

TITLE 8 SOCIAL SERVICES
CHAPTER 9 EARLY CHILDHOOD EDUCATION AND CARE
PART 5 NON-LICENSED CHILD CARE; REQUIREMENTS GOVERNING REGISTRATION OF
NON-LICENSED FAMILY CHILD CARE HOMES

8.9.5.1 ISSUING AGENCY: Early Childhood Education and Care Department (“ECECD”).
[8.9.5.1 NMAC - N, 11/01/2022]

8.9.5.2 SCOPE: All non-licensed family child care homes within the state of New Mexico who are intending to participate in the child and adult care food program or the child care services programs.
[8.9.5.2 NMAC - N, 11/01/2022]

8.9.5.3 STATUTORY AUTHORITY: The requirements (regulations) set forth herein, are established pursuant to the federal regulations at 7 CFR Part 226 CACFP, 45 CFR Part 98 CCDBG, the New Mexico Public Health Act, Sections 24-1-2 and 24-1-5 NMSA 1978, and the New Mexico Children’s Code, Section 32A-15-3 NMSA 1978. These regulations are promulgated by the authority set forth in Subsection E of Section 9-29-6 NMSA 1978. Child care homes registered pursuant to these regulations for participation in the child and adult care food program (CACFP) and child care assistance programs (CCAP) with Early Child Education and Care Department, are health facilities within the scope of Sections 24-1-2, 24-1-5 NMSA 1978, and Section 32A-15-3 NMSA 1978. *See also* Paragraph (3) of Subsection (A) of Section 9-29-3 NMSA 1978.
[8.9.5.3 NMAC - N, 11/01/2022]

8.9.5.4 DURATION: Permanent.
[8.9.5.4 NMAC - N, 11/01/2022]

8.9.5.5 EFFECTIVE DATE: November 1, 2022, unless a later date is cited at the end of a section.
[8.9.5.5 NMAC - N, 11/01/2022]

8.9.5.6 OBJECTIVE: The objective of 8.9.5 NMAC is to establish standards and procedures to permit independent caregivers who are not required to be licensed as family child care homes under state regulation 8.9.4 NMAC to participate in the federal child and adult care food program and the state and federal child care assistance programs through the registration process. The objective of 8.9.5 NMAC is also to establish standards and procedures that promote equal access to services and prohibit discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older).
[8.9.5.6 NMAC - N, 11/01/2022]

8.9.5.7 DEFINITIONS:

A. Terms beginning with the letter “A”:

- (1) “Abuse”** means any act or failure to act, performed intentionally, knowingly or recklessly, which causes or is likely to cause harm to a child, including:
- (a)** physical contact that harms or is likely to harm a child;
 - (b)** inappropriate use of a physical restraint, isolation, medication or other means that harms or is likely to harm a child;
 - (c)** punishment that is hazardous to the physical, emotional or mental state of the child; and
 - (d)** an unlawful act, a threat or menacing conduct directed toward a child that results or might be expected to result in fear or emotional or mental distress to a child.
- (2) “Adult”** means a person who has a chronological age of 18 years or older.
- (3) “Attended”** means the physical presence of a staff member of educator supervising children under care. Merely being within eyesight of hearing of the children does not mean actively engaged or meet the intent of this definition.

B. Terms beginning with the letter “B”: [RESERVED]

C. Terms beginning with the letter “C”:

- (1) “Care”** means the provisions of what is necessary to meet the needs of the health, welfare, maintenance, and protection of a child.

(2) **“Cease and desist letter”** means a formal letter from the registered authority to a provider outlining any ongoing violation of applicable regulations and providing 24 - 72 hours, depending on the circumstances, to rectify the violation(s) before additional action, including suspension or revocation, is taken by the registered authority. A cease and desist letter is usually issued when a registered care giver violates applicable regulations, but there is not an immediate threat to the health and safety of children in care, and seeks to compel compliance before more serious action is taken. A cease and desist letter must provide the specific deadline to rectify the violation(s), 24 to 72 hours, and specify the subsequent action the registered authority will take if the violation(s) is not corrected by that deadline.

(3) **“Child”** means any person who is under the chronological age of 18 years.

(4) **“Child and adult care food program (CACFP)”** means the state of New Mexico's family nutrition bureau which administers the federal child and adult care food program.

(5) **“Child care assistance program (CCAP)”** means the state of New Mexico's child care services bureau (CCSB) which administers the federal child care and development fund (CCDF).

(6) **“Child with a disability or special needs”** means a child with an identified disability, health, or mental health conditions requiring early intervention, special education services, or other specialized services and support; or children without identified conditions, but requiring specialized services, supports, or monitoring.

(7) **“Clean”** means to physically remove all dirt and contamination.

(8) **“Conditions of operation”** means a written plan that applies to a registered home and is developed by the licensing authority when the registered authority determines that provisions within these regulations have been violated. The plan addresses corrective actions that the caregiver must take within a specified timeframe.

(9) **“Corrective action plan”** means the plan submitted by the caregiver addressing how and when identified deficiencies will be corrected.

D. Terms beginning with the letter “D”:

(1) **“Disinfect”** means to destroy or inactivate most germs on any inanimate object, but not bacterial spores. Mix four tablespoons of bleach with one gallon of cool water or use an environmental protection agency (EPA) registered disinfectant.

(2) **“Drop-in”** means a child who attends a child care home on an occasional or unscheduled basis to include children who come to play with provider's children without parent being present.

E. Terms beginning with the letter “E”:

(1) **“Emergency caregiver”** means someone 18 years of age or older who is authorized by the primary caregiver to provide care on an emergency basis, eight hours or less, on behalf of the primary caregiver.

(2) **“Exempt caregiver”** means a child care home primary caregiver who is exempt from participating in the CACFP because he or she is caring only for resident children or does not provide child care during the hours when a meal (breakfast, lunch or dinner) is served.

(3) **“Exploitation”** of a child consists of the act or process, performed intentionally, knowingly, or recklessly, or using a child's property for another person's profit, advantage or benefit without legal entitlement to do so.

(4) **“Expulsion”** means the involuntary termination of the enrollment of a child or family.

F. Terms beginning with the letter “F”: **“Family, friend or neighbor (FFN)”** means care provided temporarily in a home and only in the case of a public health emergency.

G. Terms beginning with the letter “G”: **“Guidance”** means fostering a child's ability to become self-disciplined. Guidance shall be consistent and developmentally appropriate.

H. Terms beginning with the letter “H”:

(1) **“Home”** means a private residence and its premises registered under these regulations where children receive care, services, and supervision. The caregiver will reside in the home and be the primary caregiver. A home will be considered a building or fixed dwelling that can be occupied for living purposes if it provides complete independent living facilities, including permanent provisions for plumbing and electricity. Special considerations will be made for homes on tribal lands.

(2) **“Homeless children and youth”** means individuals who lack a fixed, regular, and adequate nighttime residence, which includes:

(a) children and youth who are temporarily sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks (excludes mobile homes), or camping ground due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(b) children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

(c) children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(d) migratory children who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in subparagraphs (a) through (c) of this Paragraph.

I. Terms beginning with the letter “I”:

(1) “Infant” means a child from birth to 12 months.

(2) “In-home care” means care provided in the child’s own home. In-home care registrations are limited to care of children with documented special needs or a medical condition, and the siblings of qualifying child. In-home care registrations must comply with the following:

(a) Parents or legal guardians who choose to use an in-home provider become the employer of the child care provider and must comply with all federal and state requirements related to employers, such as the payment of all federal and state employment taxes and the provision of wage information. Any parent or legal guardian who chooses to employ an in-home provider releases and holds the department harmless from any and all actions resulting from their status as an employer. Payments for in-home provider care are made directly to the parent or legal guardian.

(b) Parents or guardians are responsible for submitting documentation from a medical professional detailing the need for in-home care.

(c) Parent or guardians must consent to initial and annual inspections in accordance with 8.9.5.13 NMAC.

(d) In-home care registrations are exempt from the health and safety requirements outlined in Subsections C, D, E, F, G, H, I, J, R, T, U, V, W, X, Z of 8.9.5.22 NMAC; 8.9.5.23 NMAC; and Subsections D and I of 8.9.5.25 NMAC.

J. Terms beginning with the letter “J”: [RESERVED]

K. Terms beginning with the letter “K”: [RESERVED]

L. Terms beginning with the letter “L”: [RESERVED]

M. Terms beginning with the letter “M”: “Media” means the use of televisions, video games, and non-educational on-line streaming such as video and social media.

N. Terms beginning with the letter “N”:

(1) “Neglect” means the failure to provide the common necessities including but not limited to: food, shelter, a safe environment, education, emotional well-being and healthcare that may result in harm to the child.

(2) “Non-resident child” means any child who does not reside in the primary caregiver's home.

(3) “Notice of Provisional Employment” means a written notice issued to a child care center or home applicant indicating the background check unit reviewed the applicant’s fingerprint based federal or New Mexico criminal record and made a determination that the applicant may begin employment under direct physical supervision until receiving background eligibility. A notice may also indicate the applicant must receive a complete background eligibility prior to beginning employment.

(4) “Notifiable diseases” means confirmed or suspected diseases/conditions as identified by the New Mexico department of health which require immediate reporting to the office of epidemiology which include but are not limited to: measles, pertussis, food borne illness, hepatitis and acquired immune deficiency syndrome.

O. Terms beginning with the letter “O”: [RESERVED]

P. Terms beginning with the letter “P”:

(1) “Pacifier” means a rubber or plastic device, often shaped into a nipple, for an infant to suck or bite.

(2) “Premises” means all parts of the buildings, grounds, and equipment of a non-licensed home pursuant to these regulations.

(3) “Primary caregiver” means a registered child care home caregiver 18 years of age or older who is personally providing care to children, less than 24 hours a day, in his/her own residence and has completed the registration process, paid the required fee and has no other employment during hours of care. The primary caregiver must reside in the home.

Q. Terms beginning with the letter “Q”: [RESERVED]

R. Terms beginning with the letter “R”:

(1) **“Registered authority”** means the child care services bureau - regulatory oversight unit of the early education, care and nutrition division of the New Mexico Early Childhood Education and Care Department (ECECD).

(2) **“Registered family child care home”** means the residence of an independent primary caregiver who registers the home under these regulations to participate in the child and adult care food program or in the state and federal child care assistance programs.

(3) **“Registered family child care food-only home”** means the residence of an independent primary caregiver who registers the home under these regulation to participate in the child and adult care food program only and does not participate in the state and federal child care assistance program.

(4) **“Resident child”** means any child who resides in the home, such as the primary caregiver’s own children by birth or adoption, foster children, grandchildren, or cohabitant's children who are part of the residential unit.

S. Terms beginning with the letter “S”:

(1) **“Serious injury”** means the death of a child or accident, illness, or injury that requires treatment by a medical professional or hospitalization.

(2) **“Significant amount of time”** means someone who is on the premises for more than one hour per day during hours of care.

(3) **“Substantiated”** means an incident or complaint determined to factual, based on an investigation of events.

(4) **“Substitute caregiver”** means someone 18 years of age or older who is authorized by the primary caregiver and the registered authority to provide care in the absence of the primary caregiver and is required to complete all the items required of primary caregivers, including background check clearance in accordance with the most current provisions of 8.9.6 NMAC governing background checks and employment history verification provisions.

(5) **“Supervision”** means the direct observation and guidance of children at all times and requires being physically present with them.

(6) **“Survey”** means a representative of ECECD’s authority to enter a home, observes activity, examine the records and premises, interviews parents and records deficiencies.

T. Terms beginning with the letter “T”: “Toddler” means a child age 12 months to 24 months.

U. Terms beginning with the letter “U”:

(1) **“Unattended”** means a caregiver is not physically present with a child or children under care.

(2) **“Unsubstantiated”** means an incident or complaint not determined to be factual based on an investigation of events.

V. Terms beginning with the letter “V”: [RESERVED]

W. Terms beginning with the letter “W”: [RESERVED]

X. Terms beginning with the letter “X”: [RESERVED]

Y. Terms beginning with the letter “Y”: [RESERVED]

Z. Terms beginning with the letter “Z”: [RESERVED]

[8.9.5.7 NMAC - N, 11/01/2022]

8.9.5.8 APPLICATION:

A. An independent caregiver who wants to participate in the federal child and adult care food program and state and federal child care assistance programs must apply as a registered family child care home by submitting an application, receiving an on-site health and safety inspection by ECECD, completing the registration process and paying the processing charge. One primary caregiver per household can be registered or licensed with CCSB. All registered homes receiving child care assistance subsidies must be enrolled and participate in the CACFP, unless they are exempt. Primary caregivers must provide photo identification to prove identity and documentation of proof of address.

B. An applicant will complete an application form provided by the registered authority and include payment for the non-refundable application fee. Applications will be rejected unless all supporting documents are received within six months of the date indicated on the application. A 45 day extension will be granted if the applicant provides documentation to the licensing authority that documents were submitted to the appropriate agencies in a timely manner but, through no fault of their own, they have not received responses from these agencies. In home care registrations are exempt from the application fee.

C. A home will submit a new application to the registered authority before changing anything required to be stated on the registration such as: change of name, dates, status or address.
[8.9.5.8 NMAC - N, 11/01/2022]

8.9.5.9 REGISTERED AUTHORITY (ADMINISTRATION AND ENFORCEMENT

RESPONSIBILITY): The child care services bureau - regulatory oversight unit of the early education, care and nutrition division of ECECD, hereafter called the registered authority, has been granted the responsibility by ECECD for the administration and enforcement of these regulations pursuant to the Early Childhood Education and Care Department Act, Sections 9-29-1 to 9-29-12 NMSA 1978, as amended.
[8.9.5.9 NMAC - N, 11/01/2022]

8.9.5.10 CAREGIVER REQUIREMENTS:

A. All child care primary caregivers who receive child care assistance reimbursements are required to be licensed or registered by the department and meet and maintain compliance with the appropriate licensing and registration regulations in order to receive payment for child care services. All registered homes receiving child care assistance subsidies must be enrolled and participate in a CACFP, unless they are exempt.

B. All caregivers, including primary, substitute and emergency caregivers must be at least 18 years of age, and must demonstrate the ability to perform essential job functions that reasonably ensure the health, safety and welfare of children in care.

C. Primary and substitute caregivers must comply with background check requirements in accordance with the most current provisions of 8.9.6 NMAC governing background checks and employment history verification provisions. A request for a background check must be submitted prior to a substitute caregiver employment. A substitute caregiver must receive a notice of provisional employment prior to beginning employment or obtain a background check in accordance with 8.9.6 NMAC.

D. Emergency caregivers may provide care on unforeseen, unforeseeable and rare occasions for up to eight hours per month on behalf of the primary caregiver. Emergency caregivers must comply with background check requirements, and be certified in first – aid and cardiopulmonary resuscitation (CPR) with a pediatric component. Emergency caregivers may be exempted from all other training requirements. Anyone who provides care repeatedly or in reasonably foreseeable circumstances is a substitute caregiver and must have the required background checks and training.

E. A substitute caregiver is anyone who provides care repeatedly or in reasonably foreseeable circumstances and must have the required background checks and training.

F. In the event care is provided by a substitute or emergency caregiver, all parents/guardians must be notified as promptly as possible.

G. All caregivers are responsible for immediately reporting to the appropriate authorities any signs or symptoms of child abuse or neglect.

H. All new primary and substitute caregivers of registered family child care homes, with the exception of registered family child care food-only homes, must complete the following training within three months of their original date of initial registration. Training must be approved to fulfill the following requirements. Approved trainings and substitutions will be listed on the ECECD's website. All current primary and substitute caregivers in a registered family child care home will have three months to comply with the following training from the date these regulations are promulgated:

- (1) prevention and control of infectious diseases (including immunization);
- (2) prevention of sudden infant death syndrome and use of safe sleeping practices;
- (3) administration of medication, consistent with standards for parental consent;
- (4) prevention of and response to emergencies due to food or other allergic reactions;
- (5) building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;
- (6) prevention of shaken baby syndrome and abusive head trauma;
- (7) emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused;
- (8) handling and storage of hazardous materials and the appropriate disposal of bio contaminants;
- (9) precautions in transporting children (if applicable);
- (10) first aid and cardiopulmonary resuscitation (CPR) awareness with a pediatric component;

[and]

(11) recognition and reporting of child abuse and neglect; and
(12) a child development course that addresses all major domains of child development, including cognitive, social emotional, physical development and approach to learning as defined by the federal Child Care and Development Fund (<https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-98.98.44.b.ii>), or approved three-credit early care and education course or an equivalent approved by the department.

I. Primary and substitute caregivers are required to attend six hours of training annually. Training documentation must be maintained for three years and include the caregiver's name, the date of training, instructor's name and signature, topic of training and number of hours completed.

J. Primary and substitute caregivers caring for infants shall receive two hours of infant or toddler specific training within six-months of registration.

K. If a registered home caregiver completes the 18-hour course, it will count toward the six-hour annual training requirement during the year in which the course was completed and the following year, exclusive of training required by CACFP.

L. Primary and substitute caregivers are required to obtain current first aid and CPR certification with a pediatric component prior to becoming registered and maintain this certification at all times. On-line first aid and CPR classes are not valid unless there is a hands-on component included. In-person requirements may be waived in case of an emergency. A caregiver cannot count more than four hours in first aid and CPR trainings toward their total hours of annual training requirements.

M. Training shall be within the seven competency areas. The competency areas are:

- (1) child growth, development and learning;
- (2) health, safety, nutrition and infection control;
- (3) family and community collaboration;
- (4) developmentally appropriate content;
- (5) learning environment and curriculum implementation;
- (6) assessment of children and programs; and
- (7) professionalism.

[8.9.5.10 NMAC - N, 11/01/2022; A, 10/08/2024]

8.9.5.11 BACKGROUND CHECKS:

A. All background checks shall be conducted in accordance with the most current provisions of 8.9.6 NMAC governing background checks and employment history verification provisions as promulgated by ECECD. All non-licensed child care caregivers must adhere to these provisions to maintain their registration status. A background check must be conducted in accordance with 8.9.6 NMAC on all required individuals at least once every five years from the original date of eligibility regardless of the date of hire or transfer of eligibility. A direct provider of care may request a transfer of background check eligibility if:

(1) the staff member was found eligible as a direct provider of care in a child care center, licensed child care home, licensed group home, or registered home within the past five years and has not been separated from employment for more than 180 days; and

(2) submits an application for transfer and is found eligible pursuant to 8.9.6.11 NMAC.

B. The primary caregiver will be responsible for obtaining background checks on all adults residing in the home using the requirements outlined in the department's most current version of the background checks and employment history verification provisions (8.9.6 NMAC). A household member reaching the age of 18, must submit their background check in accordance with the most current provisions of 8.9.6 NMAC within 30 days after their eighteenth birthday. However, in the case of a registered family child care food-only home, all household members are only required to undergo a criminal history and child abuse and neglect screening.

C. Any adult who is present in the registered primary caregiver's home for significant periods while children are in care, or who commences being present in the registered primary caregiver's home for significant periods, may be required by the department to obtain either a background check or criminal history and child abuse and neglect screen. Family members or guests visiting for temporary periods (less than five days) are not considered as spending significant periods of time. However, such visiting family or guests must not have unsupervised access to the children in care at any time.

D. All requirements of the current background checks and employment history verification provisions pursuant to 8.9.6 NMAC must be met prior to the issuance of an initial registration.

E. The registered primary caregiver must maintain documentation of all applications, correspondence and clearances relating to the background checks required in this section and make them available to the registered authority upon request.

F. The primary caregiver shall certify upon renewal that they, or any other adult living in the home have not been convicted of a disqualifying offense during the last twelve months.
[8.9.5.11 NMAC - N, 11/01/2022]

8.9.5.12 ANNUAL REGISTRATION: An annual registration is issued for a one-year period to a child care home that has met all requirements of these regulations.

A. Primary caregivers must renew registration annually, and only after receiving an onsite inspection by ECECD, by submitting a registration application and paying the processing charge with cashier's check or a money order. In-home care registrations are exempt from the application fee.

B. Primary caregiver's who fail to renew registration by the expiration date will not be eligible to receive program benefits from either the child and adult care food program or the child care assistance program.

C. Primary caregivers shall ensure that all adults residing in the home, as well as secondary caregivers and adults spending a significant amount of time in the home, are listed on all documentation required by ECECD and sponsoring agencies.

[8.9.5.12 NMAC - N, 11/01/2022]

8.9.5.13 VISITS BY THE SPONSORING AGENCY AND REGISTERED AUTHORITY: Caregivers will grant the registered authority representative the right to enter the premises and, conduct visits, including unannounced and complaint investigations when child care children are present and during the caregiver's stated normal hours of operation.

A. The registered authority will conduct a survey at least once a year at each registered residence using these regulations as the criteria. The registered authority will conduct additional surveys or visit the registered residence additional times to provide technical assistance, to check progress on correction of deficiencies found on previous surveys, or to investigate any complaints.

B. Upon the completion of a survey, the registered authority will discuss the findings with the caregiver or their substitute caregiver and will provide an official written report of the findings and a request for a plan or plans of correction, if appropriate. Each survey will be made available for review on a public web portal.

C. By applying for either a new registration or a registration renewal, the caregiver grants the registering authority representative the right to enter the premises and survey the registered residence, including inspecting and copying of child care records, both while the application is being processed and, if registered, at any time during the registration period.

D. The registering authority may or may not announce a survey. A substitute caregiver knowledgeable in the daily operations, that has access to all records and locked areas, and can represent the caregiver for survey purposes, must be present in the residence if the primary caregiver is not present.

[8.9.5.13 NMAC - N, 11/01/2022]

8.9.5.14 NON-TRANSFERABILITY OF REGISTRATION:

A. The primary caregiver's registration agreement is personal, and not transferable to any other person or location.

B. A registration will expire automatically at midnight of the expiration date unless earlier suspended or revoked, or:

- (1) if the primary caregiver moves; or
- (2) changes their name.

C. If the primary caregiver moves to a new location or has a change of name, the primary caregiver must register again by submitting a new application and pay the processing charge. The caregiver must report a new location or change of name prior to the occurrence and receive a new on-site health and safety inspection by ECECD.

D. A caregiver with only a change in name will not need to pay an amended fee or processing charge.
[8.9.5.14 NMAC - N, 11/01/2022]

8.9.5.15 INCIDENT REPORTS: Registered caregiver shall notify the appropriate authorities immediately by phone of any incident which results in significant harm to a child or which places the child in immediate danger. After making a report to the appropriate authorities, the caregiver shall notify ECECD of the incident giving rise to its report as soon as possible but no later than 24 hours after the incident occurred. A report shall first be made by telephone and followed with written notification. The caregiver shall report to the appropriate authorities the following incidents, including but not limited to:

A. Any incident that has threatened or could threaten the health and safety of children, including but not limited to:

- (1) a lost, missing child or unattended child;
- (2) a serious injury;
- (3) the suspected abuse or neglect of a child;
- (4) fire, flood, or other natural disaster that creates structural damages to a home or poses a health hazard;
- (5) any of the illnesses on the current list of notifiable diseases and communicable published by the office of epidemiology of the New Mexico department of health;
- (6) any legal action against a caregiver or household member;
- (7) any incident that could affect the background check eligibility of any cleared person related to this registration;
- (8) the use of physical or mechanical restraints, unless due to documented emergencies or medically documented necessity; or
- (9) any known change in a caregiver's health condition or use of medication that impairs his or her ability to provide for the health, safety or welfare of children in care.

B. A home will notify parents or guardians in writing of any incident, including notifiable illnesses that have threatened the health or safety of children in the home. The provider shall ensure that it obtains parent or guardian signatures on all incident reports within 24 hours of the incident. The provider shall immediately notify the parent or guardian in the event of any head injury. Incidents include, but are not limited to, those listed in Subsection A of 8.9.5.15 NMAC.

C. Incident reports involving suspected child abuse and neglect must be reported immediately to children's protective services and local law enforcement. The registered authority follows written protocols/procedures for the prioritization, tracking, investigation and reporting of incidents, as outlined in the complaint investigation protocol and procedures.
[8.9.5.15 NMAC - N, 11/01/2022]

8.9.5.16 COMPLIANCE: By completing the ECECD registration process and annual renewals, the primary caregiver is agreeing to comply with these regulations to include the following:

A. The primary caregiver agrees to continue to meet these requirements, to correct deficiencies promptly and to take prompt action to resolve problems cited in complaints filed with state agencies and referred to the caregiver.

B. The caregiver must grant the registered authority the right to enter the premises and survey the caregiver's home and the inspection and copying of records. This includes any investigations which are announced or un-announced.
[8.9.5.16 NMAC - N, 11/01/2022]

8.9.5.17 NON-COMPLIANCE:

A. ECECD may deny, suspend, revoke or decline to renew registration at any time it is reasonably determined that the caregiver is not in compliance with these regulations, or is unable to maintain compliance with registration standards.

B. Violation of any provisions of these regulations, especially when the registered authority has reason to believe that the health, safety or welfare of a child is at risk, or has reason to believe that the caregiver cannot reasonably safeguard the health and safety of children may be grounds to suspend, revoke, issue a cease and desist letter or decline to renew registration include but are not limited to:

- (1) failure to comply with the group composition requirement;
- (2) any health and safety violations which place the children in immediate danger, including but not limited to:
 - (a) a dwelling infested with vermin, including rodents, with no effort to correct the problem;
 - (b) lack of basic sanitary facilities, such as an open cesspool or open sewer line draining onto the ground surface; and
 - (c) unlocked or unsecured firearms and weapons in the home;
- (3) background check denial or suspension;
- (4) failure to timely obtain required background checks;
- (5) misrepresentation or falsification of any information given to ECECD or CACFP;

- (6) failure to allow access to the registered home by authorized representatives of the department or sponsor, at any time that children are present in the registered home;
- (7) failure to properly protect the health, safety and welfare of children due to impaired health or conduct or hiring or continuing to allow any person whose health or conduct impairs the person's ability to properly protect the health, safety, and welfare of the children;
- (8) discovery of repeat violations of these regulations or failure to correct deficiencies of survey findings in current or past contiguous or noncontiguous certification periods;
- (9) possessing or knowingly permitting non-prescription controlled substances or illegal drugs to be present on the premises at any time, regardless of whether children are present;
- (10) substantiated non-compliance with caregiver requirements to care for children in the registered home as defined in these regulations;
- (11) substantiated abuse or neglect of children by the caregiver or household member as determined by the Children, Youth and Families Department (CYFD), ECECD or a law enforcement agency;
- (12) allowing any person to be active in the child care home who is or would be disqualified as a primary caregiver under the most current version of the background checks and employment history verification provisions pursuant to 8.9.6 NMAC; this will include all adults and teenaged children living in a family child care home operated in a private residence whether or not they are active in the child care operation;
- (13) situations where the children in care are placed in unreasonable or unnecessary danger, including but not limited to: evidence of illegal drug use in the home, evidence of domestic violence in the home, a convicted sex offender maintaining residence in the home, a convicted sex offender in the home when children are present, accusations of sexual child abuse against a caregiver or household member, or pending the outcome of a child protective services referral; and
- (14) any serious violation or other circumstance which reasonably leads the department to determine that the caregiver cannot reliably safeguard the health and safety of children.

C. Commencement of an ECECD, CYFD, or law enforcement investigation may be grounds for immediate suspension of registration pending the outcome of the investigation. Upon receipt of the final results of the investigation, the department may take such further action as is supported by the investigation results.

D. A suspension, revocation, or conditions of operations imposed pursuant to part A of this section may take effect immediately if in the discretion of the department that the health, safety or welfare of a child is at risk, or has reason to believe that the caregiver cannot reasonably safeguard the health and safety of children.

E. The Early Childhood Education and Care Department notifies the primary caregiver in writing when registration is denied, suspended or revoked, or if renewal is declined. The notification shall include the reasons for the department's action. The primary caregiver may obtain an administrative appeal of the department's action.

F. The child care services bureau notifies the family nutrition bureau of any revocation or suspension of registration for a primary caregiver participating in the child care assistance programs.

G. Primary caregivers whose registration has previously been suspended or revoked may re-apply for registration through the regular registration process. The child care services bureau may consider the reasons for the previous action, as well as changed and current circumstances, in determining whether to allow the new application. The Early Childhood Education and Care Department may require the registered caregiver to implement specific actions, or to agree to specific conditions, in order to obtain re-registration.

H. The Early Childhood Education and Care Department may require the registered caregiver to implement specific actions, or to agree to specific conditions, in order to maintain registered status. Such specific actions or conditions may be required if the department has reasonable grounds to determine they are needed to assure the continued safe operation of the primary caregiver's home. Examples:

- (1) The department may require caregiver(s) to complete additional training if it appears that the caregiver has used inappropriate discipline, and revocation is not necessary under the circumstances.

- (2) The department may require that certain person(s) not be permitted to enter the premises while care is being provided, if it reasonably appears that that person(s) may pose a threat to health or safety, or otherwise create a risk of harm to children.

I. Caregivers who are required to implement actions or to agree to conditions pursuant to Subsections G or H, are notified in writing, and shall have the opportunity for administrative appeal.

J. There shall be no right to an appeal or administrative review when the registered authority issues a cease and desist letter; provided, however, that the registered care giver shall have the right to an appeal or administrative review of any subsequent action taken by the registered authority as set forth herein.

[8.9.5.17 NMAC - N, 11/01/2022]

8.9.5.18 COMPLAINTS:

- A.** Complaints received by ECECD shall be investigated promptly.
 - B.** An authorized ECECD representative receiving complaints will ask complainants to identify themselves and provide all information necessary to document the complaint.
 - C.** The authorized ECECD representative will investigate any complaint in which the health, safety or welfare of a child could be in danger. The complaint will be reviewed and prioritized immediately according to the nature and severity of the complaint. The registered authority will follow established protocols and procedures for prioritizing, tracking, initiating and reporting of complaints and complaint investigations. Complaints will be investigated in a timely manner as follows:
 - (1)** Priority 1 complaints: investigation will be initiated within 24 hours.
 - (2)** Priority 2 complaints: investigation will be initiated within three working days.
 - (3)** Priority 3 complaints: investigation will be initiated within five working days.
 - (4)** Initiation timeframes for investigations may be shortened based on the severity and nature of the complaint, but timeframes may not be extended.
 - D.** The caregiver shall cooperate in good faith with any investigation by the authorized ECECD authority. Obstruction of an investigation may subject the primary caregiver to sanctions, up to and including revocation.
 - E.** Action by the authorized ECECD representative:
 - (1)** The registered authority will provide a written letter on the results of the investigation to the registered home primary caregiver that is the subject of the complaint and the complainant if an action is taken.
 - (2)** If the authorized ECECD representative finds the complaint is unsubstantiated, it will be so designated and the authorized ECECD representative will take no further action.
 - (3)** If the authorized ECECD representative finds that a complaint is substantiated, it will make the complaint part of the authorized ECECD file on the child care registered home. The following additional actions will, at the discretion of the authorized ECECD representative, be taken:
 - (a)** the ECECD authority will require the registered home caregiver to submit and comply with a written corrective action plan; or
 - (b)** the ECECD authority will sanction the registered home administratively including, without limitation, suspension, revocation, or restriction of a registration; or
 - (c)** the ECECD authority will pursue criminal charges or civil remedies.
 - F.** The authorized ECECD representative will report all cases of suspected child abuse and neglect to both CYFD's protective services and the local law enforcement agency.
- [8.9.5.18 NMAC - N, 11/01/2022]

8.9.5.19 ADMINISTRATIVE APPEAL RIGHTS:

- A.** Any primary caregivers who receives notice that registration is denied, revoked, suspended or that renewal is denied, has a right to an administrative appeal of the decision. Any primary caregiver who is required by the department to implement specific actions, or to agree to specific conditions, in order to maintain registered status, has a right to administrative appeal.
 - B.** Administrative appeals shall be conducted by a hearing officer appointed by the department's secretary pursuant to ECECD's identified administrative hearing regulations.
 - C.** If the suspension or revocation is to take effect immediately, or if required conditions of continued operation are to take effect immediately, the department affords the primary caregiver the opportunity for an administrative appeal within five working days. If registration is suspended pending the results of an investigation, the primary caregiver may elect to postpone the hearing until the investigation has been completed.
 - D.** If after the imposition of an immediate suspension the department takes additional actions including additional suspension, revocation, or conditions of operations, the immediate action will stay in effect until the following action goes into effect or an appeal of the following action is concluded and the action is either upheld or overturned.
 - E.** If the contemplated action does not take immediate effect, and the primary caregiver is given advance notice of the contemplated action, the primary caregiver is allowed 10 working days from date of notice to request an administrative appeal in writing.
 - F.** For any action taken by the department pursuant to 8.9.5.20 NMAC of this regulation, the applicable hearing procedure shall be that contained in 8.9.5.20 NMAC.
- [8.9.5.19 NMAC - N, 11/01/2022]

8.9.5.20 PROBABLE CAUSE OF IMMINENT DANGER:

A. In circumstances in which Public Health Act, Subsection (N) of Section 24-1-5 (2005) NMSA 1978 may apply, and in which other provisions of this regulation are not adequate to protect children from imminent danger of abuse or neglect while in the care of a provider, the provisions of Subsection (N) of Section 24-1-5 NMSA 1978 shall apply as follows:

- (1) The department shall consult with the owner or operator of the child care facility.
- (2) Upon a finding of probable cause, the department shall give the owner or operator notice of its intent to suspend operation of the child care facility and provide an opportunity for a hearing to be held within three working days, unless waived by the owner or operator.
- (3) Within seven working days from the day of notice, the secretary shall make a decision, and, if it is determined that any child is in imminent danger of abuse or neglect in the child care facility, the secretary may suspend operation of the child care facility for a period not in excess of fifteen days.
- (4) Prior to the date of the hearing, the department shall make a reasonable effort to notify the parents of children in the care of the registered home of the notice and opportunity for hearing given to the caregiver.
- (5) No later than the conclusion of the 15 day period, the department shall determine whether other action is warranted under this regulation.

B. Nothing in this section of the regulation shall be construed to require registration that is not otherwise required in this regulation.
[8.9.5.20 NMAC - N, 11/01/2022]

8.9.5.21 GROUP COMPOSITION REQUIREMENTS:

- A.** A caregiver will care for no more than four non-resident children at any one time.
- B.** A caregiver will care for no more than two children under two years old at any one time, including the caregiver's own children.
- C.** A caregiver will care for no more than six children under six years old at any one time, including the caregiver's own children.
- D.** Drop-in children will be counted in the group composition requirements listed above.
- E.** Shifts are allowed provided there are never more than four non-resident children present at any one time, including change of shifts.
- F.** All caregivers will be physically present and actively involved in the care of all children during the designated hours of child care as noted in the child enrollment forms, except for short absences when another approved caregiver is present, or emergencies. Outside employment is not considered a short absence.
[8.9.5.21 NMAC - N, 11/01/2022]

8.9.5.22 HEALTH AND SAFETY REQUIREMENTS:

- A.** A caregiver will maintain the home, grounds and equipment in safe condition. The home and grounds must be clean and free of debris or other potentially dangerous hazards. All equipment must be in good repair.
- B.** All electrical outlets within reach of children will have safety outlets or have protective covers.
- C.** A caregiver will not use multiple plugs or gang plugs unless surge protection devices are used.
- D.** A caregiver will keep the temperature of inside areas used by children at no less than 68 degrees Fahrenheit and no more than 82 degrees Fahrenheit. A home may use portable fans if the fans are secured and inaccessible to children and do not present any tripping, safety or fire hazard.
- E.** The home must be adequately ventilated at all times.
- F.** A home will not use un-vented heaters or open flame heaters. Portable heaters will be used in accordance with manufacture instructions. A home will install barriers or take other steps to ensure heating units are inaccessible to children. Heating units include hot water pipes, infrared heaters, ceramic heaters, hot water baseboard heaters hotter than 110 degrees Fahrenheit, fireplaces, fireplace inserts and wood stoves.
- G.** All homes will have hot and cold running water. Water coming from a faucet will be below 110 degrees Fahrenheit in all areas accessible to children. A home may install a water tempering control valve ahead of all domestic water-heater piping.
- H.** A caregiver must provide safe playing areas inside and outside the home. A caregiver's inside and outside play areas must be safe, clean and free of any debris.

I. A caregiver's outside play area must be on the premises and approved by the registered authority. The caregiver will fence the outside play area when determined to be necessary for safety by the registered authority. The fence must be at least four feet high and will have one latched gate for emergency exits. For apartment buildings or residences with no outdoor play areas, a common park/playground can be used for outdoor play but will not be inspected or approved by the registered authority. The provider will ensure the play area is safe from hazards prior to allowing children to play.

J. The use of a trampoline is prohibited at any time during the hours of operation or by any children receiving care at the registered home.

K. A caregiver will keep all poisons, toxic materials, cleaning substances, alcohol, alcoholic beverages, prescriptions and over the counter medications, intoxicating substances, sharp and pointed objects or any other dangerous materials in a storage area inaccessible to children.

L. The primary caregiver must have a working telephone in the home and a valid working phone number on file with ECECD at all times. Emergency numbers will be posted on any cordless or cellular telephones. A cellular telephone is acceptable as the only phone in the home. The cellular telephone will remain in the same room, charged and accessible to the provider a caregiver at all times.

M. A caregiver will post emergency numbers for the police, fire department, ambulance, and poison control center in a visible location.

N. A caregiver will install at least one working smoke detector and a carbon monoxide detector in an appropriate area in the home.

O. A caregiver will unload all guns, such as pellet or BB guns, rifles and handguns, lethal and non-lethal weapons and keep them in a locked area inaccessible to children. For purposes of this regulation, a weapon is (including but not limited to): firearms, tasers and stun guns, pepper spray, knives, swords and other items designed or used for inflicting bodily harm or physical damage.

P. A caregiver, will prohibit smoking, the use of e-cigarettes/vaporizers and the drinking of alcoholic beverages in all areas, including vehicles, when children are present. Possessing or knowingly permitting illegal drugs, paraphernalia, or non-prescription controlled substances to be possessed or sold on the premises at any time regardless of whether children are present is prohibited.

Q. A home will have a fully - charged 2A-10B:C fire extinguisher in an easily accessible place. A fire extinguisher must be certified once a year and will have official tags noting the date of inspection.

R. A caregiver will store combustible and flammable materials in a safe area away from water heater rooms, furnace rooms, heaters, fireplaces or laundry rooms.

S. In case of a fire, the caregiver's first responsibility is to evacuate the children to safety. An up to date emergency evacuation and disaster preparedness plan must be available by the caregiver , which shall include steps for evacuation, relocation, shelter-in-place, lock-down, communication, reunification with parents, individual plans for children with special needs and children with chronic medical conditions, accommodations of infants and toddlers, and continuity of operations. The plans shall be approved annually by the registered authority and the department will provide guidance on developing these plans.

T. Caregiver's will conduct at least one fire drill each month and an emergency preparedness practice drill at least quarterly beginning January of each calendar year. A caregiver will hold the drills at different times of the day and will keep a record of the drills with the date, time, number of adults and children participating, and any problems.

U. A home will have two major exits readily accessible to children with no obstructions in the pathways of these exits.

V. Toys and objects (including high chairs, playpens and cribs) are safe, durable, easy to clean and nontoxic. Toys will be disinfected, at a minimum of, once per week. Frequency of disinfection of toys must be increased in the event of a communicable disease, following appropriate guidance.

W. Cribs will meet federal standards (CPSC 16 CFR1219,1220), be kept in good repair, and not be used for storage. A home will not use plastic bags or lightweight plastic sheeting to cover a mattress and will not use pillows in cribs. Animals and pets will not be allowed in cribs or on sleeping materials.

X. Children will not use a common towel or wash cloth. All toilet rooms used by children will have toilet paper, soap and disposable towels.

Y. The home will have a first aid kit stored in a convenient place inaccessible to children, but easily accessible by caregiver. The kit will contain at least band-aids, gauze pads, adhesive tape, scissors, soap, non-porous latex gloves, and a thermometer.

Z. A caregiver with pets will comply with the following requirements:

- (1) A home will inform parents or guardians in writing before pets are allowed at the residence.
- (2) A home will inoculate any pets as prescribed by a veterinarian and keep a record of proof of inoculation prior to the pet's presence at the residence.
- (3) A home will not allow on the premises pets or other animals that are undomesticated, dangerous, contagious, or vicious in nature.
- (4) Areas of confinement, such as cages and pens, and outdoor areas are cleaned of excrement daily.
- (5) A caregiver must be physically present during the handling of all pets or other animals
 - AA. A caregiver will change wet and soiled diapers and clothing promptly. A caregiver will not change a diaper in a food preparation area. Caregivers will wash their hands and the child's hands after every diaper change. A caregiver will change a child's diaper on a clean, safe, waterproof surface and discard any disposable covers and disinfect the surface after each diaper change.
 - BB. Children may be transported only in vehicles that have current registration and insurance coverage. All drivers must have current driver's license and comply with motor vehicle and traffic laws. A child shall only be transported if the child is properly secured in an age appropriate restraining device. Persons who have been convicted in the last seven years of a misdemeanor or felony driving while intoxicated/driving under the influence cannot transport children under the auspices of a registered home certification.
 - CC. Children less than one year of age shall be properly secured in a rear-facing child passenger restraint device that meets federal standards in the rear seat of a vehicle that is equipped with a rear seat. If the vehicle is not equipped with a rear seat, the child may ride in the front seat of the vehicle if the passenger-side air bag is deactivated if the vehicle is equipped with a deactivation switch for the passenger-side air bag.
 - DD. Children one year of age through four years of age, regardless of weight, or children who weigh 40 pounds, regardless of age, shall be properly secured in a child passenger restraint device that meets federal standards.
 - EE. Children five years of age through six years of age, regardless of weight, or children who weigh less than 60 pounds, regardless of age, shall be properly secured in either a child booster seat or an appropriate child passenger restraint device that meets federal standards.
 - FF. Children seven years of age through 12 years of age shall be secured in a child passenger restraint device or by a seat belt.
 - GG. Vehicles used for transporting children will be enclosed and properly maintained. Vehicles shall be cleaned and inspected inside and out.
 - HH. Vehicles operated by the home to transport children shall be air-conditioned whenever the outside air temperature exceeds 82 degrees Fahrenheit. If the outside air temperature falls below 50 degrees Fahrenheit the center will ensure the vehicle is heated
 - II. A home will load and unload children at the curbside of the vehicle or in a protected parking area or driveway. The home will ensure children do not cross a street unsupervised after leaving the vehicle.
 - JJ. No one will smoke, use e-cigarettes or vaporizers - in a vehicle used for transporting children.
 - KK. Persons transporting children will also take the safe transportation practices training.

[8.9.5.22 NMAC - N, 11/01/2022]

8.9.5.23 MEAL REQUIREMENTS:

- A. Children will not use shared eating or drinking utensils.
- B. Children will not use common eating or drinking utensils.
- C. A caregiver will provide readily accessible drinking water in sanitary cups or glasses.
- D. Meals must meet age-appropriate USDA requirements.
- E. A caregiver must keep a daily menu.
- F. Caregivers will serve meals family style and allow children to assist in the preparation and serving of food and snacks.
- G. Caregivers will feed children a meal or snack every three hours.
- H. Caregivers and children will wash their hands regularly and before each meal time.
- I. Caregivers will keep food requiring refrigeration, including formula, at 41 degrees Fahrenheit or below.
- J. Refrigerators and freezers shall have working thermometers.

[8.9.5.23 NMAC - N, 11/01/2022]

8.9.5.24 RECORD KEEPING REQUIREMENTS: Caregivers must keep an information card for each child (including drop-in children) with:

- A. the child's full name;
 - B. the child's birth date;
 - C. any known food or drug allergies or unusual physical condition;
 - D. the name, telephone number, and location of a parent or other responsible adult to be contacted in any emergency;
 - E. the name and telephone number of the child's physician;
 - F. authorization from a parent or guardian for the caregiver to seek professional medical care in an emergency;
 - G. written permission from a parent or guardian for the caregiver to administer medication prescribed by a physician or requested by the parent;
 - H. an immunization record showing current, age-appropriate immunizations for each child or a written waiver for immunizations granted by the department of health. A grace period of a maximum of 30 days will be granted for children in foster care or homeless children and youth, or at-risk children and youth as determined by the department;
 - I. written permission from parent to transport children outside of the registered home; and
 - J. A record of the time the child arrived and left the home and dates of attendance initialed by a parent, guardian, or person authorized to pick up the child. The attendance log must be kept on file for 12 months.
- [8.9.5.24 NMAC - N, 11/01/2022]

8.9.5.25 CAREGIVER'S RESPONSIBILITIES:

- A. A caregiver will directly supervise and actively care for children at all times during hours of operation including outdoor playtime and naptime. Caregivers will interact with children and provide a safe and positive learning environment.
- B. Children will never be left unattended. A caregiver will be with the children at all times whether activities are inside or outside of the home. Caregivers will be onsite, available and responsive to children during all hours of operation.
- C. A caregiver will use guidance that is positive, consistent and age-appropriate. The caregiver will not use:
 - (1) physical punishment of any type, including shaking, biting, hitting, pinching or putting anything on or in a child's mouth;
 - (2) withdrawal of food, rest, bathroom access, or outdoor activities;
 - (3) abusive or profane language, including yelling;
 - (4) any form of public or private humiliation, including threats of physical punishment; or
 - (5) unsupervised separation; or
 - (6) children will not be lifted by the arms, hands, wrist, legs, feet, ankles, or clothing.
- D. Each home must develop policies and procedures for expulsion of children. Policies and procedures shall include how the home will maintain a positive environment and will focus on preventing the expulsion of children age birth to five. The home must develop policies that include clear, appropriate, consistent expectations, and consequences to address disruptive student behaviors; and ensure fairness, equity, and continuous improvement.
- E. Each home must develop an anti-discrimination policy that promotes the equal access of services for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 and older).
- F. Each home must offer children activities and experiences that are developmentally appropriate, allow children choices, and promote positive social, emotional, physical and intellectual growth and well-being. Caregivers will schedule activities in these areas. A caregiver will schedule routine activities such as meals, snacks, rest periods, and outdoor play to provide structure to the children's daily routine. Other activities should be flexible based on changes in the children's interests. A caregiver will also provide a variety of indoor and outdoor equipment to meet the children's developmental interests and needs. Equipment will encourage large and fine muscle activity, solitary and group play and active and quiet play. Television, videotapes and video games should be limited to two hours a day and should be age-appropriate.
- G. Caregivers of infants will allow them to crawl or toddle. Infants shall not be confined to one area for prolonged periods of time unless the infant is content and responsive. Children that are awake should be moved every 30 minutes to offer new stimulation.

H. Infants shall either be held or be fed sitting up for bottle-feeding. Infants unable to sit shall always be held for bottle-feeding. Infants and toddlers shall not be placed in a laying position while drinking bottles or sippy cups. The carrying of bottles and sippy cups by young children throughout the day or night shall not be permitted. Caregivers will allow infants to eat and sleep on their own schedules. Children will not be allowed to walk/run with pacifiers. Pacifiers will not be used outside of cribs in rooms with mobile infants or toddlers. Pacifiers will be labeled and not shared. Pacifiers will not be tied to the child. Dropped pacifiers shall be cleaned using warm water and soap.

I. Caregivers will ensure age appropriate naps or rest periods as follows:

(1) A home shall allow children who do not sleep to get up and participate in quiet activities that do not disturb the other children.

(2) Caregivers shall ensure that nothing covers the face or head of a child age 12 months or younger when the child is laid down to sleep and while the child is sleeping.

(3) Caregivers shall not place anything over the head or face of a child over 12 months of age when the child is laid down to sleep and while the child is sleeping.

(4) No child(ren) shall be allowed to sleep behind closed doors.

J. Swimming, wading and water:

(1) A caregiver must obtain written permission from a parent or guardian before a child enters a pool;

(2) If a home has a portable wading pool:

(a) a home will drain and fill the wading pool with fresh water daily and disinfect the pool regularly;

(b) a home will empty a wading pool when it is not in use and remove it from areas accessible to children; and

(c) a home will not use a portable wading pool placed on concrete or asphalt.

(3) If a home has a built in or above ground swimming pool, ditch, fish pond or other water hazard:

(a) the fixture will be constructed, maintained and used in accordance with applicable state and local regulations;

(b) the fixture will be constructed and protected so that, when not in use, it is inaccessible to children; and

(c) when in use, children will be constantly supervised and ensure adequate safety for the ages, abilities and type of water hazard in use.

[8.9.5.25 NMAC - N, 11/01/2022]

HISTORY OF 8.9.5 NMAC: [RESERVED]