elk on the Jicarilla Apache Indian Reservation, filed 3/14/1974;
 Regulation No. 558, Establishing Seasons on Deer, Turkey, Bear, Cougar, Dusky Grouse, Tassel-Eared and Chickaree Squirrel, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, and Ibex, filed 5/29/1974;
 Regulation No. 565, Establishing Special Turkey Seasons for the Spring of 1975, filed 3/24/1975;
 Regulation No. 567, Establishing 1975 Seasons on Deer, Bear, and Turkey on the Jicarilla Apache and Navajo Indian Reservations and on Elk on the Jicarilla Apache Indian Reservation, filed 3/24/1975;

Regulation No. 568, Establishing Seasons on Deer, Turkey, Bear, Cougar, Dusky Grouse, Chickaree and Tassel-Eared Squirrel, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx and Ibex, filed 6/25/1975;
 Regulation No. 573, Establishing Seasons on Deer, Turkey, Bear, Cougar, Dusky Grouse, Tassel-Eared and Chickaree Squirrel, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx and Ibex, filed 2/23/1976;
 Regulation No. 583, Establishing Seasons on Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx and Ibex, filed 2/11/1977;
 Regulation No. 590, Establishing Seasons on Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx and Ibex, filed 2/15/1978;
 Regulation No. 596, Establishing Seasons on Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx and Ibex, filed 2/23/1979;
 Regulation No. 603, Establishing Open Seasons on Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx and Ibex for the Period April 1, 1980 through March 31, 1981, filed 2/22/1980;
 Regulation No. 609, Establishing Open Seasons on Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx and Ibex for the Period April 1, 1981 through March 31, 1982, filed 3/17/1981;
 Regulation No. 614, Establishing Open Seasons on Deer, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx and Ibex for the Period April 1, 1982 through March 31, 1983, filed 3/10/1982;
 Regulation No. 622, Establishing Open Seasons on Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx and Ibex for the Period April 1, 1983 through March 31, 1984, filed 3/9/1983;
 Regulation No. 628, Establishing

Open Seasons on Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx and Ibex for the Period April 1, 1984 through March 31, 1985, filed 4/2/1984;
 Regulation No. 634, Establishing Open Seasons on Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx and Ibex for the Period April 1, 1985 Through March 31, 1986, filed 4/18/1985;
 Regulation No. 640, Establishing Open Seasons on Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx and Ibex for the Period April 1, 1986 through March 31, 1987, filed 3/25/1986;
 Regulation No. 645, Establishing Open Seasons on Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx and Ibex for the Period April 1, 1987 through March 31, 1988, filed 2/12/1987;
 Regulation No. 653, Establishing Open Seasons on Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx and Ibex for the Period April 1, 1988 through March 31, 1989, filed 12/18/1987;
 Regulation No. 663, Establishing Opening Spring Turkey for the Period April 1, 1989 through March 31, 1990, filed 3/28/1989;
 Regulation No. 664, Establishing Open Seasons on Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx and Ibex for the Period April 1, 1989 through March 31, 1990, filed 3/20/1989;
 Regulation No. 674, Establishing Open Seasons on Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx and Ibex for the Period April 1, 1990 through March 31, 1991, filed 11/21/1989;
 Regulation No. 683, Establishing Open Seasons on Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, and Ibex for the Period April 1, 1991 through March 31, 1992, filed 2/8/1991;

Regulation No. 689, Establishing Open Seasons on Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, and Ibex for the Period April 1, 1992 through March 31, 1993, filed 3/4/1992;
 Regulation No. 700, Establishing Open Seasons on Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx, and Ibex for the Period April 1, 1993 through March 31, 1995, filed 3/11/1993.

History of Repealed Material:

19.31.8 NMAC, Big Game, filed 3/1/2001 - duration expired 3/31/2003.
 19.31.8 NMAC, Big Game and Turkey, filed 3/3/2003 - duration expired 3/31/2005.
 19.31.8 NMAC, Big Game and Turkey, filed 12/15/2004 - duration expired 3/31/2007.
 19.31.11 NMAC, Bear and Cougar, filed 12/1/2006 - duration expired 3/31/2009.
 19.31.11 NMAC, Bear and Cougar, filed 3/13/2009 - duration expired 3/31/2011.
 19.31.11 NMAC, Bear and Cougar, filed 2/22/2011 - duration expired 3/31/2016.
 19.31.11 NMAC, Bear and Cougar, filed 2/29/2016 - duration expired 3/31/2020.
 19.31.11 NMAC, Bear and Cougar, filed 12/3/2019 - duration expired 3/31/2024.

GAME AND FISH DEPARTMENT

**TITLE 19 NATURAL RESOURCES AND WILDLIFE
 CHAPTER 32 TRAPPING AND FURBEARERS
 PART 2 FURBEARERS**

19.32.2.1 ISSUING AGENCY: New Mexico department of game and fish.
 [19.32.2.1 NMAC - Rp, 19.32.1.1 NMAC, 4/1/2024]

19.32.2.2 SCOPE: Sportspersons interested in furbearer hunting and management. Additional requirements may be found in Chapter 17 NMSA 1978 and Title 19 NMAC.
 [19.32.2.2 NMAC - Rp, 19.32.1.2 NMAC, 4/1/2024]

19.32.2.3 STATUTORY AUTHORITY: Sections 17-1-14, 17-1-26, 17-5-3, 17-5-4, and 17-5-5 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected species.
 [19.32.2.3 NMAC - Rp, 19.32.1.3 NMAC, 4/1/2024]

19.32.2.4 DURATION: Permanent.
 [19.32.2.4 NMAC - Rp, 19.32.1.4 NMAC, 4/1/2024]

19.32.2.5 EFFECTIVE DATE: April 1, 2024, unless a later date is cited at the end of a section.
 [19.32.2.5 NMAC - Rp, 19.32.1.5 NMAC, 4/1/2024]

19.32.2.6 OBJECTIVE: Establishing open hunting seasons and regulation, rules and procedures governing the distribution and issuance of trapping licenses by the department.
 [19.32.2.6 NMAC - Rp, 19.32.1.6 NMAC, 4/1/2024]

19.32.2.7 DEFINITIONS:

- A. "Department"** shall mean the New Mexico department of game and fish.
- B. "Foothold trap"** shall mean a trap designed to capture a furbearer by the foot, but does not include foot encapsulating traps.
- C. "Foot encapsulating trap"** shall mean any trap with a push or pull-activated trigger located inside an enclosure recessed from an opening of no more than two inches in diameter, as measured across the opening from side to side, not corner to corner. Foot encapsulating traps include "dog proof" and "egg" traps.

D. “Furbearer” shall mean any quadruped defined as a fur-bearing animal in 17-5-2 NMSA 1978.

E. “Land set” shall mean any foothold trap or snare set on land.

F. “Public land” means state-owned land, state-leased land, lands held in trust by the state, lands administered by the United States fish and wildlife service, the United States forest service, the federal bureau of land management, the national park service, the United States department of defense, state parks and any county or municipality, but does not include the interior of physical structures or land belonging to or held in trust for an Indian nation, tribe or pueblo.

G. “Snare” shall mean a wire or cable with a single closing device designed to capture a furbearer.

H. “Trap” shall mean any foothold trap, foot encapsulating trap, cage trap or body-grip trap set to capture a furbearer.
[19.32.2.7 NMAC - Rp, 19.32.1.7 NMAC, 4/1/2024]

19.32.2.8 OPEN SEASONS:

A. Badger, weasel, fox, ringtail and bobcat: November 1-March 15 statewide.

B. Raccoon:
(1) April 1-May 15 and September 1-March 31, statewide.

(2) Extended season: May 16-August 31 statewide, method restrictions per 19.31.10 NMAC.

C. Beaver and muskrat: April 1-April 30 and November 1-March 31, statewide.

D. Nutria: April 1-March 31 statewide.
[19.32.2.8 NMAC - Rp, 19.32.1.8 NMAC, 4/1/2024]

19.32.2.9 CLOSED AREAS:

All public lands in New Mexico are closed to the use of traps and snares except as allowed by 17-11-4 NMSA 1978.

[19.32.2.9 NMAC - Rp, 19.32.1.9 NMAC, 4/1/2024]

19.32.2.10 MANDATORY FURBEARER EDUCATION:

A. Every person must successfully complete a department approved trapper education course before setting any trap or snare in New Mexico. Proof of successful completion of a trapper education course in any other state will also be accepted, but the person must pass a New Mexico law and species identification course.

B. Every person hunting furbearers must successfully complete either the New Mexico trapper education course, or a New Mexico law and species identification course.

C. Trapper education shall be offered free of charge to all residents. The department may charge a fee of not more than \$35 for each non-resident who takes a New Mexico trapper education course. The New Mexico law and species identification course shall be free for everyone.

[19.32.2.10 NMAC - Rp, 19.32.1.10 NMAC, 4/1/2024]

19.32.2.11 BAG LIMIT:

Annual bag limits may be set by the director, with the verbal concurrence of the chairperson of the game commission or their designee, for any furbearer species to address significant changes in statewide populations or to address critical department management needs. Annual bag limits, if set, shall expire March 31st annually.

[19.32.2.11 NMAC - Rp, 19.32.1.11 NMAC, 4/1/2024]

19.32.2.12 EXEMPTIONS:

The provisions of this rule shall not apply to department of game and fish personnel or designated agents who are acting in their official capacity in the control of depredating animals, for law enforcement purposes, to protect human health and safety, or for research or management purposes, unless otherwise restricted by 17-11-1 to 17-11-5 NMSA 1978.

[19.32.2.12 NMAC - Rp, 19.32.1.12 NMAC, 4/1/2024]

HISTORY OF 19.32.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under: Regulation No. 490, Establishing Seasons On Protected Furbearers, filed 3/1/68; Regulation No. 511, Establishing Seasons On Protected Furbearers 1970-1971, filed 2/20/70; Regulation No. 521, Establishing Seasons On Protected Furbearers 1971-1972, filed 3/9/71; Regulation No. 533, Establishing Seasons On Protected Furbearers 1972-1973, filed 3/30/72; Regulation No. 544, Establishing Seasons On Protected Furbearers 1973-1974, filed 2/26/73; Regulation No 555, Establishing Seasons On Protected Furbearers 1974-1975, filed 3/4/74; Regulation No. 566, Establishing Seasons On Protected Furbearers, filed 3/24/75; Regulation No. 584, Establishing Seasons On Protected Furbearers, filed 2/9/77; Regulation No. 491, Establishing Seasons On Protected Furbearers, filed 2/15/78; Regulation No. 597, Establishing Seasons On Furbearers, filed 2/23/79; Regulation No. 604, Establishing 1980 Seasons On Furbearers, filed 2/22/80; Regulation No. 608, Establishing 1981 Seasons On Furbearers, filed 3/5/81; Regulation No. 613, Establishing 1982 Seasons On Furbearers, filed 3/2/82; Regulation No. 623, Establishing 1983 Seasons On Furbearers, filed 3/9/83; Regulation No. 629, Establishing 1984 Seasons On Furbearers, filed 3/16/84; Regulation No. 633, Establishing 1985 Seasons On Furbearers, filed 4/15/85; Regulation No. 641, Establishing 1986 Seasons On Furbearers, filed 3/25/86; Regulation No. 646, Establishing 1987 Seasons On Furbearers, filed 10/27/86; Regulation No. 654, Establishing 1988 Seasons On Furbearers, filed 12/4/87; Regulation No. 665, Establishing 1989-1990 Seasons On Furbearers, filed 3/20/89; Regulation No. 675, Establishing 1990-1991 Seasons On Furbearers, filed 11/21/89; Regulation No. 684, Establishing 1991-1992 Seasons On Furbearers, filed 1/11/91; Regulation

No. 690, Establishing 1992-1993 Seasons On Furbearers, filed 3/4/92; Regulation No. 701, Establishing 1993-1995 Seasons on Furbearers, filed 3/11/93.

Regulation No. 691, Establishing Financial Liability For Unaccounted For Licenses, 10/3/1991.

History of Repealed Material:
19.32.2 NMAC, Method, Season Dates, and Bag Limits, filed 8/1/2011, and replaced it with 19.32.2 NMAC, Furbearers, effective 4/1/2020.
19.32.2 NMAC, Furbearers, filed 1/24/2020 - duration expired 3/31/2024

**HUMAN SERVICES
DEPARTMENT
INCOME SUPPORT DIVISION**

The Human Services Income Support Division is approving to repeal its rule 8.139.520 NMAC-Social Services Food Stamp Program Eligibility Policy/Income and Deductions filed (4/26/2001) and replace it with 8.139.520 Social Services Food Stamp Program Eligibility Policy / Income and Deductions effective 11/21/2023.

**HUMAN SERVICES
DEPARTMENT
INCOME SUPPORT DIVISION**

**TITLE 8 SOCIAL
SERVICES
CHAPTER 139 FOOD STAMP
PROGRAM
PART 520 ELIGIBILITY
POLICY / INCOME AND
DEDUCTIONS**

8.139.520.1 ISSUING
AGENCY: New Mexico Human Services Department.
[8.139.520.1 NMAC - Rp,
8.139.520.1 NMAC, 11/21/2023]

8.139.520.2 SCOPE: General public.

[8.139.520.2 NMAC - Rp,
8.139.520.2 NMAC, 11/21/2023]

8.139.520.3 STATUTORY AUTHORITY: The food stamp program is authorized by the Food Stamp Act of 1977 as amended (7 U.S.C. 2011 et. seq.). Regulations issued pursuant to the act are contained in 7 CFR Parts 270/282. State authority for administering the food stamp program is contained in Chapter 27 NMSA, 1978. Administration of the human services department (HSD), including its authority to promulgate regulations, is governed by Chapter 9, Article 8, NMSA 1978 (Repl. 1983).
[8.139.520.3 NMAC - Rp,
8.139.520.3 NMAC, 11/21/2023]

8.139.520.4 DURATION: Permanent.
[8.139.520.4 NMAC - Rp,
8.139.520.4 NMAC, 11/21/2023]

8.139.520.5 EFFECTIVE DATE: November 21, 2023, unless a later date is cited at the end of a section.
[8.139.520.5 NMAC - Rp,
8.139.520.5 NMAC, 11/21/2023]

8.139.520.6 OBJECTIVE: Issuance of the revised food stamp program policy manual is intended to be used in administration of the food stamp program in New Mexico. This revision incorporated the latest federal policy changes in the food stamp program not yet filed. In addition, current policy citations were rewritten for clarification purposes or were simply reformatted. Issuance of the revised policy manual incorporated a new format which is the same in all income support division policy manuals. A new numbering system was designated so that similar topics in different programs carry the same number. The revised format and numbering standards were designed to create continuity among ISD programs and to facilitate access to policy throughout the human services department.
[8.139.520.6 NMAC - Rp,
8.139.520.6 NMAC, 11/21/2023]

8.139.520.7 DEFINITIONS:
[RESERVED]

8.139.520.8 INCOME: The national income eligibility standards are based on the federal income poverty levels established in Section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)). The net income standard is the federal income poverty guideline for the 48 contiguous states and the District of Columbia. The gross income standard is one hundred and thirty percent of that amount. The income standards are adjusted annually each October 1st. Activities described in this section relate to the calculation of a household's income to determine eligibility and food stamp benefit amount.

A. Elderly/disabled households: Households which contain an elderly or disabled member, as defined in 8.139.100 NMAC, definitions, must meet the net income eligibility standards listed in Subsection E of 8.139.500.8 NMAC.

B. Other households: Households which do not contain an elderly or disabled member, as defined, must meet the gross income eligibility standards for the food stamp program (FSP) (Subsection E of 8.139.500.8 NMAC). If a household is determined eligible based on gross income standards, deductions shall be allowed in calculating net monthly income to arrive at a final eligibility determination based on net income standards.

C. Categorically eligible: Households that are entitled to broad/based categorically eligibility must meet gross and net income eligibility. Households that are categorically eligible, due to receipt of financial assistance do not need to meet the gross or net income eligibility standard. The food stamp benefit amount for all CE households shall be based on net income limits. All categorically eligible one/ and two/person households are entitled to the minimum food stamp benefit amount, except in an initial month if the prorated benefit is less than ten dollars.

D. Income of ineligible or disqualified household members:

(1) The earned or unearned income of an individual disqualified for intentional program violation (IPV) or for noncompliance with the employment and training (E&T) work requirements shall be attributed in its entirety to the remaining members.

(2) The earned or unearned income of an individual disqualified for failing to provide or apply for a social security number or because the individual is an ineligible alien shall continue to be counted as income, minus a pro rata share for the disqualified or ineligible member(s).

E. Income of non-household members: The earned or unearned income of an individual listed below shall not be considered available to the household with which the individual lives:

- (1) roomers;
- (2) boarders;
- (3) foster children, if the household chooses not to include them;
- (4) live/in attendants; and
- (5) ineligible students.

[8.139.520.8 NMAC - Rp, 8.139.520.8 NMAC, 11/21/2023]

8.139.520.9 INCOME STANDARDS

A. Earned income: Earned income includes the following:

(1) **Wages and salaries:** All wages and salaries paid to an employee.

(2) **Sick pay:** Sick pay is counted as earned income if the person receiving sick pay will be returning to work after recovery and is still considered an employee by the employer.

(3) **Military personnel:** A household consisting of one or more military personnel receiving a basic allowance for quarters or basic allowance for subsistence instead of free housing or food shall have such funds counted as earned income.

(4) **Self-employment:** The gross income from a self/employment enterprise, including the total gain from the sale of any capital goods or equipment related to the business, minus the costs of doing business, is considered earned income. This is the gross income of the self/employed individual.

(5) **Rental property:** Income from rental property is considered earned only if a household member is actively engaged in the management of the property an average of at least 20 hours per week. The owner is allowed the cost of doing business.

(6) **Roomer or boarder:** Payments from a roomer or boarder are considered self-employment income. The 20 hours per week provision applied to rental property does not apply to roomer or boarder situations.

(7) **Training allowances:** A training allowance from a vocational and rehabilitative program recognized by federal, state or local governments, such as DVR, is considered earned income, to the extent the training allowance is not a reimbursement.

(8) **VISTA payments:** Payments under Title I (VISTA, university year for action, etc.) of the Domestic Volunteer Service Act of 1973 (Pub. L. 93/113 Stat., as amended) are considered earned income to applicant households not receiving food stamp benefits at the time the household member joined VISTA.

(9) **Workforce Investment Act:** Earnings of an individual participating in an on/the/ job training program under Section 204 (b) (1) (C) or Section 254 (c) (1) (A) of the Workforce Investment Act (WIA). This provision does not apply to household members under 19 years of age who are under the parental control of an adult member, regardless of school attendance or enrollment. Earnings include monies paid under the WIA and monies paid by the employer. This section includes adult and youth programs and summer

youth employment and training programs, but does not include job corps, E&T programs for Native Americans, migrant and seasonal farm workers, and veterans employment programs.

B. Unearned income: Unearned income includes, but is not limited to, the following:

(1) **Federal assistance programs:** Assistance payments from federal or federally aided cash assistance programs, such as supplemental security income (SSI), Title IV/A (temporary assistance to needy families), general assistance (GA), or other assistance programs based on need. Assistance payments from programs which require, as a condition of eligibility, the actual performance of work without compensation other than the assistance payments themselves, shall be considered unearned income.

(2) **Other benefits:** Annuities, pensions, retirement, veteran's or disability benefits, workman's compensation, unemployment compensation benefits (UCB), OASDI, and strike benefits are unearned income.

(3) **Foster care payments:** Foster care payments for children or adults shall be counted in their entirety unless the household providing the foster care chooses to exclude the foster child household member.

(4) **Support or alimony:** Support or alimony payments made directly to the household from non/household members.

(5) **Educational funds:** Scholarships, educational grants, fellowships, deferred payment loans for education, and veteran's educational benefits, are counted, after allowable deductions, unless the educational assistance is excluded in its entirety in Subsection E of 8.139.520.9 NMAC. Gifts or money a student may receive from parents or other private source on a periodic basis shall be counted as unearned income, including the portion used to pay for tuition and mandatory fees.

(6)
Government/sponsored programs: Payments to individuals from individual Indian monies and grants from the bureau of Indian affairs.

(7) **Gain**
or benefit: Dividends, interest, royalties, and all other direct money payments from any source which can be construed to be a gain or a benefit to the household. Interest income includes payments on a bank account that are simply posted in a bank book and not paid directly to a household.

(8) **Trust**
funds: Money withdrawn or dividends that are or could be received by a household from a trust fund considered an excludable resource. Such trust withdrawals shall be considered income in the month received, unless excluded in Subsection D of 8.139.520.9 NMAC. Dividends which the household has the option of either receiving as income or reinvesting in the trust shall be considered income in the month they become available to the household, unless excluded per Subsection D of 8.139.520.9 NMAC.

(9) **Rental**
property: Income from rental property shall be considered unearned when a household member engages in the management of the property less than 20 hours per week. The gross income minus the cost of doing business is counted as household income.

(10) **Sponsored**
alien income: The amount of monthly income of an alien's sponsor and the sponsor's spouse (if living with the sponsor) that is deemed to be that of the alien (Subsection G of 8.139.420.9 NMAC).

(11)
Termination pay: Severance pay (e.g., two weeks pay instead of notice) and supplementary unemployment benefits (a series of payments similar to UCB, but paid by the employer) received after termination shall be considered unearned income.

(12) **Vacation**
or sick pay: Unused vacation or sick pay paid in installments over a period of at least two months is

considered unearned income in the months received. If paid as a lump sum at termination of employment, the income is considered a resource in the month received.

(13) **Cash**
awards, gifts, prizes: Cash awards, gifts, prizes and winnings shall be considered unearned income in the month received, subject to the \$30.00 per quarter exclusion, even if paid on a one/time basis.

(14) **One/time**
income: The distinction between one/time income and a one/time lump sum resource is that a lump sum is money owed the household from a past period and paid retroactively.

C. **Other countable**
income:

(1) **Legal**
entitlement: Any payment that a household is legally entitled to receive, but is diverted by the provider of the payment to a third party for an expense incurred or owed by the household shall be counted as income. The distinction is whether the individual or organization making a payment on behalf of a household is using funds that otherwise must be paid to the household, such as wages, cash assistance grant, or child support or alimony payments. In these cases, a household is legally entitled to the money. If an employer, agency, or former spouse who owes such funds to a household diverts the money to a third party to pay for a household expense, the money is still counted as income, unless a court orders the money diverted.

(2) **Garnished**
wages: Wages earned by a household member that are garnished or diverted by an employer and paid to a third party for a household expense shall be counted as income.

(3) **Public**
assistance: All or part of a public assistance grant that is normally provided by a money payment to a household, but is diverted to a third party or to a protective payee for purposes of managing expenses, shall be counted as income.

(4) **Third**
party energy assistance payments:

Any payment made to a household under a state law to provide energy assistance shall be considered money payable directly to the household, unless under the law the payment cannot be provided in cash.

D. **Excluded income:**
 The following income shall be excluded in determining FS benefits:

(1) **Federal**
laws: Income excluded by federal laws. The comprehensive list is found in 8.139.527 NMAC.

(2) **In/kind**
benefits: Any gain or benefit which is not in the form of money paid directly to the household, including non/monetary or in/kind benefits such as meals, clothing, public housing, gifts for special occasions, or produce from a garden.

(3) **Vendor**
payments: Money payments that a household is not legally entitled to receive, and which are paid directly to a third party for a household expense are considered a vendor payment. A money payment made on behalf of a household is considered a vendor payment whenever an individual or organization outside the household uses its own funds to make a direct payment to a household's creditors, or to a person or organization providing a service to a household. Vendor payments include but are not limited to:

(a)
 rent paid directly to the landlord by a friend or relative, who is not a household member;

(b)
 rent or mortgage payments made to landlords or the mortgagee by the department of housing and urban development (HUD) or by a state or local housing authority;

(c)
 payments by a government agency to a child care institution to provide day care for a household member;

(d)
 insurance company payments made directly to titleholders or loan companies when a household member becomes disabled or dies and is covered by credit life and disability insurance;

(e) housing assistance payments made to a third party on behalf of a household residing in transitional housing for the homeless;

(f) a rent payment by an employer made directly to the landlord, in addition to paying the household its regular wages, is considered a vendor payment and is excluded as income.

(4) **Energy assistance:** Any payment or allowance made for the purpose of providing energy assistance under any federal law, except for a payment or allowance provided under Title IV/A of the Social Security Act; any federal or state one/time assistance for weatherization or emergency repair or replacement of heating or cooling devices.

(5) **State or local general assistance:** Any general assistance provided to a household which cannot, under state law, be provided in cash directly to a household.

(6) **Child care food program:** Payments made to a household from the child care food program for child care, or any amount received as payment for care or reimbursement for costs incurred is excluded income.

(7) **Plan for achieving self/support (PASS) program:** Income of an SSI recipient necessary for the fulfillment of a plan for achieving self/support which has been approved under Sections 1612 (b)(4) (A)(iii) or 1612(b)(4)(B)(iv) of the Social Security Act. The income may be spent in accordance with an approved PASS or deposited into a PASS savings account for future use.

(8) **Infrequent/irregular income:** Any income received in the certification period which is received too infrequently or irregularly to be reasonably anticipated. The income received cannot exceed \$30.00 in a quarter.

(9) **Lump/sum payment:** Money received in the form of a nonrecurring lump sum payment, including but not limited to

income tax refunds; rebates or credits; retroactive lump sum social security or SSI; cash assistance; railroad retirement; or other similar payments. Lump sum insurance settlements and refunds of security deposits on rental property or utilities are counted as resources in the month received, unless specifically excluded from consideration as a resource by federal law.

(10) **TANF diversion:** A TANF payment made to divert a family from becoming dependent on cash assistance shall be considered as a nonrecurring lump/sum payment if the payment is not defined as ongoing monthly assistance.

(11) **Loans:** All loans, including loans from private individuals as well as commercial institutions, other than educational loans on which repayment is deferred.

(12) **Charitable donations:** Charitable cash donations based on need from one or more private, nonprofit charitable organizations, not to exceed \$300 in a federal fiscal quarter (January through March, April through June, July through September, and October through December).

(13) **Earned income tax credit (EITC):** EITC payments received either as a lump sum, or advance payments of earned income tax credits received as part of a paycheck or as a reduction in taxes that otherwise would have been paid at the end of the year.

(14) **Diverted retirement income:** The portion of a civil service retirement annuity or military retirement payment that is diverted to a former spouse by court order in a divorce decree is excluded from the income of the retiree.

(15) **Annual clothing allowance:** The clothing allowance provided each year to an TANF household whose children are entering or returning to school.

(16) **Utility reimbursements:** Any amount paid by the department of housing and urban development (HUD) or farmers

home administration (FmHA) to a household as a utility reimbursement, or to a utility provider on behalf of a household, is excluded income.

E. Educational expenses:

(1) **Title IV/ BIA:** Cash assistance received under Title IV of the higher education amendments of 1992, including federal college work study authorized under Title IV, or cash assistance received from bureau of Indian affairs student assistance programs shall be excluded in determining eligibility and food stamp benefit amounts effective for award years beginning on or after July 3, 1993.

(2) **Title XIII:** Financial assistance received under Title XIII of the Tribal Development Student Assistance Act shall be excluded in determining eligibility and food stamp benefit amounts effective October 1, 1992.

(3) **Earmarked funds:** All educational assistance, including, but not limited to, educational loans on which payment is deferred, grants, scholarships, fellowships, veteran's educational benefits, and the like, provided for a student to participate in or attend a recognized institution of post/secondary education, school for the handicapped, vocational education program, or program that provides for the completion of a secondary (i.e., high school) diploma or equivalency (GED), shall be excluded to the extent that the assistance is either used or made available for:

- (a) tuition;
- (b) mandatory fees, including rental or purchase of any equipment, materials, and supplies required to pursue the course of study involved;
- (c) books and supplies;
- (d) transportation expenses;
- (e) origination fees and insurance premiums on student loans; and
- (f) miscellaneous personal expenses

(other than living expenses) incidental to a student's attendance at a school, institution, or program.

(4)

Restrictions:

(a)

Educational assistance provided for normal living expenses (room, board, and dependent care) shall not be excluded as income.

(b)

Educational expenses in excess of the educational assistance provided may not be deducted from other income.

(c)

A student household eligible for a deduction for dependent care expenses may claim only the amount which exceeds the amount of educational assistance made available for dependent care.

(5) **Deferred**

payment educational loans: Any amount of state, local, or private deferred payment educational loans shall be excluded to the extent that the lender specifically earmarks or budgets part of or all of the loan for educational expenses. If the institution, school, program, or other lender does not earmark or budget amounts from the loan for educational expenses, students receive an exclusion for amounts verified as an educational expense.

F. Reimbursements:

(1) **Past or**

future expenses: Reimbursements for past or future expenses, to the extent they do not exceed actual expenses, and do not represent a gain or benefit to the household, shall be excluded.

(2) **Identified**

expense: Reimbursements made for an identified expense, other than normal living expenses, and used for the purpose intended, shall be excluded.

(3) **Normal**

living expenses: Reimbursements for normal living expenses, such as rent or mortgage, clothing, or food eaten at home, shall be considered a gain or benefit to a household and are not excluded.

(4) **Multiple**

expenses: If a reimbursement,

including a flat allowance, covers multiple expenses, each expense does not need to be identified separately, as long as none of the reimbursement covers normal living expenses. The amount by which a reimbursement exceeds the actual incurred expense shall be counted as income.

(5)

Excludable reimbursements:

(a)

Job/training related:

Reimbursements or flat allowances for job or training/related expenses, such as travel, per diem, uniforms, and transportation to and from the job or training site. Reimbursements provided over and above the basic wages for such expenses are excluded. However, these expenses, if not reimbursed, are not otherwise deductible from income.

(b)

Migrant worker expenses:

Reimbursements for travel expenses incurred by migrant workers.

(c)

Volunteers: Reimbursements for out/of/pocket expenses incurred by volunteers in the course of their work.

(d)

Medical or dependent care:

Medical or dependent care reimbursements.

(e)

Nonfederal educational expense:

Nonfederal reimbursements or allowances for students for specific educational expenses, such as travel or books, but not allowances for normal living expenses such as food, rent, or clothing shall be excluded. Portions of a general grant or scholarship must be specifically earmarked by the grantor as an educational expense rather than for living expenses to be excludable as a reimbursement.

(f)

Title XX services: Reimbursements received by households to pay for services provided by Title XX of the Social Security Act.

(g)

E&T program: Reimbursements for expenses necessary for participation in an education component to fulfill E&T work requirements in a work program.

(6)

Nonexcludable reimbursements:

(a)

Title IV/A grant: No portion of an title IV/A grant shall be excluded as a reimbursement if the grant is increased to adjust for work/related or child care expenses.

(b)

Educational funds: No portion of any federal or nonfederal (state, local, private) educational loan, grant, scholarship, fellowship, veteran's educational benefit and the like shall be excluded as a reimbursement, to the extent that it provides income assistance for normal living expenses.

G. Payments for

third party beneficiary: Payments received and used for the care and maintenance of a third/party beneficiary who is not a household member shall be excluded as income. If the intended beneficiaries of a single payment include both household and non/household members, any identifiable portion of the payment intended and used for the care and maintenance of a nonmember is excluded. If the nonmember's share cannot be readily identified, the payment is divided equally among intended beneficiaries. The exclusion is applied to the nonmember's pro rata share, or the amount actually used for the nonmember's care and maintenance, whichever is less.

H. Earned income

of a student: The earned income of an elementary or secondary school student living in the same food stamp household with a natural, adoptive or step/parent, or under the parental control of another member of the same food stamp household other than a parent, shall be excluded if the student is:

(1) under age

18, and is

(2) attending

classes, including GED classes, at least half/time.

(3)

Temporary interruptions: The exclusion shall continue to apply during temporary interruptions in school attendance for semester

or vacation breaks, provided that the child's enrollment will resume following the break.

(4) Child's/ other members income: If a child's earnings or amount of work performed cannot be differentiated from that of other household members, the total earnings shall be divided equally among the working members and the child's pro rata share shall be excluded.

(5) Child turns 18 years old: The earnings of students shall be counted beginning the month following the month the student turns 18.

I. Money owed to other sources:

(1) Money withheld to repay previous overpayments: Money withheld to repay prior overpayments (recoupments) or money voluntarily or involuntarily returned from an assistance payment, earned income, or other income source shall be excluded from income, provided that:

(a) repayment is made from the same income source, and

(b) the income is from a countable income source.

(c) this exclusion applies only to recoupment or repayment situations.

(2) Other withholding: Money withheld for any other purpose is considered income. Money withheld for other purposes include: Medicare premiums; processing fees for child support payments collected by CSED; and deductions (taxes, insurance, etc.) from unearned income, such as civil service, PERA, and military retirement benefits.

(3) Failure to comply with another assistance program's requirements or fraud: A household's food stamp benefit amount shall not increase when benefits received from another program have been decreased (reduced, suspended or terminated) because of a determination by the other program of intentional failure

to comply with a requirement of the other program or an act of fraud. This provision applies in cases where the other program is a means/ tested, federal, state or local welfare or public assistance program, which is governed by welfare or public assistance laws or regulations and which distributes public funds.

(a) Conditions:

(i) If the department is not able to obtain necessary cooperation from another federal, state or local means/ tested welfare or public assistance program to enable it to comply with the requirements of this provision, the department is not held responsible as long as a good faith effort to obtain the information has been made.

(ii) A household's current food stamp benefit amount shall not be reduced, suspended or terminated when the benefits under another assistance program have been decreased.

(iii) Food stamp benefits shall be adjusted when eligible members are added to the food stamp household regardless of whether or not the household is prohibited from receiving benefits for the additional member under another federal, state, or local welfare or public assistance means/ tested program.

(iv) Changes in household circumstances which are not related to a penalty imposed by another federal, state or local welfare or public means/ tested assistance program shall not be affected by this provision.

(b) This provision does not apply to individuals or households subject to disqualification for noncompliance with E & T work requirements which are comparable to Title IV or UCB work requirements in Subsection H of 8.139.410.12 NMAC. In such cases, an individual or household disqualification occurs and food stamp benefits are reduced.

(c) There is no time restriction on the application of this provision. The

prohibition against increasing food stamp benefits shall apply for the duration of the penalty imposed by the welfare or public assistance program.

(d) Recoupments: Food stamp benefits shall not increase in cases where the household is subject to either a reduction in benefits or recoupment due to intentional failure to comply with the other program's requirements. Food stamp benefits shall not increase as long as a reduction or recoupment is in effect.

(e) This provision does not result in a reduction, termination, or suspension of a household's current food stamp benefit amount; therefore, a caseworker need not send an adverse action notice. A caseworker may send adequate notice to a household affected by this provision.

(4) Child support payments transferred under title IV/D: A child support payment received by a cash assistance household that must be transferred to or retained by the child support enforcement division (title IV/D) to maintain cash assistance eligibility, shall be excluded as income.

J. Guaranteed Based Income: Guaranteed basic income provides an individual or household a one time or recurring cash payment or transfer funded from a public or private source intended to support the basic needs of individuals or households by reducing poverty, promoting economic mobility, or increasing the financial stability.

(1) Exempt: Any payments that is funded solely with private funds or a mixture of private and public funds will be excluded as income.

(2) Counted: Any payment that is funded solely with public funds will be counted as income.

K. Universal Basic Income: Universal basic income is a government-guaranteed program that provides a modest cash income at regular intervals (e.g., each month or year) to every individual or household to meet basic needs.

(1) **Exempt:**
Any payments that is funded solely with private funds or a mixture of private and public funds will be excluded as income.

(2) **Counted:**
Any payment that is funded solely with public funds will be counted as income.
[8.139.520.9 NMAC - Rp, 8.139.520.9 NMAC, 11/21/2023]

8.139.520.10 COUNTING INCOME:

A. **Income averaging:**
(1) **Optional income averaging:** Income received by a household may be averaged at the household's option (See 8.139.500.10 NMAC) except as specified below.

(2) **Mandatory income averaging:**
Averaging is mandatory for income received under the following circumstances:

(a) contract or self/employment income;
(b) educational monies.

B. **Rounding off:**
Calculations shall be rounded to the nearest dollar. Figures between one cent and forty/nine cents are rounded down; figures between 50 cents and 99 cents are rounded up. When adding gross amounts received weekly, biweekly or semi/monthly to arrive at the monthly income, cents are retained until the total monthly amount is determined; the total monthly amount is rounded as the final step. Cents resulting from the computation of the twenty percent earned income deduction are rounded before being subtracted from earned income. Cents are retained in the computation of shelter and medical expenses until the final step.

C. **Ineligible or disqualified household members:**
An ineligible or disqualified household member shall not be included when:

(1) determining the maximum food stamp benefit amount for the household's size;

(2) comparing the household's monthly income with the income eligibility standards; or
(3) comparing the household's resources with the resource eligibility limits.

(4) **Intentional program violation (IPV) or work disqualified:**

(a) The income and resources of individuals disqualified for IPV or noncompliance with E&T work requirements shall be counted in their entirety.

(b) A household's allowable deductions for earned income, medical expenses, dependent care expenses, excess shelter expenses, and the standard deduction continue to apply to the remaining household members.

(c) HSD shall make sure that a household's food stamp benefit amount is not increased as a result of the disqualification of one or more members.

(5) **Ineligible alien or SSN disqualified:**

(a) **Resources:** Resources of ineligible aliens, or individuals disqualified for failure or refusal to apply for or provide a social security number, shall be counted in their entirety.

(b) **Income and deductions of ineligible aliens:**

(i) Income belonging to the ineligible alien shall be counted on a pro rata basis to remaining eligible household members. The prorated share is calculated by first subtracting any allowable exclusions from the ineligible alien's income, then dividing the income evenly by all household members, including the excluded member(s). The result is multiplied by the number of eligible household members to determine countable income.

(ii) The twenty percent earned income deduction is applied to the countable income attributed to the remaining eligible household members.

(iii) The allowable expense(s) either billed to or paid by the ineligible alien shall be allowed in its entirety as a household expense.

(c) **Income and deductions for ABAWD or SSN disqualified individuals:**

(i) Income belonging to an individual disqualified because of ABAWD status or failure or refusal to provide a social security number shall be counted on a pro rata basis to remaining eligible household members. The prorated share is calculated by first subtracting any allowable exclusions from the disqualified member's income, then dividing the income evenly by all household members, including the excluded member(s). The result is multiplied by the number of eligible household members to determine countable income.

(ii) The twenty percent earned income deduction is applied to the countable income attributed to the remaining household members.

(iii) The portion an allowable expense either paid by or billed to a disqualified individual(s) is divided evenly among all household members, including the disqualified individual(s). All but the disqualified individual's share is counted as a deductible expense for the remaining household members.

(6) **Reduction/termination during certification period:** When an individual is excluded or disqualified during the certification period, the caseworker shall determine the eligibility of the remaining household members based on information already in the case record.

(7) **Excluded for IPV disqualification:** If a household's benefits are reduced or terminated during the certification period because one of its members was disqualified for an IPV, the caseworker shall notify the remaining household members of changes in eligibility and food stamp benefit

amount at the same time the excluded member is notified of the disqualification. The household is not entitled to an adverse action notice but may request a fair hearing to contest the reduction or termination of benefits, unless it has already had a fair hearing on the amount of the claim as a result of consolidation of the administrative disqualification hearing with the fair hearing.

(8) Excluded

for other causes: If a household's benefits are reduced or terminated during the certification period because one or more of its members is an ineligible alien, is disqualified for failure to comply with E&T work requirements, disqualified for failing or refusing to apply for or provide a social security number, the caseworker shall issue an adverse action notice informing the household of the individual's ineligibility, the reason for the ineligibility, the eligibility and benefit amount of the remaining member(s), and the actions the household must take to end the disqualification.

D. Non-household members:

(1) Income

and resources: The income and resources of non-household members, such as certain students, roomers, and boarders, are not considered available. Cash payments from a non-household member to the household shall be counted as income (Subsection E of 8.139.520.8 NMAC). Vendor payments (Subsection D of 8.139.520.9 NMAC) shall be excluded as income.

(2)

Deductible expenses: If a household shares deductible expenses with a non-household member, only the amount actually paid or contributed by the household is deductible as an expense. If the payments or contributions cannot be differentiated, the expenses shall be divided evenly among individuals actually paying or contributing to the expense; only the household's pro rata share is deducted.

(3) Combined income of household/non-household

members: When the earned income of one or more household members and the earned income of a non-household member are combined as one wage, the income for the household shall be determined as follows.

(a)

If the household's share can be identified, it is counted as earned income.

(b)

If the household's share cannot be identified, the caseworker shall divide the earned income among all those whom it was intended to cover and count a prorated share to the household.

E. Self-employed

household: The following guidelines shall be used to determine eligibility and food stamp benefit amount for self/employed households, including those households that own or operate commercial boarding houses.

(1) Averaging

self/employment income:

(a)

Annualizing:

(i)

Households which by contract or self/employment derive their annual income in a period of time shorter than one year shall have income averaged over a 12 month period, provided that the income from the contract is not received on an hourly or piecework basis.

(ii)

Annualizing shall not apply to seasonal or migrant farm workers.

(iii)

Self/employment income representing a household's annual income shall be averaged over a 12 month period, even if the income is received within only a short period of time.

(iv)

The self/employment income shall be annualized even if the household receives income from other sources in addition to self/employment.

(v)

Self/employed households include, but are not limited to, school employees, sharecroppers, and farmers. Tenured teachers who may not actually have a signed contract

shall have their income considered on this basis.

(vi)

For self/employed households that receive their annual income in a short period of time, an initial certification period is assigned to bring the household into the annual cycle.

(vii)

Households which receive their annual income from self/employment and have no other source of income may be certified for up to 12 months.

(b)

Anticipated income:

(i)

If the average annualized amount or self/employment income received on a monthly basis does not accurately reflect a household's actual circumstances because it has experienced a substantial increase or decrease in business, self/employment income shall be calculated on anticipated earnings.

(ii)

Income shall not be calculated based on previous income (e.g., income tax returns) if a self/employed household has experienced a substantial increase or decrease in business.

(c)

Projected income: If a household's self/employment enterprise has been in existence for less than one year, the income from self/employment shall be averaged over the period of time the business has been in operation. The resulting monthly amount shall be projected for the coming year. If the business has been in operation for such a short time that there is insufficient information to make a reasonable projection, the household shall be certified for short periods of time until the business has been in operation long enough to make a longer projection.

(d)

Seasonal income: Self/employment income which is intended to meet the household's needs for only part of the year shall be averaged over the period of time the income is intended to cover.

(2)

Determining monthly self/employment income:

(a) For the period of time over which self/employment income is averaged, the caseworker shall add all self/employment income, including capital gains, exclude the cost of producing the self/employment income, and divide the self/employment income by the number of months over which the income shall be averaged.

(b) A capital gain is defined as proceeds from the sale of capital goods or equipment. Capital gains are counted in full as income to determine self/employment income.

(c) For households with self/employment income calculated on an anticipated basis, the caseworker shall add any capital gains the household anticipates receiving in the next 12 months, beginning with the date the application is filed. The resulting amount is counted in successive certification periods during the 12 months, except that a new average monthly amount is calculated if the anticipated amount of capital gains changes.

(3) **Determining net self/employment income:**

(a) A household's total self/employment income, minus the allowable costs of producing the income, shall be counted as gross income to the household. The gross self/employment income shall be added to any other earned income.

(b) The total monthly gross earned income, after allowing the twenty percent earned income deduction, is added to all monthly unearned income to determine income eligibility.

(c) For households anticipating income, the cost of producing income is calculated by anticipating allowable costs of producing the self/employment income.

(d) Expenses exceeding self/employment income shall not be deducted from other income.

(e) If a self/employment enterprise is a farming or ranching operation, expenses exceeding self/employment income may be offset against any other countable household income, provided that the farming or ranching operation grosses or is anticipated to gross at least \$1,000 annually.

(4) **Allowable costs:** Allowable costs of producing self/employment income include, but are not limited to:

(a) identifiable costs of labor, stock, raw material, seed and fertilizer.

(b) payments on the principal of the purchase price of income/producing real estate and capital assets, equipment, machinery, and other durable goods;

(c) interest paid to purchase income/producing property;

(d) insurance premiums, and taxes paid on income/producing property;

(e) transportation costs necessary to produce self employment income, such as farmers carrying grain to elevators, or trips to obtain needed supplies; costs are allowed at twenty-five cents per mile;

(f) payment of gross receipts taxes.

(5) **Costs not allowed:** In determining net self/employment income, the following shall not be allowed as a cost of doing business:

(a) net losses from previous periods;

(b) federal, state, and local personal income taxes, money set aside for retirement purposes, and other work/related personal expenses (such as transportation to and from work), since these expenses are accounted for by the twenty percent earned income deduction (Paragraph (3) of Subsection E of 8.139.520.10 NMAC);

(c) charitable contributions and entertainment; and

(d) depreciation.

F. Boarders:

(1) Individuals paying a reasonable amount for room and board shall be excluded from a household when determining the household's eligibility and food stamp benefit amount.

(2) Payments from a boarder shall be counted as self/employment income.

(3) Household income eligibility is determined as follows.

(a) Income from a boarder includes all direct payments to the household for room and meals, including contributions for shelter expenses.

(b) Shelter expenses paid by a boarder directly to someone outside the household shall not be counted as income. Such payments are considered vendor payments and are not used to determine reasonable compensation (Paragraph (4) of Subsection C of 8.139.400.11 NMAC), or as a shelter expense for the household.

(4) After determining the income received from a boarder, the caseworker shall exclude the portion of the boarder payment which is a cost of doing business. The cost of doing business is equal to either of the following, provided that the amount allowed as a cost of doing business does not exceed the payment the household receives from the boarder for lodging and meals:

(a) the amount of the maximum food stamp allotment for a household size that is equal to the number of boarders (Subsection E of 8.139.500.8 NMAC); or

(b) the actual documented cost of providing room and meals if the actual cost exceeds the appropriate maximum food stamp allotment; if actual costs are used, only separate and identifiable costs of providing room and meals to boarders are excluded.

[8.139.520.10 NMAC - Rp,
8.139.520.10 NMAC, 11/21/2023]

8.139.520.11 GENERAL DEDUCTIONS:

A. Use of deductions:

A household must qualify for deductions by first meeting a gross income test. A household is not eligible if gross income is more than the standard listed in Subsection E of 8.139.500.8 NMAC for a household size. If income falls below the gross income limit, a household shall be allowed deductions, where applicable, to make a final eligibility and benefit amount determination. Households that include elderly or disabled members, as defined, automatically qualify for deductions; eligibility is determined based on net rather than gross income.

B. Standard

deduction: All households are allowed a standard deduction from income. The standard deduction is listed in Paragraph (3) of Subsection F of 8.139.500.8 NMAC, tables, and is adjusted effective every October 1st.

C. Earned income

deduction: Twenty percent of gross earned income shall be deducted. Excluded income is not used for purposes of computing the earned income deduction.

(1)

Computing an over issuance: The earned income deduction (EID) shall not be allowed when calculating the income to be used in determining an over issuance which is due to the failure of a household to report earned income in a timely manner.

(2) Work

supplementation programs: The EID shall not be allowed for any amount of income which is earned under a work supplementation or support program and is attributable to public assistance.

D. Medical

deductions: Allowable medical deductions include:

(1) Elderly/

disabled: Medical expenses in excess of \$35.00 per month, excluding special diets, incurred by any

household member who is elderly or disabled.

(2)

Emergency SSI: Individuals receiving emergency SSI benefits based on presumptive eligibility shall be eligible for the medical deduction.

(3) Death:

A medical expense incurred by a household member who dies shall be allowed as a deduction if the member was eligible for the deduction at the time of death and if the remaining household members are legally responsible for payment.

(4) Hospital/

outpatient/nursing home: Medical expenses, such as hospitalization or outpatient treatment, nursing care and nursing home care, including payments by a household for an individual who was an eligible household member immediately before entering a hospital or nursing home facility recognized by the state, are allowable deductions.

(5) Not

eligible: Spouses, children or other individuals in the household who are not elderly or disabled, shall not be entitled to claim the medical deduction.

(6) Allowing

medical expenses:

(a)

One/time only expense:

(i)

A household may choose to have a one/time only expense, reported at certification, deducted in a lump sum or averaged over the certification period.

(ii)

If a household incurs a one/time medical expense and has made arrangements with the provider to make monthly installments (beyond the current certification period), the expense may be allowed each month as arranged.

(iii)

A household reporting a one/time only medical expense during its certification period may choose to have a one/time deduction or to have the expense averaged over the remaining months of the certification period.

(b)

Households certified for 24 months:

A household certified for 24 months cannot have a one/time medical expense averaged over the 24/month certification period.

(i)

A one/time medical expense may be deducted in the first month of the 24/month certification period; or the one/time medical expense may be deducted and averaged over the first 12 months of the 24/month certification period.

(ii)

One/time medical expenses reported after the first 12 months of the certification period shall be averaged over the remaining months.

(c)

Expense in last month of

certification: If a household is billed for and reports an expense during the last month of its certification period, the deduction shall not be allowed. If the expense will be paid in installments during the following certification period, the deduction shall be allowed during the appropriate number of months in the subsequent certification period.

(d)

Fluctuating expenses: Fluctuating medical expenses shall be allowed as deductions if regularly recurring, reasonably anticipated, and verified.

Once determined, the household is not required to report changes of \$25 or less or reverify expenses each month.

(e)

Anticipated changes in expenses:

At certification and recertification the household must report and verify all medical expenses. The household's monthly medical deduction for the certification period shall be based on:

(i)

anticipated changes in the household's medical expenses that can reasonably be expected to occur during the certification period based on available information about the recipient's medical condition, public or private insurance coverage, and current verified medical expenses; and

(ii)

expenses that occurred during the certification period that will continue in the new certification period; and

(iii) consideration of unpaid and past due medical expenses that will continue in the certification period.

(f) If a household reports an allowable medical expense at the time of certification but cannot provide verification at that time, and if the amount of the expense cannot be reasonably anticipated based upon available information about the recipients' medical condition and public or private medical insurance coverage, the household shall have the non-reimbursable portion of the medical expense considered at the time the amount of the expense or reimbursement is reported and verified.

(g) A household shall not be required to file reports about its medical expenses during the certification period. If a household voluntarily reports a change in its medical expenses, the caseworker shall act on the change in accordance with regulations in Subparagraph (c) of Paragraph (1) of Subsection B of 8.139.120.10 NMAC.

(7) **Past due and unpaid medical expenses:** The medical expense deduction shall not be determined by averaging past due or unpaid monthly medical expenses. Such expenses shall be used only as an indicator of what can reasonably be anticipated. Medical expenses which the household might reasonably anticipate receiving include but are not limited to costs of medical services and treatment received regularly, but less often than monthly, and prescription drugs.

(8) **Medical and dental care:** Medical and dental care, psychotherapy, and rehabilitation services, provided by licensed practitioners authorized by state law, or other qualified health professional, shall be allowed as medical expense deductions. State licenses in New Mexico are authorized by occupational licensing boards. A state/licensed practitioner has such a license. Native American practitioners (medicine men) are not licensed, but are recognized as health practitioners for this purpose.

(9) **Prescription drugs and medical supplies:** Prescription drugs, when prescribed by a licensed practitioner authorized under state law, and over-the-counter medications (including insulin) when approved by a licensed practitioner or other qualified health professional, shall be allowed as deductions. In addition, costs for medical supplies, sick/room equipment (including rental), or other prescribed equipment are deductible.

(10) **Health and hospitalization/medicare premiums:** Health and hospitalization insurance premiums, and medicare premiums, as well as any cost sharing or spend/down expenses incurred by medicaid recipients, are allowable deductions. If a medical insurance policy includes benefits for household members not eligible for a deduction, only that portion of the premium assigned to the eligible member(s) may be considered a deduction. In the absence of specific information about how much of the premium is for the eligible member(s), a pro rata amount may be used. This system may be used even if the policy holder does not qualify for the deduction but the policy includes a person(s) who does qualify. The cost of life or health and accident policies, such as those payable in lump sum settlements for death or dismemberment, or income maintenance policies that continue mortgage or loan payments while the beneficiary is disabled, are not deductible.

(11) **Transportation and lodging costs:** Reasonable costs of transportation and lodging to obtain medical treatment or services are deductible. The allowance for mileage in privately owned vehicles is the same as the amount allowed state employees. Lodging costs may not exceed the daily expense amount allowed (per diem) for state employees.

(12) **Maintaining an attendant:** Costs of maintaining an attendant, homemaker or home health aide, child care services, or housekeeper that are

necessary because of age, infirmity, or illness are deductible medical expenses. In addition, an amount equal to the food stamp benefit amount for one person is deductible if the household furnishes the majority of the attendant's meals. The food stamp benefit amount for the meal/related deduction is the one in effect at the time of initial certification. The caseworker shall update the food stamp benefit amount for meals at the next scheduled recertification. If a household incurs attendant care expenses that could qualify under both the medical deduction and the dependent care deduction, the caseworker shall treat the expense as a medical expense.

(13) **Other expenses:** Other deductible expenses include but are not limited to:
 (a) dentures, hearing aids, prosthetics;
 (b) securing and maintaining a seeing/eye or hearing dog, or other service animal, including the cost of dog food and veterinary bills; and
 (c) eyeglasses or contact lenses prescribed by an ophthalmologist or an optometrist.

(14) **Prescription drug card expense:**
 (a) An individual participating in the food stamp program who has enrolled for the medicare/approved drug discount card shall have \$23.00 credited to the monthly medical expense allowed for that individual.

(b) An individual participating in the food stamp program who receives a \$600.00 transitional assistance credit on the medicare/approved drug discount card for the calendar years 2004 and 2005 shall have \$50.00 credited to the monthly medical expense allowed for that individual for each month after September 2004, through December 2005, and not beyond that month.

E. **Dependent care expenses:**
 (1) **Deductible amounts:** Payments may be deducted

for the actual cost of the care of children or other dependents when necessary for a household member to accept or continue employment, comply with E&T work requirements, or an equivalent effort by those not required to comply with E&T work requirements, or attend training or pursue education which is preparatory to employment or leads to a degree. Allowable costs include:

- (a) the costs of care given by an individual care provider or care;
- (b) transportation costs to and from the care facility; and
- (c) activity or other fees associated with the care provided to the dependent that are necessary for the household to participate in the care.

(2)

Household member provides care:

If a household member provides dependent care, the payment is neither income to the payee nor a deduction for the payor (see Subsection A of 8.139.500.11 NMAC).

F. Household

expenses:

(1) **Shelter**

expenses:

(a)

Definition: Continuing charges for the shelter occupied by a household include rent, mortgage payment, or other continuing charges leading to the ownership of the shelter, such as loan repayments for the purchase of a mobile home and interest on such payments. If payments are made on more than one mortgage on the home, each payment is counted for the period the payment is intended to cover. Security deposits on rental property and downpayments for the purchase of a home are not allowed as shelter expense deductions. Closing costs shall not be allowed as a shelter expense, unless the closing costs can be itemized to identify costs that are allowable deductions, such as insurance and property taxes.

(b)

Excess shelter expense deduction:

Monthly shelter expenses in excess of fifty percent of a household's income,

after all other deductions have been allowed may be deducted, subject to the following restrictions:

(i) The shelter deduction may not exceed the maximum amount indicated in Paragraph (3) Subsection F of 8.139.500.8 NMAC, unless the household contains a member who is elderly or disabled, as defined.

(ii)

Households may not claim shelter expenses if the expense shall be paid as a vendor payment by an individual or organization outside the household.

(iii)

The household must be responsible for payment of the shelter expense; however, the household need not have paid the expense to claim the deduction. A current billing statement is used to establish the expense. The expense may not be allowed more than once.

(2) **Taxes and insurance:**

Property taxes, state and local assessments, and insurance on the structure itself, but not separate costs for insuring furniture or personal belongings, are deductible expenses.

(3) **Natural disasters:**

Expenses for the repair of a home that has been substantially damaged or destroyed by a natural disaster such as fire or flood may be deducted. Expenses shall not be allowed if the household has been or will be reimbursed by public or private relief agencies, insurance companies, or any other source.

Expense deductions are limited to the repair of the home and not its furnishings.

(4) **Costs of temporarily unoccupied home:**

(a)

If the home is temporarily unoccupied by a household because of employment or training away from home, illness, or abandonment caused by a natural disaster or casualty loss, the shelter costs for the home may be deducted. However, a household may claim only one SUA.

(b)

For costs of a home vacated by the household to be included in its shelter costs:

(i) the household must intend to return to the home;

(ii)

the current occupants of the home, if any, cannot be claiming shelter expenses for food stamp purposes;

(iii)

the home cannot be leased or rented during the household's absence.

(c)

Verification is required of households claiming this deduction if the cost is questionable or would result in a deduction.

(5) **Maximum deduction limit adjustment:**

The maximum deduction limit for excess shelter expenses will be revised as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as follows: effective January 1, 1997 through September 30, 1998, the deduction will be \$250; from October 1, 1998 through September 30, 2000 the deduction will be \$275; and effective from October 1, 2000 the deduction will be \$300; and will remain so indefinitely.

(6) **Homeless shelter standard:**

A household in which all household members are defined as homeless, within the definition at Paragraph (40) of Subsection A of 8.139.100.7 NMAC, shall be allowed the homeless shelter standard if the household incurs any shelter expenses at any time during the month.

(a)

The homeless household may claim actual shelter expenses if the expenses exceed the homeless shelter standard and the expenses are verified. Verification standards at Subsection A of 8.100.130.15 NMAC and 8.100.130.9 NMAC shall be used to verify shelter expenses, as well as other reasonable documentation determined to establish the homeless household's actual expenses.

(b)

The caseworker shall assist the homeless household in determining whether claiming the homeless shelter standard or actual expenses would be most beneficial to the household.

(c)
The homeless shelter standard shall be deducted from the household's countable net income.

(7) **Utility expenses:**

(a)
Allowable expenses for the mandatory utility standards: Allowable expenses that may be used to determine the mandatory utility standards include the cost of home heating or cooling; cooking fuel; electricity; water and sewerage; garbage and trash collection fees; the service fee for one telephone, including but not limited to, basic service fees, wire maintenance fees, subscriber line charges, relay center surcharges, 911 fees, taxes; and fees charged by the utility provider for initial installation of the utility.

(i)
A one/time deposit is not allowed as a utility expense.

(ii)
Expenses billed to a landlord or housing unit, but separately identifiable from the rent as an expense to the household, are allowable expenses.

(iii)
A household shall not be allowed actual utility expenses, even if the expenses exceed the amount of the mandatory utility standard for which the household is eligible.

(iv)
A household that is determined eligible for a mandatory utility standard deduction shall receive only one standard deduction during the household's food stamp certification period.

(b)
Mandatory heating or cooling standard: A food stamp household shall be allowed the heating/cooling standard utility allowance (HCSUA) during the household's certification period. The HCSUA includes all utility expenses for heating or cooling the household's home. The household's heating or cooling expense must be billed separately from other shelter expenses. The HCSUA shall be allowed if the household:

(i)
incurs a heating or cooling expense separate from other shelter expenses; or

(ii)
receives or received a direct payment or a payment is made on behalf of the household under the Low Income Home Energy Assistance Act of 1981; or

(iii)
receives or received a payment or a payment is made on behalf of the household under any other similar energy assistance program as long as the household still incurs out/of-pocket heating or cooling expenses in excess of the energy assistance provided; or

(iv)
lives in a public housing unit that has central utility meters, incurs a heating or cooling expense, and the household is charged only for excess heating or cooling usage.

(c)
Mandatory limited utility standard: A food stamp household shall be allowed a limited utility allowance (LUA) if the household does not incur a heating or cooling expense but does incur two or more of the following expenses:

(i)
electricity or fuel, for purposes other than heating or cooling;

(ii)
water;

(iii)
sewerage;

(iv)
well and septic tank installation or maintenance;

(v)
garbage or trash collection; and

(vi)
one telephone.

(d)
Mandatory telephone standard: A food stamp household shall be allowed the telephone standard if the household incurs an expense only for the telephone used by the household. The telephone standard shall be allowed for only one telephone charge for the residence.

G. Child support deduction: A deduction shall be

allowed for child support payments paid by a household member to or for a non/household member, provided that the household member has a legal obligation to pay child support and such payments are being made.

(1) **Legal obligation and verification:** The household's legal obligation to pay child support, the amount of the obligation, and the monthly amount of child support the household actually pays shall be verified. Any document that verifies the household's legal obligation to pay child support, such as a court or administrative order, or legally enforceable separation agreement shall be acceptable verification. Documents that are accepted as verification of the household's legal obligation to pay child support shall not be accepted as verification of the household's actual monthly child support payments. Actual payment of child support shall be verified by documentation including, but not limited to, cancelled checks, wage withholding statements, verification of withholding from unemployment compensation, and statements from the custodial parent regarding direct payments or third party payments the non/custodial parent pays or expects to pay on behalf of the custodial parent. The department shall be responsible for obtaining verification of the household's child support payments if the payments are made to the child support enforcement division.

(2) **Determining the deduction amount:**

(a)
Household with at least three months of payment history: Average the last three month period, taking into account any anticipated changes in the legal obligation. This average is the child support deduction amount. In the event that the client has at least a three month payment history and the payment includes arrearages, the amount paid toward arrearages shall be used in the average.

(b)
Household with less than three

months of payment history: The department shall estimate the anticipated payments according to the obligation and discussion with the client. This anticipation shall not include payments toward arrearages.

H. Non-deductible expenses:

(1) Excluded reimbursement/vendor payments:
(a)

That portion of any allowable expense that is reimbursed to the household or that is paid through a vendor payment to a third party is not allowable as a deduction.

(b)
Actual utility expense deductions or the SUA, as appropriate, shall be allowed for households receiving payments from LIHEAP, or receiving energy assistance payments under a program other than LIHEAP, as long as the household continues to incur out/of/pocket expenses for home heating or cooling.

(c)
A reimbursement paid by HUD or FHA to a household, or indirectly to a utility provider, is not allowed as a deductible expense.

(d)
A household receiving HUD or FHA utility reimbursements shall be entitled to the SUA if it incurs heating or cooling costs exceeding the amount of excluded utility reimbursements.

(2) Household member provides service:

(a)
When one household member pays another household member to provide a product or service, the money that is exchanged is neither an expense for one nor income for the other household member. Expenses are deductible only when a product or service is provided by someone outside the household and the household makes a money payment for the product or service.

(b)
Similarly, income is not counted for one household member who is paid by another household member to obtain wood for home heating. The actual cost of the wood is allowed as a utility expense if an outside money

payment is made. Money exchanged between household members is not considered income to the individual receiving the money and is not an expense to the member paying it.

(3) Past due shelter expenses: Payment on delinquent rent, mortgage, property taxes or utilities are not allowed as deductible expenses even if not previously billed.
[8.139.520.11 NMAC - Rp, 8.139.520.11 NMAC, 11/21/2023]

8.139.520.12 CALCULATING INCOME: To determine a household's income eligibility, the following guidelines will be followed:

A. The gross monthly income of all members, minus any income exclusions, is a household's gross income. Households which do not include elderly or disabled members must meet the gross income standard before other calculations are made.

B. Twenty percent of gross earned income is subtracted to determine net monthly earned income. or multiply the gross earned income by eight percent.

C. Total monthly earned income of all household members, minus income exclusions, if any, is added to net monthly unearned income.

D. The standard deduction is subtracted.

E. If a household member(s) is entitled to an excess medical deduction, the amount of medical expenses that exceeds \$35 is deducted.

F. Allowable monthly dependent care expenses, if any, are subtracted, up to the maximum amount allowed per dependent.

G. Subtract allowable monthly child support payment.

H. Add allowable shelter expenses to determine total shelter costs.

I. Subtract from total shelter costs fifty percent of the household's monthly income after all of the above deductions have been subtracted. The remaining amount, if any, is the excess shelter cost.

(1) The excess shelter cost, up to the maximum amount allowed, is subtracted from monthly income determined after G above.

(2)
Households with elderly or disabled members have the full shelter cost amount exceeding Fifty Percent of net income subtracted.

(3) The household's net monthly income has been determined.

J. The household's net monthly income is compared to the net income standard Subsection E of 8.139.500.8 NMAC to determine eligibility.

[8.139.520.12 NMAC - Rp, 8.139.520.12 NMAC, 11/21/2023]

HISTORY OF 8.139.520 NMAC:

Pre/NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives: ISD 460.0000, Action on Households with Special Circumstances, 8/15/1980. ISD 450.0000, Determining Household Eligibility and Benefit Levels, 8/15/1980. ISD/Rule 429.0000, Food Assistance / Income, 11/4/1982. ISD/Rule 429.0000, Food Assistance / Income, 2/17/1983. ISD/Rule 429.0000, Food Assistance / Income, 9/8/1983. ISD/Rule 429.0000, Food Assistance / Income, 1/20/1984. ISD/Rule 429.0000, Food Assistance / Income, 5/1/1986. ISD FS 430, Food Stamp Deductions, 3/1/1988. ISD FS 440, Food Stamp Financial Determinations, 3/1/1988. ISD/Rule 431.0000, Food Assistance / Determining Household Eligibility/ Benefit Levels and Related Activities, 11/4/1982. ISD/Rule 430.0000, Determining Household Eligibility/Benefit Levels and Related Activities, 2/9/1983. ISD/Rule 430.0000, Determining Household Eligibility/Benefit Levels and Related Activities, 10/13/1983. ISD/Rule 430.0000, Determining Household Eligibility/Benefit Levels

and Related Activities, 4/24/1984.
 ISD/Rule 430.0000, Determining Household Eligibility/Benefit Levels and Related Activities, 8/27/1984.
 ISD/Rule 432.0000, Food Assistance / Determining Resources, 11/4/1982.
 ISD/Rule 433.0000, Food Assistance / Determining Income, 11/4/1982.
 ISD/Rule 433.0000, Determining Income, 2/9/1983.
 ISD/Rule 433.0000, Determining Income Prospectively, 10/13/1983.
 ISD/Rule 433.0000, Determining Income Prospectively, 4/24/1984.
 ISD/Rule 434.0000, Food Assistance / Determining Deductible Expenses, 11/4/1982.
 ISD/Rule 434.0000, Determining Deductible Expenses, 10/13/1983.
 ISD/Rule 434.0000, Determining Deductible Expenses, 4/24/1984.
 ISD/Rule 434.0000, Determining Deductible Expenses, 5/11/1984.
 ISD/Rule 434.0000, Determining Deductible Expenses, 8/3/1984.
 ISD/Rule 435.0000, Food Assistance / Calculating Income and Benefit Levels, 11/4/1982.
 ISD/Rule 435.0000, Calculating Income and Benefit Levels, 2/11/1983.
 ISD/Rule 435.0000, Calculating Income and Benefit Levels, 10/13/1983.
 ISD/Rule 453.0000, Food Assistance / Self/employed Households, 11/5/1982.
 ISD/Rule 453.0000, Food Assistance / Self/employed Households, 4/24/1986.
 ISD/Rule 454.0000, Food Assistance / Boarders, 11/5/1982.
 ISD/Rule 455.0000, Food Assistance / Treatment of Income/Resources and Deductions of Disqualified Members and Ineligible Aliens, 11/5/1982.
 ISD/Rule 455.0000, Treatment of Income and Resources and Deductions of Excluded Members, 5/31/1983.
 ISD/Rule 455.0000, Treatment of Income, Resources and Eligibility/Benefit Level of Excluded Members, 8/23/1983.
 ISD FS 420, Food Stamp Income Eligibility, 3/1/1988.
 ISD FS 430, Food Stamp Deductions, 3/1/1988.

ISD FS 440, Food Stamp Financial Determinations, 3/1/1988.

History of Repealed Material:

8.139.520 NMAC, Eligibility Policy / Income and Deductions (filed on 4/26/2001) Repealed effective 11/21/2023.

Other: 8.139.520 NMAC, Eligibility Policy / Income and Deductions (filed on 4/26/2001) replaced by 8.139.520 NMAC, Eligibility Policy / Income and Deductions effective 11/21/2023.

**PUBLIC REGULATION
COMMISSION**

This is an amendment to 18.7.1 NMAC, Section 11, effective 11/21/2023.

18.7.1.11 NON-EMERGENCY MEDICAL TRANSPORT SERVICES: [~~This rule is adopted on an emergency basis pursuant to Section 62-19-21 NMSA-1978 and Section 14-4-5.6 NMSA-1978 to preserve the public peace, health, safety, or general welfare.~~ ~~Non-emergency medical transport services:~~ Non-emergency medical transport services:

A. May be provided only to riders who do not require medical intervention to maintain their level of response, airway, breathing and circulatory status, with the exception that self-administered oxygen is not to exceed six liters per minute via a nasal cannula; the oxygen container must be secured in accordance with other state and federal laws; and

B. May not be provided to riders who are recumbent (for example, on transport gurneys) or require medical monitoring or medical intervention.

[18.7.1.11 NMAC - N/E, 6/2/2023; A, 11/21/2023]

End of Adopted Rules

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| Issue 1 | January 5 | January 18 |
| Issue 2 | January 19 | January 31 |
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| Issue 4 | February 16 | February 28 |
| Issue 5 | March 2 | March 14 |
| Issue 6 | March 16 | March 28 |
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