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Notices of Rulemaking and Proposed Rules

AUDITOR, OFFICE OF THE STATE

NOTICE OF HEARING AND PROPOSED RULES

The New Mexico Office of the State Auditor proposes to amend the following rules:

Audit Act 12-6-5 Section NMSA 1978
2.2.2.7 through 2.2.2.16 NMAC *et seq*., ("Audit Rule").

The Office of the State Auditor is in the process of amending 2.2.2.7 through 2.2.2.16 NMAC *et seq*., ("Audit Rule"). The Audit Rule establishes policies, procedures, rules and requirements for contracting and conducting financial audits, special audits, attestation engagements, performance audits, and forensic audits of governmental agencies of the state of New Mexico, and is governed by the Sections 12-6-1 to 12-6-14, NMSA 1978 ("Audit Act"). The amendments to the Audit Rule are proposed pursuant to the Audit Act, Subsection A of Section 12-6-3 NMSA 1978.

Proposed amendments to the rule pertain to the following items: elimination of certain electronic schedules to OSA, added summary of audit results, added monetary consequences for failure to meet with governing authority, changed response time for agencies to respond to OSA, added requirement to evaluate other intergovernmental agreements reported as agency funds and made other minor changes.

Copies of the proposed amendments to the rule are available at the Office of the State Auditor, 2540 Camino Edward Ortiz, Suite A, Santa Fe, New Mexico 87507 and on the Office of the State Auditor website, http://www.osanm.org. The Agency will consider adopting the proposed new rule at a public hearing on February 4, 2019, which will take place at 1:30 p.m. at the Office of the State Auditor, 2540 Camino Edward Ortiz, Suite A, Santa Fe, New Mexico 87507. Public comment is allowed at the public hearing on February 4, 2019 or prior to. Please mail or deliver written comments on the proposed new rule to: C. Jack Emmons, Deputy State Auditor, at the Office of the State Auditor, 2540 Camino Edward Ortiz, Suite A, Santa Fe, New Mexico 87507, or by email at Jack.Emmons@osa.state.nm.us between December 27, 2018 and February 4, 2019. All written comments received by the agency will be posted on www.saonm.org no more than 3 business days following receipt to allow for public review.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the public hearing, please contact Frank Valdez at least one week prior to the public hearing or as soon as possible. Public documents can be provided in various accessible formats. Please contact Frank Valdez at 505-476-3841 or Frank.Valdez@osa.state.nm.us if a summary or other type of accessible format is needed.

2.2.2.7 DEFINITIONS:

A. "AAG GAS" means AICPA Audit and Accounting Guide - Government auditing standards and Single Audits (latest edition).

B. "AAG SLV" means AICPA Audit and Accounting Guide - State and Local Governments (latest edition).

C. "Agency" means any department, institution, board, bureau, court, commission, district or committee of the government of the state, including district courts, magistrate or metropolitan courts, district attorneys and charitable institutions for which appropriations are made by the legislature; any political subdivision of the state, created under either general or special act, that receives or expends public money from whatever source derived, including counties, county institutions, boards, bureaus or commissions; municipalities; drainage, conservancy, irrigation, or other special districts; and school districts; any entity or instrumentality of the state specifically provided for by law, including the New Mexico finance authority, the New Mexico mortgage finance authority, the New Mexico lottery authority and every office or officer of any entity listed in Paragraphs (1) through (3) of Subsection A of Section 12-6-2 NMSA 1978.

D. "Audit" means [~~both~~] annual financial and compliance audits, special audits, attestation engagements, performance audits, forensic audits and agreed upon procedures, unless otherwise specified.

E. "Auditor" means independent public accountant.

F. "AICPA" means American institute of certified public accountants.

G. "AU-C" means U.S. auditing standards-AICPA (Clarified)

H. "AUP" means agreed upon procedures.

I. "CPA" means certified public accountant.

J. "CPE" means continuing professional education.

K. "DFA" means the New Mexico department of finance and administration.

L. "ERB" means the New Mexico education retirement board.

M. "FCD" means financial control division of the department of finance and administration.

N. "FDIC" means federal deposit insurance corporation.

O. "FDS" means financial data schedule.

P. "GAAP" means accounting principles generally accepted in the United States of America.

Q. "GAGAS"

means the most recent revision of government auditing standards issued by the comptroller general of the United States (yellow book).

R. "GAO" means the government accountability office, a division of the OSA.

S. "GASB" means governmental accounting standards board.

T. "GAAS" means auditing standards generally accepted in the United States of America.

U. "GSD" means the New Mexico general services department.

V. "GRT" means gross receipts tax.

W. "HED" means the New Mexico higher education department.

X. "HUD" means United States (US) department of housing and urban development.

Y. "IPA" means independent public accountant.

Z. "IRC" means internal revenue code.

AA. "LGD" means the local government division of department of finance and administration (DFA).

BB. "Local public body" means a mutual domestic water consumers association, a land grant, an incorporated municipality or a special district.

CC. "NCUSIF" means national credit union shares insurance fund.

DD. "NMAC" means New Mexico administrative code.

EE. "NMSA" means New Mexico statutes annotated.

FF. "Office" or "OSA" means the New Mexico office of the state auditor.

GG. "OMB" means the United States office of management and budget.

HH. "PED" means the New Mexico public education department.

II. "PERA" means the New Mexico public employee retirement association.

JJ. "PHA" means public housing authority.

KK. "REAC" means real estate assessment center.

LL. "REC" means regional education cooperative.

MM. "Report" means document presented to management or the governing authority regardless of whether the document is on the contractor's letterhead or signed by the contractor.

[~~**MM**~~] **NN. "RSI"** means required supplementary information.

[~~**NN**~~] **OO. "SAS"** means the AICPA's statement on auditing standards.

[~~**OO**~~] **PP. "SHARE"** means statewide human resources accounting and management reporting system.

[~~**PP**~~] **QQ. "SI"** means supplementary information.

[~~**QQ**~~] **RR. "State auditor"** may refer to either the elected state auditor of the state of New Mexico, or personnel of his office designated by him.

[~~**RR**~~] **SS. "STO"** means state treasurer's office.

[~~**SS**~~] **TT. "Tier"** is established based on the amount of each local public body's annual revenue, pursuant to Section 12-6-3 NMSA 1978 and Section 2.2.2.16 NMAC.

[~~**TT**~~] **UU. "UFRS"** means uniform financial reporting standards.

[~~**UU**~~] **VV. "Uniform guidance"** Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

[~~**VV**~~] **WW. "U.S. GAO"** means the United States government accountability office. [2.2.2.7 NMAC - Rp, 2.2.2.7 NMAC; A, xx/xx/2018]

2.2.2.8 THE PROCUREMENT AND AUDIT PROCESS:

A. Firm profiles: For an IPA to be included on the state auditor's list of approved firms, an IPA shall submit a firm profile online annually on January [~~5th~~] 7th or on the next business day, in accordance with the guidelines set forth herein. The OSA shall review each firm profile for compliance with the requirements set forth in this rule. IPAs shall notify the state auditor of changes to the firm profile as information becomes available. The state auditor shall approve contracts only with IPAs who have *submitted a complete and correct* firm profile that has been approved by the OSA, and who have complied with all the requirements of this rule, including but not limited to:

(1) Subsection A of Section 2.2.2.14 NMAC, continuing professional education requirements for all staff that the firm will use on any New Mexico governmental engagements;

(2) listed professional service contracts the firm entered into;

(3) for IPAs who have audited agencies under this rule in the past, they shall have previously complied with: Section 2.2.2.9 NMAC, Report Due Dates, including notifying the state auditor regarding late audit reports and Section 2.2.2.13 NMAC, review of audit reports and audit documentation.

B. List of approved firms: The state auditor shall maintain a list of independent public accounting (IPA) firms that are approved and eligible to compete for audit contracts and agreed upon procedures engagements with agencies. The state auditor's list of approved firms shall be reviewed and updated on an annual basis. An IPA on the list of approved firms is approved to perform government audits until the list of approved firms is published for the following year; provided that the OSA may restrict firms at any time for failure to submit firm profile updates timely. An IPA that is included on the state auditor's list of approved firms for the first time shall be subject to an OSA quality control review of the IPA's working papers. This review shall be conducted as soon as the documentation completion date, as defined by AU-C Section 230,

has passed (60 days after the report release date). The state auditor shall approve contracts only with IPA firms that have submitted a complete and correct firm profile complying with all the requirements set forth in this rule and that has been approved by the OSA. The OSA shall inform all IPAs whose firm profiles were submitted by the due date whether they are on the list of approved firms and shall publish the list of approved firms concurrent with notification to government agencies to begin the procurement process to obtain an IPA to conduct the agency's annual financial audit.

C. Disqualified firms: An IPA firm shall not be included on the list of approved firms if any of the following applies to that IPA:

(1) the firm received a peer review rating of "failed";

(2) the firm does not have a current New Mexico firm permit to practice;

(3) the firm profile does not include at least one certified public accountant with a current CPA certificate who has met the GAGAS CPE requirements described at Subsection A of Section 2.2.2.14 NMAC, to perform GAGAS audits;

(4) the IPA has been restricted in the past and has not demonstrated improvement (this includes submitting excessively deficient audit reports or having excessively deficient workpapers);

(5) the IPA made false statements in their firm profile or any other official communication with the OSA that were misleading enough to merit disqualification; or

(6) any other reason determined by the state auditor to serve the interest of the state of New Mexico.

D. Restriction:

(1) IPAs may be placed on restriction based on the OSA's review of the firm profile and deficiency considerations as described below. Restriction may take the form of limiting either the type of engagements or the number of audit contracts, or both, that the IPA may hold. The OSA may impose a corrective action plan associated with the restriction. The restriction remains in place until the OSA notifies the IPA that the restriction has been modified or removed. The deficiency considerations include, but are not necessarily limited to:

(a) failure to submit reports in accordance with report due dates provided in Subsection A of Section 2.2.2.9 NMAC, or the terms of their individual agency contract(s);

(b) failure to submit late report notification letters in accordance with Subsection A of Section 2.2.2.9 NMAC;

(c) failure to comply with this rule;

(d) poor quality reports as determined by the OSA;

(e) poor quality working papers as determined by the OSA;

(f) a peer review rating of "pass with deficiencies" with the deficiencies being related to governmental audits;

(g) failure to contract through the OSA for New Mexico governmental audits or agreed upon procedures engagements;

(h) failure to inform agency in prior years that the IPA is restricted;

(i) failure to comply with the confidentiality requirements of this rule;

(j) failure to invite the state auditor or his designee to engagement entrance conferences, progress meetings or exit conferences after receipt of related notification from the OSA;

(k) failure to comply with OSA referrals or requests in a timely manner;

(l) suspension or debarment by the U.S. general services administration;

(m) false statements in the IPA's firm profile or any other official communication with the OSA;

(n) failure to cooperate timely with requests from successor IPAs, such as reviewing workpapers; or

(o) any other reason determined by the state auditor to serve the interest of the state of New Mexico.

(2) The OSA shall notify any IPA that it proposes to place under restriction. If the proposed restriction includes a limitation on the number of engagements that an IPA is eligible to hold, the IPA shall not submit proposals or bids to new agencies if the number of multi-year proposals the IPA possesses at the time of restriction is equal to or exceeds the limitation on the number of engagements for which the IPA is restricted.

(3) An IPA under restriction is responsible for informing the agency whether the restricted IPA is eligible to engage in a proposed contract.

(4) If an agency or local public body submits an unsigned contract to the OSA for an IPA that was ineligible to perform that contract due to its restriction, the OSA shall reject the unsigned contract.

E. Procedures for imposition of restrictions:

(1) The state auditor may place an IPA under restriction in accordance with Subsection D of Section 2.2.2.8 NMAC.

(a) The state auditor or his designee shall cause written notice of the restriction to be sent by email and certified mail, return receipt requested, to the IPA, which shall take effect as of the date of the letter of restriction. The letter shall contain the following information:

(i) the nature of the restriction;

(ii) the conditions of the restriction;

(iii) the reasons for the restriction;

(iv) the action to place the IPA on restriction is brought pursuant to Subsection A of Section 12-6-3 NMSA 1978 and these regulations;

(v) the IPA may request, in writing, reconsideration of the proposed contract restriction which shall be received by the OSA within 15 calendar days from the [~~day the IPA receives~~] date of the letter of restriction; and

(vi) the e-mail or street address where the IPA's written request for reconsideration shall be delivered, and the name of the person to whom the request shall be sent.

(b) The IPA's written request for reconsideration shall include sufficient facts to rebut on a point for point basis each deficiency noted in the OSA's letter of restriction. The IPA may request an opportunity to present in person its written request for reconsideration and provide supplemental argument as to why the OSA's determination should be modified or withdrawn. The IPA may be represented by an attorney licensed to practice law in the state of New Mexico.

(c) The IPA shall have forfeited its opportunity to request reconsideration of the restriction(s) if the OSA does not receive a written request for reconsideration within 15 calendar days of the date [~~of receipt~~] of the letter of restriction. The state auditor may grant, for good cause shown, an extension of the time an IPA has to submit a request for reconsideration.

(2) The OSA shall review an IPA's request for reconsideration and shall make a determination on reconsideration within 15 calendar days of the IPA response letter [~~receiving the request~~] unless the IPA has asked to present its request for reconsideration in person, in which case the OSA shall make a determination within 15 calendar days from the date of the personal meeting. The OSA may uphold, modify or withdraw its restriction pursuant to its review of the IPA's request for reconsideration, and shall notify the IPA of its final decision in writing which shall be sent to the IPA via email and certified mail, return receipt requested.

F. Procedures to obtain professional services from an IPA: Concurrent with publication of the list of approved firms, the OSA shall authorize agencies to select an IPA to perform their audit or agreed-upon procedures engagement. Agencies are prohibited from beginning the process of procuring IPA services until they receive the OSA authorization. Agencies that wish to begin the IPA procurement process prior to receiving OSA authorization may request an exception, however any such exceptions granted by OSA are subject to changes in the final audit rule applicable to the audit and changes in restrictions to, or disqualifications of, IPAs. The notification shall inform the agency that it shall consult its prospective IPA to determine whether the prospective IPA has been restricted by the OSA as to the type of engagement or number of contracts it is eligible to perform. Agencies that may be eligible for the tiered system shall complete the evaluation described in Subsection B of Section 2.2.2.16 NMAC. Agencies that receive and expend federal awards shall follow the uniform guidance procurement requirements from 2 CFR 200.317 to 200.326 and 200.509, and shall also incorporate applicable guidance from the following requirements. Agencies shall comply with the following procedures to obtain professional services from an IPA for an audit or agreed-upon procedures engagement.

(1) Upon receipt of written authorization from the OSA to proceed, and at no time before then unless OSA has granted an exception, the agency shall identify all elements or services to be solicited pursuant to this rule and conduct a procurement that includes each applicable element of the annual financial audit, special audit, attestation engagements, performance audit, forensic audits or agreed upon procedures engagement.

(2) Quotations or proposals for annual financial audits shall contain each of the following elements:

(a) financial statement audit;

(b) federal single audit (if applicable);

(c) financial statement preparation so long as the IPA has considered any threat to independence and mitigated it;

(d) other non-audit services (if applicable and allowed by current government auditing standards); and

(e) other (i.e., audits of component units such as housing authorities, charter schools, foundations and other types of component units).

(3) The agency is encouraged to request multiple year proposals for audit and AUP services (not to exceed three years), however the term of the contract shall be for one year only. The parties shall enter a new audit contract each year. The agency is responsible for procuring IPA services in accordance with all applicable laws and regulations which may include, but are not limited to, the State Procurement Code (Chapter 13, Article 1 NMSA 1978) or equivalent home rule procurement provisions; GSD Rule, Section 1.4.1 NMAC, Procurement Code Regulations, if applicable; DFA Rule, Section 2.40.2 NMAC, Governing the Approval of Contracts for the Purchase of Professional Services; Uniform Guidance; and Section 13-1-191.1 NMSA 1978 relating to campaign contribution disclosure forms. In the event that either of the parties to the contract elects not to contract for all of the years contemplated by a multiple year proposal, or the state auditor disapproves the contract, the agency shall use the procedures described above to procure services from a different IPA.

(4) If the agency is a component of a primary government, the agency's procurement for audit services shall include the AU-C 600 (group audits) requirements for the IPA to communicate and cooperate with the group engagement partner and team, and the primary government. This requirement applies to agencies and universities that are part of the statewide CAFR, other component units of the statewide CAFR and other component units of any primary government that use a different audit firm from the primary government's audit firm. Costs for the IPA to cooperate with the group engagement partner and team, and the primary government, caused by the requirements of AU-C 600 (group audit) may not be charged in addition to the cost of the engagement, as the OSA views this in the same manner as compliance with any other applicable standard.

(5) Agencies are encouraged to include representatives of the offices of separately elected officials such as county treasurers, and component units such as charter schools and housing authorities, in the IPA selection process. As part of their evaluation process, the OSA recommends that agencies consider the following when selecting an IPA:

(a) responsiveness to the request for proposal (the firm's integrity, record of past performance, financial and technical resources);

(b) relevant experience, availability of staff with professional qualifications and technical abilities;

(c) results of the firm's peer and external quality control reviews; and

(d) weighting the price criteria less than fifteen percent of the total criteria taken into consideration by the evaluation process or selection committee.

Upon the OSA's request, the agency shall make accessible to the OSA all of the IPA procurement and selection documentation.

(6) After selecting an IPA, each agency shall enter the appropriate requested information online on the OSA-connect website (www.osa-app.org). In order to do this, the agency shall register on OSA-Connect and obtain a user-specified password. The agency's user shall then use OSA-Connect to enter information necessary for the contract and for the OSA's evaluation of the IPA selection. After the agency enters the information, the OSA-Connect system generates a draft contract containing the information entered. The agency shall submit to the OSA for approval a copy of the unsigned draft contract by following the instructions on OSA-Connect. Note that the IPA recommendation form no longer exists as a separate document, because OSA-Connect gathers and delivers to the OSA the information historically submitted on the IPA recommendation form.

(7) The OSA shall notify the agency as to the OSA's approval or rejection of the selected IPA and contract. The OSA's review of audit contracts does not include evaluation of compliance with any state or local procurement laws or regulations; each agency is responsible for its own compliance with applicable procurement laws, regulations or policies. After the agency receives notification of approval of the selected IPA and contract from the OSA, the agency is responsible for getting the contract signed and sent to any oversight agencies, including DFA, for approval (if applicable). The OSA shall not physically sign the contract. After the agency obtains all the required signature and approvals of the contract, the agency shall submit an electronic portable document format (PDF) copy of the final signed contract to the OSA by electronic mail to: *reports@osa.state.nm.us*.

(8) The agency shall deliver the unsigned contract generated by OSA-Connect to the OSA by the due date shown below. In the event that the due date falls on a weekend or holiday, the due date shall be the next business day. If the unsigned contract is not submitted to the state auditor by these due dates, the IPA may, according to professional judgment, include a finding of non-compliance with Subsection F of Section 2.2.2.8 NMAC in the audit report or agreed-upon procedures report.

(a) Regional education cooperatives, cooperative educational services, independent housing authorities, hospitals and special hospital districts: April 15;

(b) school districts, counties, and higher education: May 1;

(c) incorporated counties (of which Los Alamos is the only one), local workforce investment boards and local public bodies that do not qualify for the tiered system: May 15;

(d) councils of governments, district courts, district attorneys, state agencies and the state of New Mexico CAFR: June 1;

(e) local public bodies that qualify for the tiered system pursuant to Subsections A and B of Section 2.2.2.16 NMAC [~~July 1;~~] with a June 30 fiscal year end: July 30;

(f) local public bodies that qualify for the tiered system pursuant to Subsections A and B of 2.2.2.16 NMAC with a fiscal year end other than June 30 shall use a due date 30 days after the end of the fiscal year;

[~~(f)~~] **(g)** agencies with a fiscal year end other than June 30 shall use a due date 30 days before the end of the fiscal year; and

[~~(g)~~] **(h)** component units that are being separately audited: on the primary government's due date.

[~~(h)~~] **(i)** Charter schools that are chartered by the PED and agencies that are subject to oversight by the HED have the additional requirement of submitting their audit contract to PED or HED for approval (Section 12-6-14 NMSA 1978).

[~~(i)~~] (j)
In the event the agency's unsigned contract is submitted to the OSA, but is not approved by the state auditor, the state auditor shall promptly communicate the decision, including the reason(s) for disapproval, to the agency, at which time the agency shall promptly submit a contract with a different IPA using OSA-Connect. This process shall continue until the state auditor approves an unsigned contract. During this process, whenever an unsigned contract is not approved by the state auditor, the agency may submit a written request to the state auditor for reconsideration of the disapproval. The agency shall submit its request no later than 15 calendar days after the date of the disapproval and shall include documentation in support of its IPA selection. If warranted, after review of the request, the state auditor may hold an informal meeting to discuss the request. The state auditor shall set the meeting in a timely manner with consideration given to the agency's circumstances.

(9) The agency shall retain all procurement documentation, including completed evaluation forms, for five years and in accordance with applicable public records laws.

(10) If the agency fails to submit an unsigned contract by the due date set forth in this rule, or, if no due date is applicable, within 60 days of notification from the state auditor to engage an IPA, the state auditor may conduct the audit or select the IPA for that agency. The reasonable costs of such an audit shall be borne by the agency audited unless otherwise exempted pursuant to Section 12-6-4 NMSA 1978.

(11) In selecting an IPA for an agency pursuant to Subsection F of Section 2.2.2.8 NMAC the state auditor shall at a minimum consider the following factors, but may consider other factors in the state auditor's discretion that serve the best interest of the state of New Mexico and the agency:

(a) the IPA shall be drawn from the list of approved IPAs maintained by the state auditor;

(b) an IPA subject to restriction pursuant to Subsection D of Section 2.2.2.8 NMAC, is ineligible to be selected under this paragraph;

(c) whether the IPA has conducted one or more audits of similar government agencies;

(d) the physical proximity of the IPA to the government agency to be audited;

(e) whether the resources and expertise of the IPA are consistent with the audit requirements of the government agency to be audited;

(f) the IPA's cost profile, including examination of the IPA's fee schedule and blended rates;

(g) the state auditor shall not select an IPA in which a conflict of interest exists with the agency or that may be otherwise impaired, or that is not in the best interest of the state of New Mexico.

(12) The state auditor shall consider, at a minimum, the following factors when considering which agencies shall be subject to the state auditor's selection of an IPA:

(a) whether agency is demonstrating progress in its own efforts to select an IPA;

(b) whether the agency has funds to pay for the audit;

(c) whether the agency is on the state auditor's "at risk" list;

(d) whether the agency is complying with the requirements imposed on it by virtue of being on the state auditor's "at risk" list;

(e) whether the agency has failed to timely submit its e-mailed draft unsigned contract copy in accordance with the audit rule on one or more occasions;

(f) whether the agency has failed to timely submit its annual financial audit report in accordance with the audit rule due dates on one or more occasions.

(13) The state auditor may appoint a committee of the state auditor's staff to make recommendations for the state auditor's final determination as to which IPAs shall be selected for each government agency subject to the discretion of the state auditor.

(14) Upon selection of an IPA to audit a government agency subject to the discretion of the state auditor, the state auditor shall notify the agency in writing regarding the selection of an IPA to conduct its audit. The notification letter shall include, at a minimum, the following statements:

(a) the agency was notified by the state auditor to select an IPA to perform its audit or agreed upon procedures engagement;

(b) 60 days or more have passed since such notification, or the applicable due date in this rule has passed, and the agency failed to deliver its draft contract in accordance with this subsection;

(c) pursuant to Subsection A of Section 12-6-14 NMSA 1978, the state auditor is selecting the IPA for the agency;

(d) delay in completion of the agency's audit is contrary to the best interest of the state and the agency, and threatens the functioning of government and the preservation or protection of property;

(e) in accordance with Section 12-6-4 NMSA 1978, the reasonable costs of such an audit shall be borne by the agency unless otherwise exempted;

(f) selection of the IPA is final, and the agency shall immediately take appropriate measures to procure the services of the selected IPA.

G. State auditor approval/disapproval of unsigned contract: The state auditor shall use discretion and may not approve:

(1) An unsigned audit contract, special audit contract, attestation engagement contract, performance audit contract, forensic audit contract or an unsigned agreed upon procedures professional services contract under Section 2.2.2.16 NMAC that does not serve the best interests of the public or the agency or local public body because of one or more of the following reasons:

(a) lack of experience of the IPA;

(b) failure to meet the auditor rotation requirements as follows:

(i) the IPA is prohibited from conducting the agency audit or agreed upon procedures engagement for a period of two years because the IPA already conducted those services for that agency for a period of six consecutive years;

(ii) if firm A purchases the stock or assets of firm B, or if firm B merges into firm A with firm A being the surviving firm, firm A shall not be affected for purposes of the auditor rotation requirement; the auditor rotation clock shall continue to run without interruption for firm B's audit contracts, despite the fact that such audit contracts may be issued by firm A after the purchase or merger. Because of the impact of firm purchases and mergers on IPA independence the OSA may evaluate historical mergers when applying this section;

(c) lack of competence or staff availability;

(d) circumstances that may cause untimely delivery of the audit report or agreed upon procedures report;

(e) unreasonably high or low cost to the agency or local public body;

(f) terms in the proposed contract that the state auditor considers to be unfavorable, unfair, unreasonable, or unnecessary;

(g) lack of compliance with the procurement code, the audit act, or this rule;

(h) the agency giving too much consideration to the price of the IPA's response to the request for bids or request for proposals in relation to other evaluation criteria;

(i) newness of the IPA to the state auditor's list of approved firm;

(j) noncompliance with the requirements of Section 12-6-3 NMSA 1978 the audit act by the agency for previous fiscal years; or

(k) any other reason determined by the state auditor to be in the best interest of the state of New Mexico.

(2) Audit contracts, special audit contract, attestation engagement contract, performance audit contract, forensic audit contract or agreed-upon procedures contracts of an IPA that has:

(a) breached a prior-year contract;

(b) failed to deliver an audit or agreed upon procedures report on time;

(c) failed to comply with state laws or regulations of the state auditor;

(d) performed non-audit services (including services related to fraud) for an agency or local public body it is performing an audit, special audit contract, attestation engagement contract, performance audit contract, forensic audit contract or an agreed upon procedures for, without prior approval of the state auditor;

(e) performed non-audit services under a separate contract for services that may be disallowed by GAGAS independence standards;

(f) failed to respond, in a timely and acceptable manner, to an OSA audit, special audit contract, attestation engagement contract, performance audit contract, forensic audit contract or agreed upon procedures report review or working paper review;

(g) impaired independence during an engagement;

(h) failed to cooperate in providing prior-year working papers to successor IPAs;

(i) not adhered to external quality control review standards as defined by GAGAS and Section 2.2.2.14 NMAC;

(j) has a history of excessive errors or omissions in audit or agreed upon procedures reports or working papers;

(k) released the audit report, special audit contract, attestation engagement contract, performance audit contract, forensic audit contract or agreed upon procedures report to the agency, local public body or the public before the audit release letter or the OSA letter releasing the agreed upon procedures report was received from the OSA;

(l) failed to submit a completed signed contingency subcontractor form, if required;

(m) failed to submit a completed firm profile as required by Subsection A of Section 2.2.2.8 NMAC or failed to include all staff in the firm profile who would be working on the firm's engagements;

(n) reached the limit of contracts to which the state auditor restricted the IPA;

(o) failed to respond to communications from the OSA or engagement clients within a reasonable amount of time; or

(p) otherwise, in the opinion of the state auditor, the IPA was unfit to be awarded a contract.

(3) An audit, special audit contract, attestation engagement contract, performance audit contract, forensic audit contract or agreed-upon procedures contract for an IPA received by the OSA which the state auditor decides to perform himself with or without the assistance

of an IPA, and pursuant to Section 12-6-3 NMSA 1978, even if the agency or local public body was previously designated for audit or agreed upon procedures to be performed by an IPA.

H. Audit contract requirements: The agency shall use the appropriate audit or agreed upon procedures engagement contract form provided by the OSA through the OSA-connect website at www.osa-app.org. The OSA may provide audit or agreed-upon procedures engagement contract forms to the agency via facsimile or U.S. mail if specifically requested by the agency. Only contract forms provided by the state auditor shall be accepted and shall:

(1) be completed and submitted in its unsigned form by the due date indicated at Subsection F of Section 2.2.2.8 NMAC;

(2) for all agencies whose contracts are approved through the DFA's contracts review bureau, have the IPA's combined reporting system (CRS) number verified by the taxation and revenue department (TRD) after approval by the state auditor; and

(3) in the compensation section of the contract, include the dollar amount that applies to each element of the contracted procedures that shall be performed;

(4) if the agency requires the IPA to provide additional services outside the scope of work described in the [~~standard~~] audit or agreed upon procedures contract form provided through the OSA-connect website, the additional services shall be described in detail in the "other provisions section" of the contract; if the additional services required by the "other provisions" section of the contract cause a significant change in the scope of the audit, then the contract amendment provisions of Subsection N of Section 2.2.2.8 NMAC shall apply.

I. Professional liability insurance: The IPA shall maintain professional liability insurance covering any error or omission committed during the term of the contract. The IPA shall provide proof of such insurance to the state auditor with the firm profile. The amount maintained should be commensurate with the risk assumed. The IPA shall provide to the state auditor, prior to expiration, updated insurance information.

J. Breach of contract: A breach of any terms of the contract shall be grounds for immediate termination of the contract. The injured party may seek damages for such breach from the offending party. Any IPA who knowingly makes false statements, assurances, or disclosures may be disqualified from conducting audits or agreed upon procedures engagements of New Mexico governmental agencies.

K. Subcontractor requirements:

(1) Audit firms that have only one individual qualified to supervise a GAGAS audit and issue the related audit report pursuant to Section 61-28B-17 NMSA 1978, and GAGAS Paragraph 3.76 shall submit with the firm profile, a completed contingency subcontractor form that is dated to be effective until the date the next firm profile shall be submitted. The form shall indicate which IPA on the state auditor's current list of approved IPA's shall complete the IPA's audits in the event the one individual with the qualifications described above becomes incapacitated and unable to complete the audit. See the related contingency subcontractor form available at www.osanm.org. The OSA shall not approve audit contracts for such a firm without the required contingency subcontractor form.

(2) In the event an IPA chooses to use a subcontractor to assist the IPA in working on a specific audit, then the IPA shall obtain the prior written approval of the state auditor to subcontract a portion of the audit work. The IPA may subcontract only with IPAs who have submitted a completed and approved firm profile to the state auditor as required in Subsection A of Section 2.2.2.8 NMAC. Subcontractors are subject to an independence analysis, which may include the IPA rotation requirements of Subsection G of Section 2.2.2.8 NMAC. "Technical review contracts" are considered subcontracting and are subject to the requirements of this section. The audit contract shall specify subcontractor responsibility, who shall sign the report(s), and how the subcontractor shall be paid. For additional information see the subcontract work section of the OSA website.

L. IPA independence: IPAs shall maintain independence with respect to their client agencies in accordance with the requirements of *government auditing standards*, December 2011 revision, issued by the US-GAO (GAGAS 3.02-3.59).

(1) An IPA who performs the agency's annual financial audit shall not enter into any special audit or non-audit service contract with the respective agency without the prior written approval of the state auditor. The exception to this requirement is an engagement that costs one thousand dollars ($1,000) and less (exclusive of gross receipts tax) for client assistance with responses to IRS and other regulators. Requests for approval of professional service contracts shall be submitted to the OSA with the signed agreement. The OSA shall review the requests and respond to the agency and the IPA within 30 calendar days of receipt. The following documentation shall be submitted to the OSA for review and approval.

(a) The professional services contract shall be submitted to the state auditor for review and approval after it has been signed by the agency and the IPA. The contract shall include the contract fee, start and completion date, and the specific scope of services to be performed by the IPA.

(b) For non-audit services, include the auditor's documentation of:

(i) whether management has the ability to effectively oversee the non-audit service pursuant to GAGAS 3.34;

(ii) the documented assurance from the entity that management shall assume all management responsibilities, oversee the services by designating an individual, preferably within senior management, who possesses suitable skill, knowledge, or experience; evaluate the adequacy and results of the services performed; and accept responsibility for the results of the services pursuant to GAGAS 3.37;

(iii) the auditor's establishment and documentation (engagement letter) of the auditor's understanding with the entity's management or those charged with governance of the objectives of the non-audit services, the services to be performed, audited entity's acceptance of its responsibilities, the auditor's responsibilities, and any limitations of the non-audit service, pursuant to GAGAS 3.39; and

(iv) the auditor's consideration of significant threats (if applicable) to independence that have been eliminated or reduced to an acceptable level through the application of additional safeguards, and a description of those safeguards.

(c) Upon completion of the non-audit services, the IPA shall provide the state auditor with a copy of any report submitted to the agency. Such reports are not subject to OSA review and release procedures unless Section 2.2.2.15 NMAC requires such review and release procedures. Additionally, the OSA has the authority to notify the agency, IPA or contractor that the report is subject to review and release procedures.

(2) An IPA may not enter into any type of [~~fraud-related~~] financial affairs engagement (this includes waste and abuse related engagements) with a New Mexico governmental agency without first obtaining the prior written approval of the state auditor. This requirement applies both when the IPA is the annual auditor approved by OSA and when the IPA is not the agency's annual auditor. See Section 2.2.2.15 NMAC for the requirements to submit such reports to the OSA for review and release. [~~If the proposed engagement is not related to fraud, waste or abuse and is therefore not subject to Section 2.2.2.15 NMAC, then prior written approval by the state auditor is not required when the IPA is not the agency's annual auditor. However, a copy of the contract that is unrelated to fraud and a copy of any report resulting from such a contract shall be submitted to the OSA when requested by the OSA.~~]

(3) The state auditor shall not approve any contract for an agency's annual auditor to perform non-audit services that are management responsibilities as provided in GAGAS 3.36. Nor shall the state auditor approve any contract for an agency's annual auditor to perform services that always impair the auditor's independence pursuant to GAGAS 3.50, 3.53, 3.54, 3.56, 3.57, and 3.58.

M. Progress Payments: The state auditor shall approve progress and final payments for the annual audit contract as follows:

(1) Subsection A of Section 12-6-14 NMSA 1978 (contract audits) provides that "payment of public funds may not be made to an independent auditor unless a contract is entered into and approved as provided in this section."

(2) Subsection B of Section 12-6-14 NMSA 1978 (contract audits) provides that the state auditor may authorize progress payments on the basis of evidence of the percentage of audit work completed as of the date of the request for partial payment.

(3) Progress payments up to seventy percent do not require state auditor approval provided that the agency certifies the receipt of services before any payments are made to the IPA. The agency shall monitor audit progress and make progress payments only up to the percentage that the audit is completed. If requested by the state auditor, the agency or the IPA shall provide a copy of the approved invoices and progress billing(s). Progress payments of seventy percent to ninety-five percent require state auditor approval after being approved by the agency. When component unit audits are part of a primary government's audit contract, requests for progress payments on the component unit audit(s) shall be included within the primary government's request for progress payment approval. In this situation, the OSA shall not process separate progress payment approvals submitted by the component unit.

(4) The state auditor may limit progress payments allowed to be made without state auditor approval for an IPA whose previous audits were submitted after the due date specified in Subsection A of Section 2.2.2.9 NMAC to only the first fifty percent of the total fee.

(5) Section 12-6-14 NMSA 1978 (contract audits) provides that final payment under an audit contract may be made by the agency to the IPA only after the state auditor has determined, in writing, that the audit has been made in a competent manner in accordance with contract provisions and this rule. The final progress payment of the contract amount will not be authorized by the OSA until the IPA has submitted the sign in sheet from the governing authority meeting or written notification from the chairman or treasurer stating that the IPA presented the audit report in an open meeting. The state auditor's determination with respect to final payment shall be stated in the letter [~~accompanying the release of the report to the agency~~]. In no circumstance may the total billed by the IPA under the audit contract exceed the total contract amount, as amended if applicable. Further, as the compensation section of the contract shall include the dollar amount that applies to each element of the contracted procedures that shall be performed, if certain procedures, such as a single audit, are determined to be unnecessary and are not performed, the IPA may not bill the agency for these services. Final payment to the IPA by the agency prior to review and release of the audit report by the

state auditor is considered a violation of Section 12-6-14 NMSA 1978 and this rule and shall be reported as an audit finding in the audit report of the agency. If this statute is violated, the IPA may be removed from the state auditor's list of approved auditors.

N. Contract amendment requirements:

(1) Contract amendments to contracts for audit services, agreed upon procedures services, or non-audit services may be submitted to the OSA regarding executed contracts. Contracts may not be amended after they expire. The contract should be amended prior to the additional work being performed or as soon as practicable thereafter. Any amendments to contracts shall be made on the contract amendment form available at www.saonm.org. The OSA's review of audit contracts and amendments does not include evaluation of compliance with the state procurement code or other applicable requirements. Although the parties may amend the delivery dates in a contract, audit report regulatory due dates cannot be modified by amendment. The OSA's review of audit contract amendments does not include evaluation of compliance with any state or local procurement laws or regulations; each agency is responsible for its own compliance with applicable procurement laws, regulations or policies.

(2) Contract amendments submitted for state auditor approval shall include a detailed explanation of:

(a) the work to be performed and the estimated hours and fees required for completion of each separate professional service contemplated by the amendment; and

(b) how the work to be performed relates to the scope of work outlined in the original contract.

(3) Since annual financial audit contracts are fixed-price contracts, contract amendments for fee increases shall only be approved for extraordinary circumstances, reasons determined by the state auditor to be in the best interest of the state of New Mexico, or a significant change in the scope of an audit. For example, if an audit contract did not include a federal single audit, a contract amendment shall be approved if a single audit is required. Other examples of significant changes in the scope of an audit include: the addition of a new program, function or individual fund that is material to the government-wide financial statements; the addition of a component unit; and the addition of special procedures required by this rule, a regulatory body or a local, state or federal grantor. Contract amendments shall not be approved to perform additional procedures to achieve an unmodified opinion. The state auditor shall also consider the auditor independence requirements of Subsection L of Section 2.2.2.8 NMAC when reviewing contract amendments for approval. Requests for contract amendments shall be submitted to the OSA with the signed contract amendment. The OSA shall review the requests and respond to the agency and the IPA within 30 calendar days of receipt.

(4) If a proposed contract amendment is rejected for lack of adequate information, the IPA and agency may submit a corrected version for reconsideration.

O. Termination of audit contract requirements:

(1) The state auditor may terminate an audit contract to be performed by an IPA after determining that the audit has been unduly delayed, or for any other reason, and perform the audit entirely or partially with IPAs contracted by the OSA (consistent with the October 6, 1993, stipulated order Vigil v. King, No. SF 92-1487(C). The notice of termination of the contract shall be in writing.

(2) If the agency or IPA terminate the audit or agreed upon procedures engagement contract pursuant to the termination paragraph of the contract, the OSA shall be notified of the termination immediately. The party sending out the termination notification letter shall simultaneously send a copy of the termination notification letter to the OSA with an appropriate cover letter, addressed to the state auditor.

(a) The agency is responsible for procuring the services of a new IPA in accordance with all applicable laws and regulations, and this rule.

(b) The unsigned contract for the newly procured IPA shall be submitted to the OSA within 30 calendar days of the date of the termination notification letter.

(c) As indicated in Subsection A of Section 2.2.2.9 NMAC, the state auditor shall not grant extensions of time to the established regulatory due dates.

(d) If the IPA does not expect to deliver the engagement report by the regulatory due date, the IPA shall submit a written notification letter to the state auditor and oversight agency as required by Subsection A of Section 2.2.2.9 NMAC or Subsection G of Section 2.2.2.16 NMAC.

[2.2.2.8 NMAC - Rp, 2.2.2.8 NMAC; A, xx/xx/2018]

2.2.2.9 REPORT DUE DATES:

A. Report due dates: The IPA shall deliver the organized and bound annual financial audit report to the state auditor by 5:00 p.m. on the date specified in the audit contract or send it postmarked by the due date. IPAs and agencies are encouraged to perform interim work as necessary and appropriate to meet the following due dates.

(1) The audit report due dates are as follows:

(a) regional education cooperatives, cooperative educational services and independent housing authorities: September 30;

(b) hospitals and special hospital districts: October 15;

(c)

higher education, state agencies not specifically named elsewhere in this Subsection , district courts, district attorneys, the New Mexico finance authority, the New Mexico lottery authority, and other agencies with June 30 fiscal year-ends that are reported as component units in the state of New Mexico comprehensive annual financial report: November 1;

(d) school districts and the state of New Mexico component appropriation funds (state general fund): November 15;

(e) the PED, the state investment council, and the three post-employment benefit agencies (PERA, ERB and the retiree health care authority): the Wednesday before Thanksgiving day;

(f) counties, incorporated counties (of which Los Alamos is the only one), workforce investment boards, councils of governments, and the New Mexico mortgage finance authority: December 1;

(g) local public bodies including municipalities: December 15;

(h) the state of New Mexico comprehensive annual financial report (CAFR): December 31;

(i) the ERB, PERA and retiree health care authority schedules of employer allocations reports and related employer guides required by SubSections Z and DD of Section 2.2.2.10 NMAC: June 15;

(j) agencies with a fiscal year-end other than June 30 shall submit the audit report no later than *five months after the fiscal year-end*;

(k) regarding component unit reports (e.g., housing authorities, charter schools, hospitals, foundations, etc.), all separate audit reports prepared by an auditor that is different from the primary government's auditor, are *due fifteen days before the primary government's audit report is due*, unless some other applicable due date requires the report to be submitted earlier;

(l) any agency that requires its report to be released by December 31st for any reason (bonding, GFOA, etc.): the earlier of its agency due date or December 1; and

(m) late audit or agreed upon procedures reports of any agency (not performed in the current reporting period): not more than six months after the date the contract was executed.

(2) If an audit report is not delivered on time to the state auditor, the auditor shall include this instance of non-compliance with Subsection A of Section 2.2.2.9 NMAC as an audit finding in the audit report. This requirement is not negotiable. If appropriate, the finding may also be reported as a significant deficiency or material weakness in the operation the agency's internal controls over financial reporting pursuant to AU-C 265.

(3) An organized bound hard copy of the report shall be submitted for review by the OSA with the following: copy of the signed management representation letter and a copy of the completed state auditor report review guide (available at www.saonm.org). A report shall not be considered submitted to the OSA for the purpose of meeting the due date until a copy of the signed management representation letter and the completed report review guide are also submitted to the OSA. All separate reports prepared for component units shall also be submitted to the OSA for review, along with a copy of the management representation letter, and a completed report review guide for each separate audit report. A separate component unit report shall not be considered submitted to the OSA for the purpose of meeting the due date until a copy of the signed management representation letter and the completed report review guide are also submitted to the OSA. If a due date falls on a weekend or holiday, or if the OSA is closed due to inclement weather, the audit report is due the following business day by 5:00 p.m. If the report is mailed to the state auditor, it shall be postmarked no later than the due date to be considered filed by the due date. If the due date falls on a weekend or holiday the audit report shall be postmarked by the following business day.

(4) AU-C 700.41 requires the auditor's report to be dated after audit evidence supporting the opinion has been obtained and reviewed, the financial statements have been prepared and the management representation letter has been signed. AU-C 580.20 requires the management representation letter to be dated the same date as the independent auditor's report.

(5) As soon as the auditor becomes aware that circumstances exist that will make an agency's audit report be submitted after the applicable due date provided in Subsection A of Section 2.2.2.9 NMAC, the auditor shall notify the state auditor in writing. This notification shall consist of a letter, not an email. However, a scanned version of the official letter sent via email is acceptable. A copy of the letter shall be sent to the legislative finance committee and any applicable oversight agency: PED, FCD, LGD, or HED. There shall be a separate notification for each late audit report. The notification shall include a specific explanation regarding why the report will be late, when the IPA expects to submit the report and a concurring signature by a duly authorized representative of the agency. If the IPA is going to miss the expected report submission date, then the IPA shall send a revised notification letter. In the event the contract was signed after the report due date, the notification letter shall still be submitted to the OSA explaining the reason the audit report will be submitted after the report due date. The late report notification letter is not required if the report was submitted to the OSA for review by the due date, and then rejected by the OSA, making the report late when resubmitted. Reports resubmitted to the OSA with changes of the IPA's opinion after the report due date shall

be considered late and a late audit finding shall be included in the audit report.

B. Delivery and release of the audit report:

(1) All audit reports (and all separate reports of component units, if applicable) shall be organized, bound and paginated. The OSA does not accept facsimile or e-mailed versions of the audit reports for initial review. The IPA shall deliver to the state auditor a hard copy of the audit report for review by 5:00 p.m. on the day the report is due. Reports postmarked by the due date shall be considered received by the due date. Unfinished or excessively deficient reports shall not satisfy this requirement; such reports shall be rejected and returned to the IPA and the OSA may take action in accordance with Subsection C of Section 2.2.2.13 NMAC. When the OSA rejects and returns a substandard audit report to the IPA, the OSA shall consider the audit report late if the corrected report is not resubmitted by the due date. The IPA shall also report a finding for the late audit report in the audit report. The firm shall submit an electronic version of the corrected rejected report for OSA review. The name of the electronic file shall be "corrected rejected report" followed by the agency name and fiscal year.

(2) Before initial submission, the IPA shall review the report using the appropriate report review guide available on the OSA's website. The report review guide shall reference applicable page numbers in the audit report. The audit manager or person responsible for the IPA's quality control system shall either complete the report review guide or sign off as having reviewed it. All questions in the guide shall be answered, and the reviewer shall sign and date the last page of the guide. If the review guide is not accurately completed or incomplete, the report shall not be accepted.

(3) IPAs are encouraged to deliver completed audit reports before the due date. The OSA shall review all audit reports submitted by the report due date before reviewing reports that are submitted after the report due date. Once the review of the report is completed pursuant to Subsection A of Section 2.2.2.13 NMAC, and any OSA comments have been addressed by the IPA, the OSA shall indicate to the IPA that the report is ready to print. After the OSA issues the "*ok to print*" communication for the audit report, the OSA shall authorize the IPA to submit the corrected report with the following items to the OSA within five business days; an electronic searchable version of the audit report labeled "final", in PDF format, an electronic excel version of the summary of findings report, [~~an electronic excel version of the vendor schedule, an electronic excel version of the completed fund balance form, an electronic excel version of the GASBS 77 disclosure template,~~] if applicable, an electronic excel version of the indigent care schedules for hospitals, if applicable, and an electronic excel version of the schedule of asset management costs for investing agencies, if applicable (all available at www.saonm.org). The OSA shall not release the report until the searchable electronic PDF version of the report and all required electronic excel schedules are received by the OSA. The electronic file containing the final audit report shall:

(a) be created and saved as a PDF document in a single PDF file format (simply naming the file using a PDF extension .pdf does not by itself create a PDF file);

(b) be version 5.0 or newer;

(c) not exceed 10 megabyte (MB) per file submitted (contact the OSA to request an exception if necessary);

(d) have all security settings like self-sign security, user passwords, or permissions removed or deactivated so the OSA is not prevented from opening, viewing, or printing the file;

(e) not contain any embedded scripts or executables, including sound or movie (multimedia) objects;

(f) have a file name that ends with .pdf;

(g) be free of worms, viruses or other malicious content (a file with such content shall be deleted by the OSA);

(h) be "flattened" into a single layer file prior to submission;

(i) not contain any active hypertext links, or any internal/external links (although it is permissible for the file to textually reference a URL as a disabled link);

(j) be saved at 300 dots per inch (DPI) (lower DPI makes the file hard to read and higher DPI makes the file too large);

(k) have a name that starts with "final version," followed by the name of the agency and the fiscal year; and

(l) be searchable.

(4) The IPA shall deliver to the agency the number of copies of the audit report indicated in the audit contract only after the state auditor has officially released the audit report with a "release letter". Release of the audit report to the agency or the public prior to it being officially released by the state auditor shall result in an audit finding. The agency or the IPA shall ensure that every member of the agency's governing authority receives a copy of the audit report.

(5) After the release of a report, the OSA shall provide DFA and the legislative finance committee with notification that the report is available on the OSA website.

(6) If an audit report is reissued pursuant to AU-C 560, subsequent events and subsequently discovered facts, or AAG GAS 13.29-.30 for uniform guidance compliance reports, the reissued audit report shall be submitted to the OSA with a cover letter addressed to the state auditor.

The cover letter shall explain that:

(a) the attached report is a "reissued" report;

(b) the circumstances that caused the reissuance; and

(c) a summary of the changes that appear in the reissued report. The OSA shall subject the reissued report to the report review process and upon completion of that report review process, shall issue a "release letter." The contents of the reissued audit report are subject to the confidentiality requirements described in Subsection M of Section 2.2.2.10 NMAC. Agency management and the IPA are responsible for ensuring that the latest version of the report is provided to each recipient of the prior version of the report. The OSA shall notify the appropriate oversight agencies regarding the updated report on the OSA website.

(7) If changes to a released audit report are submitted to the OSA, and the changes do not rise to the level of requiring a reissued report, the IPA shall submit a cover letter addressed to the agency, with a copy to the state auditor, which includes the following minimum elements:

(a) a statement that the changes did not rise to the level of requiring a reissued report;

(b) a description of the circumstances that caused the resubmitted updated report; and

(c) a summary of the changes that appear in the resubmitted updated report compared to the prior released report. Agency management and the IPA are responsible for ensuring that the latest version of the resubmitted report is provided to each recipient of the prior version of the report. The OSA shall notify the appropriate oversight agencies regarding the updated report on the OSA website.

C. Required status reports: For an agency that has failed to submit audit or agreed-upon procedures reports as required by this rule, and has therefore been designated as "at risk" due to late reports, the state auditor requires the agency to submit written status reports to the OSA on each March 15, June 15, September 15, and December 15 that the agency is not in compliance with this rule. Status reports are not required for agencies that are included on the "at risk" list solely due to an adverse or disclaimed independent auditor's opinion. The status report shall be signed by a member of the agency's governing authority, a designee of the governing authority or a member of the agency's top management. If the agency has a contract with an IPA to conduct the audit or perform the agreed upon procedures engagement, the agency must send the IPA a copy of the quarterly status report. IPAs engaged to audit or perform agreed upon procedures engagements for agencies with late reports are responsible for assisting these agencies in complying with the reporting requirements of this section. Failure to do so shall be noted by the OSA and taken in to account during the IPA Firm Profile evaluation process. At a minimum, the quarterly written status report shall include:

(1) a detailed explanation of the agency's efforts to complete and submit its audit or agreed-upon procedures;

(2) the current status of any ongoing audit or agreed-upon procedures work;

(3) any obstacles encountered by the agency in completing its audit or agreed-upon procedures; and

(4) a projected completion date for the financial audit or agreed-upon procedures report.

[2.2.2.9 NMAC - Rp, 2 2.2.9 NMAC; A, xx/xx/2018]

2.2.2.10 GENERAL CRITERIA:

A. Scope of annual financial audit:

(1) The financial audit shall cover the entire financial reporting entity including the primary government and the component units of the primary government, if any.

(a) The primary government shall determine whether an agency that is a separate legal entity from the primary government is a component unit of the primary government as defined by GASBS 14, 39, 61, and 80 (as amended). The flowchart at GASBS 61.68 may be useful in making this determination. The primary government shall notify all other agencies determined to be component units by September 15 of the subsequent fiscal year. Failure to meet this due date results in a compliance finding. All agencies that meet the criteria to be a component unit of the primary government shall be included with the audited financial statements of the primary government by discrete presentation unless otherwise approved by the state auditor. An exemption shall be requested by the primary government, in writing, from the state auditor in order to present a component unit as other than a discrete component unit. The request for an exemption shall include a detailed explanation, conclusion and supporting documentation justifying the request for blended component unit presentation. Documentation of the state auditor's approval of the blended component unit presentation shall accompany the bound hard copy of the report submitted to OSA for review. Component units are reported using the government financial reporting format if they have one or more of the characteristics described at AAG SLV 1.01. If a component unit does not qualify to be reported using the governmental format, that fact shall be explained in the notes to the financial statements (summary of significant accounting policies: financial reporting entity). <u>If there was a change from the prior year's method of presenting a component unit or change in component units reported, the notes to the financial statements shall disclose the reason(s) for the change.</u>

(b)
If a primary government has no component units, that fact shall be disclosed in the notes to the financial statements (summary of significant accounting policies: financial reporting entity). If the primary government has component units that are not included in the financial statements due to materiality, that fact shall also be disclosed in the notes. However, if the primary government is a state agency, department, board, public institution of higher education, public post-secondary educational institution, county, municipality or public school district, Section 6-5A-1 NMSA 1978 requires all 501(c)3 component unit organizations with a gross annual income in excess of two hundred fifty thousand dollars (250,000) to be audited annually. This statutory requirement does not set a universal materiality threshold for purposes of the performing audits subject to this rule.

(c)
The state auditor requires component unit(s) to be audited by the same audit firm that audits the primary government (except for public housing authority component units that are statutorily exempt from this requirement, and the statewide CAFR). Requests for exemption from this requirement shall be submitted in writing by the primary government to the state auditor. If the request to use a different auditor for the component unit is approved in writing by the state auditor, the following requirements shall be met:

(i)
the IPAs of the primary government and all component units shall consider and comply with the requirements of AU-C 600;

(ii)
the group engagement partner shall agree that the group engagement team will be able to obtain sufficient appropriate audit evidence through the use of the group engagement team's work or use of the work of the component auditors (AU-C 600.15);

(iii)
the component unit auditor selected shall appear on the OSA list of approved IPAs;

(iv)
all bid and auditor selection processes shall comply with the requirements of this rule;

(v)
the OSA standard contract form shall be used by both the primary government and the component unit;

(vi)
the primary government, the primary engagement partner, management of the component unit, and the component unit auditor shall all coordinate their efforts to ensure that the audit reports of the component unit and the primary government are submitted by the applicable due dates;

(vii)
all component unit findings shall be disclosed in the primary government's audit report (except the statewide CAFR which shall include only component unit findings that are significant to the state as a whole); and

(viii)
any separately issued component unit financial statements and associated auditors' reports shall be submitted to the state auditor by the due date in Subsection A of Section 2.2.2.9 NMAC for the review process described in Subsection A of Section 2.2.2.13 NMAC.

(d)
With the exception of the statewide CAFR, the following SI pertaining to component units for which separately issued financial statements are not available shall be audited and opined on as illustrated in AAG SLV 16.103 example A-15: financial statements for each of the component unit's major funds, combining and individual fund financial statements for all of the component unit's non-major funds, and budgetary comparison statements for the component unit's general fund and major special revenue funds that have legally adopted annual budgets (AAG SLV 3.22).

(2) Audits of agencies shall be comprised of a financial and compliance audit of the financial statements and schedules as follows:

(a)
The level of planning materiality described at AAG SLV 4.72-4.73 and exhibit 4.1 shall be used. Planning materiality for component units is at the individual component unit level.

(b)
The scope of the audit includes the following statements and disclosures which the auditor shall audit and give an opinion on. The basic financial statements (as defined by GASB and displayed in AAG SLV exhibit 4.1) consisting of:

(i)
the governmental activities, the business-type activities, and the aggregate discretely presented component units;

(ii)
each major fund and the aggregate remaining fund information;

(iii)
budgetary comparison statements for the general fund and major special revenue funds that have legally adopted annual budgets (when budget information is available on the same fund structure basis as the GAAP fund structure, the state auditor requires that the budgetary comparison statements be included as part of the basic financial statements consistent with GASBS 34 fn. 53, as amended, and AAG SLV 11.13); and

(iv)
the related notes to the financial statements.

(c)
Budgetary comparison statements for the general fund and major special revenue funds presented on a fund, organization, or program structure basis because the budgetary information is not available on the GAAP fund structure basis for those funds shall be presented as RSI pursuant to GASBS 41.

(d)
The auditor shall apply procedures and report in the auditor's report on the following RSI (if applicable) pursuant to AU-C 730:

(i)
management's discussion and analysis (GASBS 34.8-.11);

(ii)
RSI data required by GASBS 67 and 68 for defined benefit pension plans;

(iii) RSI schedules required by GASBS 43 and 74 for postemployment benefit plans other than pension plans;

(iv) RSI schedules required by GASBS 45 and 75 regarding employer accounting and financial reporting for postemployment benefits other than pensions; and

(v) infrastructure modified approach schedules derived from asset management systems (GASBS 34.132-133).

(e) The audit engagement and audit contract compensation include an AU-C 725 opinion on the SI schedules presented in the audit report. The auditor shall subject the information on the SI schedules to the procedures required by AU-C 725. The auditor shall report on the remaining SI in an other-matter paragraph following the opinion paragraph in the auditor's report on the financial statements pursuant to AU-C 725. With the exception of the statewide CAFR, the following SI schedules are required to be included in the AU-C 725 opinion if the schedules are applicable to the agency:

(i) primary government combining and individual fund financial statements for all non-major funds (GASBS 34.383);

(ii) the schedule of expenditures of federal awards required by uniform guidance;

(iii) the schedule of pledged collateral required by Subsection P of Section 2.2.2.10 NMAC;

(iv) the schedule of changes in assets and liabilities for agency funds required by Subsection X of Section 2.2.2.10 NMAC;

(v) the financial data schedule (FDS) of housing authorities pursuant to Subsection B of 2.2.2.12 NMAC;

(vi) the school district schedule of cash reconciliation required by Subsection C of 2.2.2.12 NMAC. In addition, the school district schedule of cash reconciliation SI shall be subjected to audit procedures that ensure the cash per the schedule reconciles to the PED reports as required by Subsection C of 2.2.2.12 NMAC;

(vii) the indigent care schedules for hospitals pursuant to Subsection F of 2.2.2.12 NMAC; and

(viii) any other SI schedule required by this rule.

[~~**(f)** The agency shall prepare a schedule of vendors using the form and instructions available on www.saonm.org, for *procurements* exceeding sixty thousand dollars ($60,000) (excluding gross receipts tax) that occurred during the audited fiscal year, that includes the following information: request for bid or request for proposal number; type of procurement, for example, request for proposal (RFP), sole source, etc.; the names and physical addresses of all vendors that responded to requests for bids or requests for proposals during the fiscal year; whether each vendor received the award; dollar amount of the awarded contract; dollar amount of any contract amendment during the fiscal year that caused a previously awarded contract to exceed sixty thousand dollars ($60,000) (excluding gross receipts tax); whether each responding vendor was an in-state vendor or an out-of-state vendor (based on the statutory definition); if the vendor was in-state and chose the veterans' preference instead of the in-state preference (this is n/a for federal funds); and a short description of the scope of work. The schedule shall include all contracts totaling over sixty thousand dollars ($60,000) (excluding gross receipts tax) regardless of whether related expenditures exceeded sixty thousand dollars ($60,000) during the fiscal year and regardless of procurement method. Exclude information on a multi-year procurement that occurred in a prior year unless there was a contract amendment during the current fiscal year that caused the previously existing contract to exceed sixty thousand dollars ($60,000) for the first time. Exclude procurements that agencies performed based on statewide pricing agreements obtained by general services department (GSD) or cooperative educational services from the schedule. However, agencies like GSD and cooperative educational services that perform procurement services for other agencies that result in price agreements shall disclose all their procurements in their vendor schedules in their own audit reports, including procurements that resulted in price agreements. The IPA shall submit an electronic excel version of the vendor schedule using the form provided by the OSA with the final PDF version of the audit report as required by Subsection B of Section 2.2.2.9 NMAC. The GAO may aggregate, analyze and publish vendor schedule information.~~]

B. Governmental auditing, accounting and financial reporting standards: The audits shall be conducted in accordance with:

(1) the most recent revision of GAGAS issued by the United States government accountability office;

(2) U.S. auditing standards-AICPA (clarified);

(3) uniform administrative requirements, cost principles, and audit requirements for federal awards (uniform guidance);

(4) AICPA audit and accounting guide, government auditing standards and single audits, (AAG GAS) latest edition;

(5) AICPA audit and accounting guide, state and local governments (AAG SLV) latest edition; and

(6) 2.2.2 NMAC, requirements for contracting and conducting audits of agencies, latest edition.

C. Financial statements and notes to the financial statements: The financial statements and notes to the financial

statements shall be prepared in accordance with accounting principles generally accepted in the United States of America. Governmental accounting principles are identified in the government accounting standards board (GASB) codification, latest edition. IPAs shall follow interpretations, technical bulletins, and concept statements issued by GASB, other applicable pronouncements, and GASB illustrations and trends for financial statements. In addition to the revenue classifications required by NCGAS 1.110, the OSA requires that the statement of revenues, expenditures, and changes in fund balance - governmental funds include classifications for intergovernmental revenue from federal sources and intergovernmental revenue from state sources, as applicable.

D. Requirements for preparation of financial statements:

(1) The financial statements presented in audit reports shall be prepared from the agency's books of record and contain amounts rounded to the nearest dollar.

(2) The financial statements are the responsibility of the agency. The agency shall maintain adequate accounting records, prepare financial statements in accordance with accounting principles generally accepted in the United States of America, and provide complete, accurate, and timely information to the IPA as requested to meet the audit report due date imposed in Subsection A of Section 2.2.2.9 NMAC.

(3) If there are differences between the financial statements and the books, the IPA shall provide to the agency the adjusting journal entries and the supporting documentation that reconciles the financial statements in the audit report to the books.

(4) If the IPA prepared the financial statements for management's review and approval, including documenting independence safeguards as required by GAGAS 3.59, the fact that the auditor prepared the financial statements shall be disclosed on the exit conference page of the audit report. If the IPA prepared the financial statements, the auditor shall determine whether an audit finding shall be reported in accordance with AU-C 265.

E. Audit documentation requirements:

(1) The IPA's audit documentation shall be retained for a minimum of five years from the date shown on the opinion letter of the audit report or longer if requested by the federal oversight agency, cognizant agency, or the state auditor. The state auditor shall have access to the audit documentation at the discretion of the state auditor.

(2) When requested by the state auditor, all of the audit documentation shall be delivered to the state auditor by the due date indicated in the request.

(3) The audit documentation of a predecessor IPA shall be made available to a successor IPA in accordance with AU-C 510.07 and 510.A3 to 510. A11, and the predecessor auditor's contract. Any photocopy costs incurred shall be borne by the requestor. If the successor IPA finds that the predecessor IPA's audit documentation does not comply with applicable auditing standards and this rule[~~,~~] or does not support the financial data presented in the audit report, the successor IPA shall notify the state auditor in writing specifying all deficiencies. If the state auditor determines that the nature of deficiencies indicate that the audit was not performed in accordance with auditing or accounting standards generally accepted in the United States of America and related laws, rules and regulations and this rule, any or all of the following actions may be taken:

(a) the state auditor may require the predecessor IPA firm to correct its working papers and reissue the audit report to the agency, federal oversight or cognizant agency and any others receiving copies;

(b) the state auditor may deny or limit the issuance of future audit contracts; or

(c) the state auditor may refer the predecessor IPA to the New Mexico public accountancy board for possible licensure action.

F. Auditor communication requirements:

(1) The IPA shall comply with the requirements for auditor communication with those charged with governance as set forth in AU-C 260 and GAGAS 4.03 and 4.04.

(2) After the agency and IPA have an approved audit contract in place, the IPA shall prepare a written and dated engagement letter during the planning stage of a financial audit, addressed to the appropriate officials of the agency, keeping a copy of the signed letter as part of the audit documentation. In addition to meeting the requirements of the AICPA professional standards and the GAGAS requirements, the engagement letter shall state that the engagement shall be performed in accordance with Section 2.2.2 NMAC.

(3) The audit engagement letter shall not include any fee contingencies. The engagement letter shall not be interpreted as amending the contract. Nothing in the engagement letter can impact or change the amount of compensation for the audit services. Only a contract amendment submitted pursuant to Subsection N of Section 2.2.2.8 NMAC may amend the amount of compensation for the audit services set forth in the contract.

(4) A separate engagement letter and list of client prepared documents is required for each fiscal year audited. The IPA shall provide a copy of the engagement letter and list of client prepared documents immediately upon request from the state auditor.

(5) The IPA shall conduct an audit entrance conference with the agency. The OSA has the authority to notify the agency or IPA that the state auditor shall be informed of the date of the entrance conference, any progress meetings

and the exit conference. If such notification is received, the IPA and agency shall invite the state auditor or his designee to attend all such conferences no later than 72 hours before the proposed conference or meeting.

(6) All communications with management and the agency's oversight officials during the audit, regarding any instances of non-compliance or internal control weaknesses, shall be made in writing. The auditor shall obtain and report the views of responsible officials of the audited agency concerning the audit findings, pursuant to GAGAS 4.33. Any violation of law or good accounting practice, including instances of non-compliance or internal control weaknesses, shall be reported as audit findings per Section 12-6-5NMSA 1978. Separate management letter comments shall not be issued as a substitute for such findings.

G. Reverting or non-reverting funds: Legislation can designate a fund as reverting or non-reverting. The IPA shall review the state law that appropriated funds to the agency to confirm whether any unexpended, unencumbered balance of a specific appropriation shall be reverted and to whom. The law may also indicate the due date for the required reversion. Appropriate audit procedures shall be performed to evaluate compliance with the law and accuracy of the related liability account balances due to other funds, governmental agencies, or both. The financial statements and the accompanying notes shall fully disclose the reverting or non-reverting status of a fund or appropriation. The financial statements shall disclose the specific legislation that makes a fund or appropriation non-reverting and any minimum balance required. If non-reverting funds are commingled with reverting appropriations, the notes to the financial statements shall disclose the methods and amounts used to calculate reversions. For more information regarding state agency reversions, see Subsection A of Section 2.2.2.12 NMAC and the department of finance and administration (DFA) white papers "calculating reversions to the state general fund," and "basis of accounting-modified accrual and the budgetary basis." The statewide CAFR is exempt from this requirement.

H. Referrals and Risk Advisories: The Audit Act (Section 12-6-1 et seq. NMSA 1978) states that "the financial affairs of every agency shall be thoroughly examined and audited each year by the state auditor, personnel of the state auditor's office designated by the state auditor or independent auditors approved by the state auditor." (Section 12-6-3 NMSA 1978). Further, audits of New Mexico governmental agencies "shall be conducted in accordance with generally accepted auditing standards and rules issued by the state auditor." (Section 12-6-3 NMSA 1978).

(1) In an effort to ensure that the finances of state and local governments are thoroughly examined, OSA may provide IPAs with written communications to inform the IPA that OSA received information [~~that suggests~~] which may suggest elevated risk in specific areas relevant to a particular agency's annual financial and compliance audit. These communications shall be referred to as "referrals." Referrals may relate to any topic relevant to the scope of the annual financial and compliance audit. IPAs shall take the circumstances described in OSA referral communications into account in their risk assessment and perform such procedures as, in the IPA's professional judgment, are necessary to determine what further action, if any, in the form of additional disclosure, findings and recommendations are appropriate in connection with the annual audit of the agency. After the conclusion of fieldwork but at least 14 days prior to submitting the draft annual audit report to the OSA for review, IPAs shall provide written confirmation to the OSA that the IPA took appropriate action in response to the referral. This written confirmation shall respond to all aspects of the referral and list any findings associated with the subject matter of the referral. IPAs shall retain adequate documentation in the audit workpapers to support the written confirmation to OSA that the IPA took appropriate action in response to the referral. As outlined in Section 2.2.2.13 NMAC the OSA may review IPA workpapers associated with the annual audit of any agency. OSA workpaper review procedures shall include examining the IPA documentation associated with referrals. Insufficient or inadequate documentation may result in deficiencies noted in the workpaper review letter and may negatively impact the IPA during the subsequent firm profile review process. In accordance with Subsection D of Section 2.2.2.8 NMAC IPAs may be placed on restriction if an IPA refuses to comply with OSA referrals in a timely manner.

(2) OSA may issue written communications to inform agencies and IPAs that OSA received information that suggests elevated risk in specific areas relevant to the annual financial and compliance audits of some agencies. These communications shall be referred to as "risk advisories." Risk advisories shall be posted on the OSA website in the following location: https://www.saonm.org/risk_advisories. Risk advisories may relate to any topic relevant to annual financial and compliance audits of New Mexico agencies. IPAs shall take the circumstances described in OSA risk advisories into account in their risk assessment and perform such procedures and testwork as, in the IPA's professional judgment, are necessary to determine what further action, if any, in the form of disclosure, findings and recommendations are appropriate in connection with the annual audit of the agency.

I. State auditor workpaper requirement: The state auditor requires that audit workpapers include a written audit program for fund balance and net position that includes tests for proper classification of fund balance pursuant to GASBS

54 and proper classification of net position pursuant to GASBS 34.34-.37 (as amended) and GASBS 46.4-.5 (as amended).

J. State compliance audit requirements: An IPA shall identify significant state statutes, rules and regulations applicable to the agency under audit and perform tests of compliance. In designing tests of compliance, IPAs may reference AU-C 250 relating to consideration of laws and regulations in an audit of financial statements and AU-C 620 relating to using the work of an auditor's specialist. As discussed in AU-C 250.A23, in situations where management or those charged with governance of the agency, or the agency's in-house or external legal counsel, do not provide sufficient information to satisfy the IPA that the agency is in compliance with an applicable requirement, the IPA may consider it appropriate to consult the IPA's own legal counsel. AU-C 620.06 and 620.A1 discuss the use of an auditor's specialist in situations where expertise in a field other than accounting or auditing is necessary to obtain sufficient, appropriate audit evidence, such as the interpretation of contracts, laws and regulations. In addition to the significant state statutes, rules and regulations identified by the IPA, compliance with the following shall be tested if applicable (with the exception of the statewide CAFR audit):

(1) Procurement Code, Sections 13-1-1 to 13-1-199 NMSA 1978 including providing the state purchasing agent with the name of the agency's chief procurement officer, pursuant to Section 13-1-95.2 NMSA 1978, and Procurement Code Regulations, Section 1.4.1 NMAC, or home rule equivalent.

(2) Per Diem and Mileage Act, Sections 10-8-1 to 10-8-8 NMSA 1978, and Regulations Governing the Per Diem and Mileage Act, Section 2.42.2 NMAC.

(3) Public Money Act, Sections 6-10-1 to 6-10-63 NMSA 1978, including the requirements that county and municipal treasurers deposit money in their respective counties, and that the agency receive a joint safe keeping receipt for pledged collateral.

(4) Public School Finance Act, Sections 22-8-1 to 22-8-48 NMSA 1978.

(5) Investment of Public Money Act, Sections 6-8-1 to 6-8-25 NMSA 1978.

(6) Public Employees Retirement Act, Sections 10-11-1 to 10-11-142 NMSA 1978. IPAs shall test to ensure one hundred percent of payroll is reported to PERA. PERA membership is mandatory, unless membership is specifically excluded pursuant to Subsection B of Section 10-11-3 NMSA 1978.

(7) Educational Retirement Act, Sections 22-11-1 to 22-11-55 NMSA 1978.

(8) Sale of Public Property Act, Sections 13-6-1 to 13-6-8 NMSA 1978.

(9) Anti-Donation Clause, Article IX, Section 14, New Mexico Constitution.

(10) Special, Deficiency, and Supplemental Appropriations (appropriation laws applicable for the year under audit).

(11) State agency budget compliance with Sections 6-3-1 to 6-3-25 NMSA 1978, and local government compliance with Sections 6-6-1 to 6-6-19 NMSA 1978.

(12) Lease purchase agreements, Article IX, Sections 8 and 11, New Mexico Constitution; Sections 6-6-11 to 6-6-12 NMSA 1978; Montano v. Gabaldon, 108 NM 94, 766 P.2d 1328, 1989).

(13) Accounting and control of fixed assets of state government, Sections 2.20.1.1 to 2.20.1.18 NMAC, (updated for GASBS 34 as applicable).

(14) Requirements for contracting and conducting audits of agencies, Section 2.2.2 NMAC.

(15) Article IX of the state constitution limits on indebtedness.

(16) Any law, regulation, directive or policy relating to an agency's use of gasoline credit cards, telephone credit cards, procurement cards, and other agency-issued credit cards.

(17) Retiree Health Care Act, Sections 10-7C-1 to 10-7C-19 NMSA 1978. IPAs shall test to ensure one hundred percent of payroll is reported to NMRHCA. NMRHCA employer and employee contributions are set forth in Section 10-7C-15 NMSA 1978.

(18) Governmental Conduct Act, Sections 10-16-1 to 10-16-18 NMSA 1978.

(19) School Personnel Act, Sections 22-10A-1 to 22-10A-39 NMSA 1978.

(20) School Athletics Equity Act, Sections 22-31-1 to 22-31-6 NMSA 1978. IPAs shall test whether the district has submitted the required school-district-level reports, but no auditing of the reports or the data therein is required.

K. Federal requirements: IPAs shall conduct their audits in accordance with the requirements of the following government pronouncements and shall test federal compliance audit requirements as applicable:

(1) government auditing standards (GAGAS) issued by the United States government accountability office, most recent revision;

(2) uniform administrative requirements, cost principles, and audit requirements for federal awards;

(3) compliance supplement, latest edition;

(4) catalog of federal domestic assistance (CFDA), latest edition; and

(5) internal revenue service (IRS) employee income tax requirements. IRS Publication 15-B, employer's tax guide to fringe benefits, available online, provides detailed information regarding the taxability of fringe benefits.

L. Audit finding requirements:

(1)

Communicating findings: IPAs shall communicate findings in accordance with generally accepted auditing standards and the requirements of GAGAS 4.23. All finding reference numbers shall follow a standard format with the four digit audit year, a hyphen and a three digit sequence number (e.g. [~~2013~~] 2018-001, [~~2013~~] 2018-002 [~~2013~~] 2018-999). All prior year findings shall include all finding numbers used under historical numbering systems in brackets, following the current year finding reference number, to enable the report user to see what year the finding originated and how it was identified in previous years. Finding reference numbers for single audit findings reported on the data collection form shall match those reported in the schedule of findings and questioned costs and the applicable auditor's report. Depending on the IPA's classification of the finding, the finding reference number shall be followed by one of the following descriptions: "material weakness"; "significant deficiency"; "material non-compliance"; "other non-compliance"; or "[~~findings that do not rise to the level of a significant deficiency~~] other matters."

(a)

IPAs shall evaluate deficiencies to determine whether individually or in combination they are significant deficiencies or material weaknesses in accordance with AU-C 260.

(b)

Findings that meet the requirements described in AAG GAS 4.12 shall be included in the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards. AAG GAS 13.35 table 13-2 provides guidance on whether a finding shall be included in the schedule of findings and questioned costs.

(c)

Section 12-6-5NMSA 1978 requires that "each report set out in detail, in a separate section, any violation of law or good accounting practices found by the audit or examination." When auditors detect violations law or good accounting practices that shall be reported per Section 12-6-5NMSA 1978, but that do not rise to the level of significant deficiencies or material weaknesses, such findings are considered to warrant the attention of those charged with governance due to the statutory reporting requirement. The auditor shall communicate such violations in the "compliance and other matters" paragraph in the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards. Findings required by Section 12-6-5NMSA 1978 shall be presented in a separate schedule of findings labeled "Section 12-6-5NMSA 1978 findings". This schedule shall be placed in the back of the audit report following the financial statement audit and federal award findings. Per AAG GAS 13.48 there is no requirement for such findings to be included or referenced in the uniform guidance compliance report.

(d)

Each audit finding (including current year and unresolved prior-year findings) shall specifically state and describe the following:

(i)

condition (provides a description of a situation that exists and includes the extent of the condition and an accurate perspective, the number of instances found, the dollar amounts involved, if specific amounts were identified, and *for repeat findings, management's progress or lack of progress towards implementing the prior year planned corrective actions);*

(ii)

criteria (identifies the required or desired state or what is expected from the program or operation; cites the specific section of law, regulation, ordinance, contract, or grant agreement if applicable);

(iii)

effect (the logical link to establish the impact or potential impact of the difference between the situation that exists (condition) and the required or desired state (criteria); demonstrates the need for corrective action in response to identified problems or relevant risks);

(iv)

cause (identifies the reason or explanation for the condition or the factors responsible for the difference between what the auditors found and what is required or expected; the cause serves as a basis for the recommendation);

(v)

recommendation addressing each condition and cause; and

(vi)

agency response (the agency's comments about the finding, *including specific planned corrective actions with a timeline and designation of what employee position(s) are responsible for meeting the deadlines in the timeline*).

(e)

Uniform guidance regarding single audit findings (uniform guidance 200.511): The auditee is responsible for follow-up and corrective action on all audit findings. As a part of this responsibility, the auditee shall prepare a summary schedule of prior audit findings and a corrective action plan for current year audit findings in accordance with the requirements of uniform guidance 200.511. The corrective action plan and summary schedule of prior audit findings shall include findings relating to the financial statements which shall be reported in accordance with GAGAS. The summary schedule of prior year findings and the corrective action plan shall be included in the reporting package submitted to the federal audit clearinghouse (AAG GAS 13.48 fn 38). In addition to being included in the agency response to each audit finding, the corrective action plan shall be provided on the audited agency's letterhead in a document separate from the auditor's findings. (COFAR frequently asked questions on the office of management and budget's uniform administrative requirements, cost principles, and audit requirements for federal awards at 2 CFR 200, Section 511-1).

(f) all audit reports shall include a summary of audit results preceding the presentation of audit findings (if any). The summary of audit results shall include the type of auditor report issued and whether the following categories of findings for internal control over financial reporting were identified: material weakness, significant deficiency, and material noncompliance.

(2) Prior year findings:

(a) IPAs shall comply with the requirements of GAGAS Section 4.05 relating to findings and recommendations from previous audits and attestation engagements. In addition, IPAs shall report the status of *all* prior-year findings and *all* findings from special audits performed under the oversight of the state auditor in the current year audit report in a summary schedule of prior year audit findings. GAGAS 4.05 requirements shall also be applied to findings from special audits performed under the oversight of the state auditor released by June 30 of the current fiscal year. If a special audit performed under the oversight of the state auditor is released after June 30 but before the financial statements are available for issuance, the IPA shall include a subsequent event note to the financial statements referring readers to the special audit report. The summary schedule of prior year audit findings shall include the prior year finding number, the title, and whether the finding was resolved, repeated, or repeated and modified in the current year. No other information shall be included in the summary schedule of prior year audit findings. All findings from special audits performed under the oversight of the state auditor shall be included in the findings of the annual financial and compliance audits of the related fiscal year.

(b) Uniform guidance regarding single audit prior year findings (uniform guidance 200.511): The auditor shall follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with the uniform guidance, and report, as a current-year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding (AAG GAS 13.51).

(3) Current-year audit findings: Written audit findings shall be prepared and submitted to management of the agency as soon as the IPA becomes aware of the findings so the agency has time to respond to the findings prior to the exit conference. The agency shall prepare "planned corrective actions" as required by GAGAS 4.33. The agency shall respond, in writing, to the IPA's audit findings within 10 business days. Lack of agency responses within the 10 business days does not warrant a delay of the audit report. The agency's responses to the audit findings and the "planned corrective actions" shall be included in the finding after the recommendation. If the IPA disagrees with the management's comments in response to a finding, they may explain in the report their reasons for disagreement, after the agency's response (GAGAS 4.38). Pursuant to GAGAS 4.39, "if the audited agency refuses to provide comments or is unable to provide comments within a reasonable period of time, the auditors may issue the report without receiving comments from the audited entity. In such cases, the auditors should indicate in the report that the audited entity did not provide comments."

(4) If appropriate in the auditor's professional judgment, failure to submit the completed audit contract to the OSA by the due date at Subsection F of Section 2.2.2.8 NMAC may be reported as a current year compliance finding.

(5) If an agency has entered into any professional services contract with the IPA who performs the agency's annual financial audit, or the scope of work on any professional services contract relates to fraud, waste, or abuse, and the contract was not approved by the state auditor, the IPA shall report a finding of non-compliance with Subsection L of Section 2.2.2.8 NMAC.

(6) If an agency subject to the procurement code failed to meet the requirement to have a certified chief procurement officer during the fiscal year, the IPA shall report a finding of non-compliance with Section 1.4.1.94 NMAC.

(7) Component unit audit findings shall be reported in the primary government's financial audit report. This is not required for the statewide CAFR unless a finding of a legally separate component unit is significant to the state as a whole.

(8) Except as discussed in Subsections A and E of Section 2.2.2.12 NMAC, release of any portion of the audit report by the IPA or agency prior to being officially released by the state auditor is a violation of Section 12-6-5NMSA 1978 and requires a compliance finding in the audit report.

(9) In the event that an agency response to a finding indicates in any way that the OSA is the cause of the finding, the OSA may require that a written response from the OSA be included in the report, below the other responses to that finding.

M. Exit conference and related confidentiality issues:

(1) The IPA shall hold an exit conference with representatives of the agency's governing authority and top management including representatives of any component units (housing authorities, charter schools, hospitals, foundations, etc.) if applicable. The OSA has the authority to notify the agency or IPA that the state auditor shall be informed of the date of the entrance conference, any progress meetings and the exit conference. If such notification is received, the IPA and agency shall invite the state

auditor or his designee to attend all such conferences. If component unit representatives cannot attend the combined exit conference, a separate exit conference shall be held with the component unit's governing authority and top management. [~~Unless the cost of the audit is five thousand dollars ($5,000) or less (excluding GRT), the exit conference shall be held in person; a telephone or webcam exit conference shall not meet this requirement.~~] If extraordinary circumstances exist that prevent the exit conference from taking place in person, the IPA shall submit a written request for an exemption from this requirement to the state auditor at least seven days prior to the scheduled exit conference. The written request for the exemption shall include the justification for the request and the concurring signature of the agency. The IPA may not hold a telephonic or webcam exit conference without prior written approval of the state auditor [~~if the cost of the audit is greater than five thousand dollars ($5,000~~)]. The date of the exit conference(s) and the names and titles of personnel attending shall be stated in the last page of the audit report.

(2) The IPA, with the agency's cooperation, shall provide to the agency for review a draft of the audit report (stamped "draft"), a list of the "passed audit adjustments," and a copy of all the adjusting journal entries at or before the exit conference. The draft audit report shall include, at minimum, the following elements: independent auditor's report, basic financial statements, audit findings, summary schedule of prior year audit findings, and the reports on internal control and compliance required by government auditing standards and uniform guidance.

(3) Agency personnel and the agency's IPA shall not release information to the public relating to the audit until the audit report is released by the OSA, and has become a public record.

(4) Once the audit report is officially released to the agency by the state auditor (by a release letter) and the required waiting period of five calendar days has passed, unless waived by the agency in writing, the audit report shall be presented by the IPA, to a quorum of the governing authority of the agency at a meeting held in accordance with the Open Meetings Act, if applicable. This requirement only applies to agencies with a governing authority, such as a board of directors, board of county commissioners, or city council, which is subject to the Open Meetings Act. The IPA shall ensure that the required communications to those charged with governance are made in accordance with AU-C 260.12 to 260.14. The final progress payment of the contact amount will not be authorized by the OSA until the IPA has submitted the sign in sheet from the governing authority meeting or written notification from the chairman or treasurer stating that the IPA presented the audit report in an open meeting.

(5) At all times during the audit and after the audit report becomes a public record, the IPA shall follow applicable standards and Section 2.2.2 NMAC regarding the release of any information relating to the audit. Applicable standards include but are not limited to the AICPA Code of Conduct ET Section 1.700.001 and related interpretations and guidance, and GAGAS 4.30-32 and GAGAS 4.40-.44.

N. Possible violations of criminal statutes in connection with financial affairs:

(1) IPAs shall comply with the requirements of GAGAS 4.06-.09 relating to fraud, noncompliance with provisions of laws, regulations, contracts and grant agreements, and abuse. Relating to contracts and grant agreements, IPAs shall extend the AICPA requirements pertaining to the auditors' responsibilities for laws and regulations to also apply to consideration of compliance with provisions of contracts or grant agreements. Concerning abuse, if an IPA becomes aware of abuse that could be quantitatively, or qualitatively material to the financial statements or other financial data significant to the audit objectives, the IPA shall apply audit procedures specifically directed to ascertain the potential effect on the financial statements or other financial data significant to the audit objectives.

(2) Pursuant to Section 12-6-6 NMSA 1978 (criminal violations), an agency or IPA shall notify the state auditor immediately, in writing, upon discovery of any violation of a criminal statute in connection with financial affairs. The notification shall include an estimate of the dollar amount involved and a complete description of the violation, including names of persons involved and any action taken or planned. The state auditor may cause the financial affairs and transactions of the agency to be audited in whole or in part pursuant to Section 12-6-3 NMSA 1978 and Section 2.2.2.15 NMAC. If the state auditor does not designate an agency for audit, an agency shall follow the provisions of Section 2.2.2.15 NMAC when entering into a professional services contract for a special audit, performance audit or attestation engagement regarding the financial affairs and transactions of the agency relating to financial fraud, waste and abuse.

(3) In accordance with Section 12-6-6 NMSA 1978, the state auditor, immediately upon discovery of any violation of a criminal statute in connection with financial affairs, shall report the violation to the proper prosecuting officer and furnish the officer with all data and information in his possession relative to the violation.

O. Special revenue funds authority: The authority for creation of special revenue funds and any minimum balance required shall be shown in the audit report (i.e., cite the statute number, code of federal regulation, executive order, resolution number, or other specific authority) on the divider page before the combining financial statements or in the notes to the financial statements. This requirement does not apply to the

statewide CAFR.

P. Public monies:

(1) All monies coming into all agencies (i.e., vending machines, fees for photocopies, telephone charges, etc.) shall be considered public monies and be accounted for as such. For state agencies, all revenues generated shall be authorized by legislation (MAPS FIN 11.4).

(2) If the agency has investments in securities and derivative instruments, the IPA shall comply with the requirements of AU-C 501.04-.10. If the IPA elects to use the work of an auditor's specialist to meet the requirements of AU-C 501, the requirements of AU-C 620 shall also be met.

(3) Pursuant to Section 12-6-5NMSA 1978, each audit report shall include a list of individual deposit and investment accounts held by the agency. The information presented in the audit report shall include at a minimum:

(a) name of depository (i.e., bank, credit union, state treasurer, state investment council, etc.);

(b) account name;

(c) type of deposit or investment account (also required in separate component unit audit reports):

(i) types of deposit accounts include non-interest bearing checking, interest bearing checking, savings, money market accounts, certificates of deposit, etc.;

(ii) types of investment accounts include state treasurer general fund investment pool (SGFIP), state treasurer local government investment pool (LGIP), U.S. treasury bills, securities of U.S. agencies such as Fannie Mae (FNMA), Freddie Mac (FHLMC), government national mortgage association (GNMA), Sallie Mae, small business administration (SBA), federal housing administration (FHA), etc.

(d) account balance of deposits and investments as of the balance sheet date;

(e) reconciled balance of deposits and investments as of the balance sheet date as reported in the financial statements; and

(f) for state agencies only, statewide human resources accounting and management reporting system (SHARE) fund number. In auditing the balance of a state agency's investment in the SGFIP, the IPA shall review the individual state agency's cash reconciliation procedures and determine whether those procedures would reduce the agency's risk of misstatement in the investment in SGFIP, and whether the agency is actually performing those procedures. The IPA shall also take into consideration the complexity of the types of cash transactions that the state agency enters into and whether the agency processes its deposits and payments through SHARE. The IPA shall use professional judgment to determine each state agency's risk of misstatement in the investment in the SGFIP and write findings and modify opinions as deemed appropriate by the IPA. The state auditor requires the IPAs auditing cash of state agencies to obtain a confirmation of cash at the individual agency level from STO.

(4) Pledged collateral:

(a) All audit reports shall disclose applicable collateral requirements in the notes to the financial statements. In addition, there shall be a supplementary information schedule or note to the financial statements that discloses the collateral pledged by each depository for public funds. The schedule or note shall disclose the type of security (i.e., bond, note, treasury, bill, etc.), security number, committee on uniform security identification procedures (CUSIP) number, fair market value and maturity date.

(b) Pursuant to Section 6-10-17 NMSA 1978, the pledged collateral for deposits in banks and savings and loan associations shall have an aggregate value equal to one-half of the amount of public money held by the depository. If this requirement is not met the audit report shall include a finding. No security is required for the deposit of public money that is insured by the federal deposit insurance corporation (FDIC) or the national credit union administration (NCUA) in accordance with Section 6-10-16 NMSA 1978. Collateral requirements shall be calculated separately for each bank and disclosed in the notes. All applicable GASB 40 disclosure requirements relating to deposit and investment risk shall be met. In accordance with GASBS 40.8, relating to custodial credit risk, the notes to the financial statements shall disclose the dollar amount of deposits subject to custodial credit risk, and the type of risk the deposits are exposed to. To determine compliance with the fifty percent pledged collateral requirement of Section 6-10-17 NMSA 1978, the disclosure shall include the dollar amount of each of the following for each financial institution: fifty percent pledged collateral requirement per statute, total pledged collateral, uninsured and uncollateralized.

(d) Repurchase agreements shall be secured by pledged collateral having a market value of at least one hundred two percent of the contract per Subsection H of Section 6-10-10 NMSA 1978. To determine compliance with the one hundred two percent pledged collateral requirement of Section 6-10-10 NMSA 1978, the disclosure shall include the dollar amount of each of the following for each repurchase agreement: one hundred two percent pledged collateral requirement per statute, total pledged collateral.

(e) Per Section 6-10-16.A NMSA 1978, "deposits of public money shall be secured by: securities of the United States, its agencies or instrumentalities; securities of the state of New Mexico, its

agencies, instrumentalities, counties, municipalities or other subdivisions; securities, including student loans, that are guaranteed by the United States or the state of New Mexico; revenue bonds that are underwritten by a member of the financial industry regulatory authority (known as FINRA), and are rated "BAA" or above by a nationally recognized bond rating service; or letters of credit issued by a federal home loan bank."

(f) Securities shall be accepted as security at market value pursuant to Subsection C of Section 6-10-16 NMSA 1978.

(g) State agency investments in the state treasurer's general fund investment pool do not require disclosure of specific pledged collateral for amounts held by the state treasurer. However, the notes to the financial statements shall refer the reader to the state treasurer's separately issued financial statements which disclose the collateral pledged to secure state treasurer cash and investments.

(h) If an agency has other "authorized" bank accounts, pledged collateral information shall be obtained from the bank and disclosed in the notes to the financial statements. The state treasurer monitors pledged collateral related to most state agency bank accounts. State agencies should not request the pledged collateral information from the state treasurer. In the event pledged collateral information specific to the state agency is not available, the following note disclosure shall be made: detail of pledged collateral specific to this agency is unavailable because the bank commingles pledged collateral for all state funds it holds. However, STO's collateral bureau monitors pledged collateral for all state funds held by state agencies in such "authorized" bank accounts.

(5) Agencies that have investments in the state treasurer's local government investment pool shall disclose the information required by GASBS 79 in the notes to their financial statements. Agencies with questions about the content of these required note disclosures may contact STO (http://www.nmsto.gov) for assistance.

Q. Budgetary presentation:

(1) Prior year balance included in budget:

(a) If the agency prepares its budget on the accrual or modified accrual basis, the statement of revenues and expenditures (budget and actual) or the budgetary comparisons shall include the amount of fund balance on the budgetary basis used to balance the budget.

(b) If the agency prepares its budget on the cash basis, the statement of revenues and expenditures (budget and actual) or the budgetary comparisons shall include the amount of prior-year cash balance used to balance the budget (or fund balance on the cash basis).

(2) The differences between the budgetary basis and GAAP basis revenues and expenditures shall be reconciled. If the required budgetary comparison information is included in the basic financial statements, the reconciliation shall be included on the statement itself or in the notes to the financial statements. If the required budgetary comparison is presented as RSI, the reconciliation to GAAP basis shall appear in either a separate schedule or in the notes to the RSI (AAG SLV 11.14). The notes to the financial statements shall disclose the legal level of budgetary control for the entity and any excess of expenditures over appropriations at the legal level of budgetary control. The legal level of budgetary control for local governments is at the fund level. The legal level of budgetary control for school districts is at the function level. The legal level of budgetary control for state agencies is explained at Subsection A of Section 2.2.2.12 NMAC. For additional information regarding the legal level of budgetary control the IPA may contact the applicable oversight agency (DFA, HED, or PED).

(3) Budgetary comparisons shall show the original and final appropriated budget (same as final budget approved by DFA, HED or PED), the actual amounts on the budgetary basis, and a column with the variance between the final budget and actual amounts.

(a) If the budget structure for the general fund and major special revenue funds is similar enough to the GAAP fund structure to provide the necessary information, the basic financial statements shall include budgetary comparison statements those funds.

(b) Budgetary comparisons for the general fund and major special revenue funds shall be presented as RSI if the agency budget structure differs from the GAAP fund structure enough that the budget information is unavailable for the general fund and major special revenue funds. An example of this "perspective difference" would occur if an agency budgets by program with portions of the general fund and major special revenue funds appearing across various program budgets. In a case like that the budgetary comparison would be presented for program budgets and include information in addition to the general fund and major special revenue funds budgetary comparison data (GASBS 41.03 and .10).

R. Appropriations:

(1) Budget related findings:

(a) If actual expenditures exceed budgeted expenditures at the legal level of budgetary control, that fact shall be reported in a finding and disclosed in the notes to the financial statements.

(b) If budgeted expenditures exceed budgeted revenues (after prior-year cash balance and any applicable federal receivables used to balance the budget), that fact shall be reported in a finding. This type of finding shall be confirmed with the agency's budget oversight entity (if applicable).

(2) Special, deficiency, specific, and capital outlay appropriations:

(a) Special, deficiency, specific, and capital outlay appropriations funded by severance tax bonds or general obligation bonds of the state shall be disclosed in the notes to the financial statements. The original appropriation, the appropriation period, expenditures to date, outstanding encumbrances and unencumbered balances shall be shown in a supplementary information schedule or in a note to the financial statements. The accounting treatment of any unexpended balances shall be fully explained in the supplementary information schedule or in a note to the financial statements. This is a special requirement of the state auditor and it does not apply to the statewide CAFR audit.

(b) The accounting treatment of any unexpended balances shall be fully explained in the supplementary information schedule or in a note to the financial statements regarding the special appropriations.

S. Consideration of internal control and risk assessment in a financial statement audit: Audits performed under this rule shall include tests of internal controls (manual or automated) over assertions about the financial statements and about compliance related to laws, regulations, and contract and grant provisions. IPAs and agencies are encouraged to reference the U.S. GAOs' *standards for internal control in the federal government*, known as the "*green book*", which may be adopted by state, local, and quasi-governmental entities as a framework for an internal control system.

T. Required auditor's reports:

(1) The AICPA provides examples of independent auditor's reports in the appendix to chapter 4 of AAG GAS and appendix A to chapter 16 of AAG SLV. Guidance is provided in footnote 3 to appendix A to chapter 16 of AAG SLV regarding wording used when opining on budgetary statements on the GAAP basis. IPAs conducting audits under this rule shall follow the AICPA report examples. All independent auditor's reports shall include a statement that the audit was performed in accordance with auditing standards generally accepted in the United States of America *and with applicable government auditing standards* per GAGAS 4.18. This statement shall be modified in accordance with GAGAS 2.24b if some GAGAS requirements were not followed. Reports for single audits of fiscal years beginning on or after December 26, 2014 shall have references to OMB Circular A-133 replaced with references to Title 2 U.S. Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance 200.110(b), AAG GAS 4.88 Example 4-1).

(2) The AICPA provides examples of the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards in the appendix to chapter 4 of AAG GAS. IPAs conducting audits under this rule shall follow the AICPA report examples.

(a) The state auditor requires the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards be dated the same date as the independent auditor's report.

(b) No separate management letters shall be issued to the agency by the auditor. Issuance of a separate management letter to an agency shall be considered a violation of the terms of the audit contract and may result in further action by the state auditor. See also Subsection F of Section 2.2.2.10 NMAC regarding this issue.

(3) The AICPA provides examples of the report on compliance for each major federal program and on internal control over compliance required by the uniform guidance in the appendix to chapter 13 of AAG GAS. IPAs conducting audits under this rule shall follow the AICPA report examples.

(4) The state auditor requires the financial statements, RSI, SI, and other information required by this rule, and the following reports to be *included under one report cover*: the independent auditor's report; the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards; and the report on compliance for each major federal program and on internal control over compliance required by the uniform guidance. If applicable, the independent auditor's report shall include the AU-C 725 opinion on SI, the schedule of expenditures of federal awards and the HUD financial data schedule (required by HUD guidelines on reporting and attestation requirements of uniform financial reporting standards). The report shall also contain a table of contents and an official roster. The IPA may submit a written request for an *exemption* from the "one report cover" requirement, but shall receive prior written approval from the state auditor in order to present any of the above information under a separate cover.

U. Disposition of property: Sections 13-6-1 and 13-6-2 NMSA 1978 govern the disposition of tangible personal property owned by state agencies, local public bodies, school districts, and state educational institutions. At least 30 days prior to any disposition of property included on the agency inventory list described at Subsection W of Section 2.2.2.10 NMAC, written notification of the official finding and proposed disposition duly sworn and subscribed under oath by each member of the authority approving the action shall be sent to the state auditor.

V. Joint powers agreements:

(1) All joint powers agreements (JPA) shall be listed in a supplementary information

schedule in the audit report. The statewide CAFR schedule shall include JPAs that are significant to the state as a whole. The schedule shall include the following information for each JPA: participants; party responsible for operations; description; beginning and ending dates of the JPA; total estimated amount of project and portion applicable to the agency; amount the agency contributed in the current fiscal year; audit responsibility; fiscal agent if applicable; and name of government agency where revenues and expenditures are reported.

(2) For self-insurance obtained under joint powers agreements, see the GASB Codification Section J50.113.

(3) Joint Powers Agreements (JPAs) and other intergovernmental agreements reported as agency funds should be reviewed to determine if a separate audit or agreed upon procedure is applicable in accordance with the Audit Act, Section 12-6-1 to 12-6-14, NMSA 1978.

W. Capital asset inventory:

(1) The Audit Act (Section 12-6-10 NMSA 1978) requires agencies to capitalize only chattels and equipment that cost over five thousand dollars ($5,000). All agencies shall maintain a capitalization policy that complies with the law. All agencies shall maintain an inventory listing of capitalized chattels and equipment that cost over five thousand dollars ($5,000).

(2) Agencies shall conduct an annual physical inventory of chattels and equipment on the inventory list at the end of each fiscal year in accordance with the requirements of Section 12-6-10 NMSA 1978. The agency shall certify the correctness of the inventory after the physical inventory. This certification shall be provided to the agency's auditors. The IPA shall audit the inventory listing for correctness and compliance with the requirements of the Audit Act.

X. Schedule of changes in assets and liabilities for agency funds: Agency funds are excluded from the statement of changes in fiduciary net position (GASBS 34.110 as amended by GASBS 63) because they have no "net position." It is a requirement of the state auditor that a schedule of changes in assets and liabilities for agency funds be included as SI for all agencies that have agency funds, except school districts which are subject to different requirements. The schedule shall show additions and deductions for each agency fund. The schedule should appear toward the end of the table of contents and requires an AU-C 725 opinion in the independent auditor's report. The requirements for school districts regarding the presentation of the statement of changes in assets and liabilities for agency funds are detailed in Subsection C of 2.2.2.12 NMAC.

Y. Tax increment development districts: Pursuant to Subsection C of Section 5-15-9 NMSA 1978, tax increment development districts (TIDDs) are political subdivisions of the state, and they are separate and apart from the municipality or county in which they are located. Section 5-15-10 NMSA 1978 states that the district shall be governed by the governing body that adopted a resolution to form the district or by a five-member board composed of four members appointed by that governing body; provided, however, that the fifth member of the five-member board is the secretary of finance and administration or the secretary's designee with full voting privileges. However, in the case of an appointed board of directors that is not the governing body, at the end of the appointed directors' initial terms, the board shall hold an election of new directors by majority vote of owners and qualified resident electors. Therefore, a TIDD and its audit firm shall apply the criteria of GASBS 14, 39, 61, and 80 to determine whether the TIDD is a component unit of the municipality or county that approved it, or whether the TIDD is a related organization of the municipality or county that approved it. If the TIDD is determined to be a related organization per the GAAP requirements, then the TIDD shall contract separately for an audit separate from the audit of the municipality or county that approved it.

Z. GASBS 68, accounting and financial reporting for pensions:

(1) PERA and ERB shall each prepare schedules of employer allocations as of June 30 of each fiscal year. The state auditor requires the following:

(a) Prior to distribution of the schedule of employer allocations, PERA and ERB shall obtain audits of their respective schedules. These audits shall be conducted in accordance with government auditing standards and AU-C 805, special considerations - audits of single financial statements and specific elements, accounts, or items of a financial statement.

(b) Pursuant to AU-C 805.16, the PERA and ERB auditors shall each issue a separate auditor's report and express a separate opinion on the AU-C 805 audit performed (distinct from the agency's regular financial statement and compliance audit). Additionally, the auditor shall apply the procedures required by AU-C 725 to all supplementary information schedules included in the schedule of employer allocations report in order to determine whether the supplementary information is fairly stated, in all material respects, in relation to the financial statements as a whole. The IPA shall include the supplementary information schedules in the related reporting in the other-matter paragraph pursuant to AU-C 725.09, regarding whether such information is fairly stated in all material respects in relation to the schedule of employer allocations as a whole.

(c) PERA and ERB shall include note disclosures in their respective schedule of employer allocations reports that detail each component of allocable pension expense at the

fund level, excluding employer-specific pension expense for changes in proportion. Each plan shall also include note disclosures by fund detailing collective fund-level deferred outflows of resources and deferred inflows of resources. The disclosures shall include a summary of changes in the collective deferred and inflows outflows of resources (excluding employer specific amounts), by year of deferral.

(d) PERA and ERB shall each obtain at least one concurring review of their respective schedules of employer allocations by an outside IPA firm (different from the firm performing the AU-C 805 audit). The firm selected to perform the concurring review is subject to OSA approval.

(e) The AU-C 805 audits and resulting separate reports on the PERA and ERB schedules of employer allocations shall be submitted to the OSA for review and release pursuant to Subsection A of Section 2.2.2.13 NMAC, prior to distribution to the participant employers.

(f) As soon as the AU-C 805 reports become public record, PERA and ERB shall make the information available to their participant employers.

(g) PERA and ERB shall each prepare an employer guide that illustrates the correct use of their respective schedule of employer allocations report by their participant employers. The guides shall explicitly distinguish between the plan-level reporting and any employer-specific items. The calculations and record-keeping necessary at the employer level (for adjusting journal entries, amortization of deferred amounts, etc.) shall be described and illustrated. The employer guides shall be made available to the participant employers by June 30 of the subsequent fiscal year.

(2) Regarding whether the pension liability shall be included in the stand-alone financial statements of funds, see the GASB's comprehensive implementation guide, chapter 5, question and answer 5.129.1, which says, "except for blended component units, which are discussed in questions 5.125.2 and 5.125.3, statement 68 does not establish specific requirements for allocation of the employer's proportionate share of the collective net pension liability or other pension-related measures to individual funds. However, for proprietary and fiduciary funds, consideration shall be given to NCGA statement 1, paragraph 42, as amended, which requires that long-term liabilities that are "directly related to and expected to be paid from" those funds be reported in the statement of net position or statement of fiduciary net position, respectively." Stand-alone state agency financial statements that exclude the proportionate share of the collective net pension liability of the state of New Mexico based on the above guidance, shall include note disclosure referring the reader to the statewide CAFR for the state's net pension liability and other pension-related information. The stand-alone report for the New Mexico component appropriation funds shall include note disclosure of the net pension liability for all the state agencies of the state of New Mexico.

AA. Federal Single Audit: OMB Circular A-133 audits of states, local governments, and non-profit organizations has been replaced by Title 2 U.S. Code of Federal Regulations Part 200, *uniform administrative requirements, cost principles, and audit requirements for federal awards* (uniform guidance). The standards set forth in Subpart F - audit requirements, became effective December 26, 2013, and apply to audits of fiscal years beginning on or after December 26, 2014 (calendar-year-end December 31, 2015 and FY16 audits).

BB. GASBS 77: GASB Statement 77, tax abatement disclosures, is effective for reporting periods beginning after December 15, 2015 (FY17 for agencies with a June 30 fiscal year end). The GAO may aggregate, analyze and publish GASBS 77 information. Unaudited, but final, GASBS 77 disclosure information in the format prescribed below shall be provided to any agency whose tax revenues are affected by the reporting agency's tax abatement agreements no later than September 15 of the subsequent fiscal year. Failure to meet this due date results in a compliance finding. This due date does not apply if the reporting agency does not have any tax abatement agreements that reduce the tax revenues of another agency. In addition to the requirements of GASBS 77, the state auditor requires:

(1) All tax abatement agreements entered into by an agency's component unit(s) shall be disclosed in the same manner as the tax abatement agreements of the primary government.

[~~**(2)** Agencies that make a GASBS 77 disclosure shall use the template GASBS 77 disclosure spreadsheet available on the OSA website and submit that electronic file with the final version of the audit report.~~]

[~~**(3)**~~] **(2)** If an agency does not need to make a GASBS 77 disclosure, that fact shall be disclosed in the notes to the financial statements.

[~~**(4)**~~] **(3)** If an agency determines that any required disclosure is confidential, the agency shall cite the legal authority for that determination.

[~~**(5)**~~] **(4)** If an agency has GASBS 77 disclosures to make as an agency that entered into a tax abatement agreement, all information contained in the OSA GASBS 77 disclosure spreadsheet must be included in the notes to the financial statements. If an agency received intergovernmental disclosures from another agency, all information contained in the OSA GASBS 77 disclosure spreadsheet must be included in the notes to the financial statements.

CC. New standards that become effective in FY[~~18~~] 19 for agencies with a June 30 fiscal year end are:

(1) GASBS [~~75~~] 83, [~~accounting and financial reporting for postemployment benefits other than pensions~~] ~~certain asset~~ retirement obligations;

(2) GASBS [~~81, irrevocable split-interest agreements;~~] 88; certain disclosures related to debt including direct borrowings and direct placements; and

(3) [~~Some provisions of GASBS 82, pension issues - an amendment of GASB statements No. 67, No. 68, and No. 73;~~

~~**(4)** GASBS 85, Omnibus 2017;~~

~~**(5)** GASBS 86, certain debt extinguishment issues;~~

~~**(6)**~~] Implementation Guide No. [~~2017-1~~] 2018-1, implementation guidance update - [2017] 2018. [~~and~~]

[~~**(7)** Implementation Guide No. 2017-2, financial reporting for postemployment benefit plans other than pension plans.~~]

DD. GASBS 75, accounting and financial reporting for postemployment benefits other than pensions: The retiree health care authority (RHCA) shall prepare a schedule of employer allocations as of June 30 of each fiscal year. The state auditor requires the following:

(1) Prior to distribution of the schedule of employer allocations, RHCA shall obtain an audit of the schedule. This audit shall be conducted in accordance with government auditing standards and AU-C 805, special considerations - audits of single financial statements and specific elements, accounts, or items of a financial statement.

(2) Pursuant to AU-C 805.16, the RHCA auditors shall issue a separate auditor's report and express a separate opinion on the AU-C 805 audit performed (distinct from the agency's regular financial statement and compliance audit). Additionally, the auditor shall apply the procedures required by AU-C 725 to all supplementary information schedules included in the schedule of employer allocations report in order to determine whether the supplementary information is fairly stated, in all material respects, in relation to the financial statements as a whole. The IPA shall include the supplementary information schedules in the related reporting in the other-matter paragraph pursuant to AU-C 725.09, regarding whether such information is fairly stated in all material respects in relation to the schedule of employer allocations as a whole.

(3) RHCA shall include note disclosures in the schedule of employer allocations report that detail each component of allocable OPEB expense at the fund level, excluding employer-specific OPEB expense for changes in proportion. RHCA shall also include note disclosures by fund detailing collective fund-level deferred outflows of resources and deferred inflows of resources. The disclosures shall include a summary of changes in the collective deferred outflows and inflows of resources (excluding employer specific amounts), by year of deferral.

(4) RHCA shall each obtain at least one concurring review of the schedule of employer allocations by an outside IPA firm (different from the firm performing the AU-C 805 audit). The firm selected to perform the concurring review is subject to OSA approval.

(5) The AU-C 805 audit and resulting separate report on the RHCA schedule of employer allocations shall be submitted to the OSA for review and release pursuant to Subsection A of Section 2.2.2.13 NMAC, prior to distribution to the participant employers.

(6) As soon as the AU-C 805 reports become public record, RHCA shall make the information available to its participant employers.

(7) RHCA shall prepare an employer guide that illustrates the correct use of the schedule of employer allocations report by its participant employers. The guide shall explicitly distinguish between the plan-level reporting and any employer-specific items. The calculations and record-keeping necessary at the employer level (for adjusting journal entries, amortization of deferred amounts, etc.) shall be described and illustrated. The employer guide shall be made available to the participant employers by June 30 of the subsequent fiscal year.

[2.2.2.10 NMAC - Rp, 2.2.2.10 NMAC; A, A, xx/xx/2018]

2.2.2.12 SPECIFIC CRITERIA: The specific criteria described in this section shall be considered in planning and conducting governmental audits. These requirements are not intended to be all-inclusive; therefore, OSA recommends that IPAs review the NMSA and NMAC while planning governmental audits.

A. Pertaining to audits of state agencies:

(1) Due dates for agency audits: audit reports of agencies under the oversight of DFA FCD are due to OSA in accordance with the requirements of Subsection D of Section 12-6-3 NMSA 1978 and Subsection A of Section 2.2.2.9 NMAC.

(2) All the individual SHARE funds shall be reported in the financial statements, either within the basic financial statements or as SI.

(3) Accounts payable at year-end and reversion calculation: If goods and services were received (as defined by generally accepted accounting principles) by the end of the fiscal year but not paid for by the end of the fiscal year, an accounts payable shall be reported for the respective amount due in both the government-wide financial statements and the fund financial statements. The *"actual"* expenditures in the budgetary comparison exclude any accounts payable that were not paid timely and therefore require a request to the financial control division to pay prior year bills out of current

year budget. They are paid out of the budget of the following fiscal year. An agency's reversions are calculated using the *budgetary basis expenditures* because the agency does not have the legal authority to obligate the state for liabilities once the appropriation period has lapsed. Thus, the agency cannot keep the cash related to accounts payable that were not paid timely. This results in a negative fund balance in the modified accrual basis financial statements of a reverting fund.

(4) Net position/fund balance:

(a) Pursuant to GASBS 63.8 the government-wide statement of net position and the proprietary fund statement of net position show net position as:

(i) net investment in capital assets as defined by GASBS 63.9;

(ii) restricted (distinguishing between major categories of restrictions) as defined by GASBS 63.10; and

(iii) unrestricted as defined by GASBS 63.11.

(b) Governmental fund financial statement fund balances shall be reported in accordance with GASBS 54.

(5) Book of record:

(a) The state maintains the centralized accounting system SHARE. The SHARE data and reports are the original book of record that the auditor is auditing. Each fiscal year, the agency shall record all audit adjusting journal entries in SHARE. The financial information in SHARE shall agree to the agency's audited financial statements, with the exception of accounts payable as explained in Subsection A of Section 2.2.2.12 NMAC. If the agency maintains a separate accounting system, it shall be reconciled with the SHARE system and all applicable adjustments shall be recorded in SHARE in the month in which the transactions occurred. DFA FCD provides guidance to agencies, which IPAs shall review, regarding policy and procedure requirements. These documents are available on the DFA FCD website and include:

(i) the manual of model accounting practices (MAPs);

(ii) various white papers, yearly closing instructions; and

(iii) various accounting guideline memos.

(b) The statement of revenues and expenditures in the audit report shall be presented in accordance with GAAP, by function or program classification and object code. However, the budgetary comparison statements shall be presented using the level of appropriation reflected in the final approved budget. The SHARE chart of accounts reflects the following appropriation unit levels: Appropriation unit code/appropriation unit description

200 personal services & employee benefits
300 contractual services
400 other
500 other financing uses
600 non-budgeted

(c) Revenue categories of appropriations to state agencies are listed below. The budgetary comparison statements for state agencies shall be presented in the audit report by the revenue categories shown below and by the expenditure categories that appear in the agency's final approved budget.

(i) state general fund;

(ii) other state funds;

(iii) internal service funds/inter-agency transfers; or

(iv) federal funds.

(d) For more detail about the SHARE chart of accounts see the DFA website.

(6) Reversions to state general fund:

(a) All reversions to the state general fund shall be identified in the financial statements by the fiscal year of appropriation (i.e., reversion to state general fund - FY 16). The gross amount of the appropriation and the gross amount of the reversion shall be shown separately.

(b) Subsection A of Section 6-5-10 NMSA 1978 states "all unreserved undesignated fund balances in reverting funds and accounts as reflected in the central accounting system as of June 30 shall revert by September 30 to the general fund. The division may adjust the reversion within forty-five days of release of the audit report for that fiscal year." Failure to transfer reverting funds timely in compliance with the statute requires an audit finding.

(7) Non-reciprocal (not payments for materials or services rendered) interfund (internal) activity includes;

(a) transfers; and

(b) reimbursements (GASBS 34.410):

(i) intra-agency transfers between funds within the agency shall offset (i.e. balance). Reasons for intra-agency transfers shall be fully explained in the notes to the financial statements. In the separate audit reports of state agencies, transfers between their internal funds are shown as other financing sources or uses in the fund financial statements and as transfers (that get eliminated) in the government-wide financial statements;

(ii) inter-agency transfers (between an agency's internal funds and other funds of the state that are outside the agency such as state general fund appropriations, special appropriations, bond proceeds appropriations, reversions to the state general fund, and transfers to/from other state agencies) shall be segregated from intra-agency transfers and fully explained in the notes to the financial statements along with the agency

number and SHARE fund number to whom and from whom transferred. The transfers may be detailed in supporting schedules rather than in the notes, but agency and SHARE fund numbers shall be shown. The schedule shall be presented on the modified accrual basis. The IPA is responsible for performing audit procedures on all such inter-agency transfers.

(c) Regarding inter-agency transfers between legally separate component units and the primary government (the state of New Mexico):

(i) if the inter-agency transfer is between a blended component unit of the state and other funds of the state, then the component unit's separately issued financial statements report such activity between itself and the primary government as revenues and expenses. When the blended component unit is included in the primary government's financial statements, such inter-agency transfers are reclassified as transfers (GASBS 34.318);

(ii) all resource flows between a discretely presented component unit of the state and other funds of the state shall be reported as external transactions - revenues and expenses - in the primary government's financial statements and the component unit's separately issued financial statements (GASBS 34.318);

(d) All transfers to and from SHARE fund 853, the state general fund appropriation account, shall be clearly identifiable in the audit report as state general fund appropriations, reversions, or collections;

(e) Reimbursements are transfers between funds that are used to reallocate the revenues and expenditures/expenses to the appropriate fund. Reimbursements are not reported as inter-fund activity in the financial statements.

(8) General services department capital projects: in general, GSD records the state of New Mexico capitalized land and buildings for which it is responsible, in its accounting records. The cost of furniture, fixtures, and moveable equipment owned by agencies is to be capitalized in the accounting records of the agency that purchased them. The agency shall capitalize those assets based on actual amounts expended in accordance with GSD instructions issued in Section 2.20.1.10 NMAC.

(9) State-owned motor vehicle inventory: successful management of state-owned vehicles pursuant to the Transportation Services Act (Sections 15-8-1 to 15-8-11 NMSA 1978) is dependent on reliable and accurate capital assets inventory records and physical verification of that inventory. Thus, the annual audit of state agencies shall include specific tests of the reliability of the capital assets inventory and verification that a physical inventory was conducted for both the agency's owned vehicles and long-term leased vehicles.

(10) Independent auditor's report: The independent auditor's report for state agencies, district attorneys, district courts, and the educational institutions created by New Mexico Constitution Article XII, Sec. 11 shall include an emphasis of matter paragraph referencing the summary of significant accounting principles disclosure regarding the reporting agency. The emphasis of matter paragraph shall indicate that the financial statements are not intended to present the financial position and changes in financial position of the primary government, the state of New Mexico, but just the financial position and the changes in financial position of the department. The emphasis of matter paragraph shall follow the example provided in AAG SLV 16.103 ex. A-17.

(11) Budgetary basis for state agencies: the state budget is adopted on the modified accrual basis of accounting except for accounts payable accrued at the end of the fiscal year that do not get accrued by the statutory deadline per Section 6-10-4 NMSA 1978. Those accounts payable that do not get paid timely or accrued by the statutory deadline shall be paid out of the next year's budget. If an agency needs to recognize additional accounts payable amounts that were not accrued by the statutory deadline, then the budgetary statements and the fund financial statements require a reconciliation of expenditures, as discussed at Subsection Q of Section 2.2.2.10 NMAC. All transactions are recorded in the state's book of record, SHARE, under the modified accrual basis of accounting except for accounts payable not meeting the statutory deadline; therefore, the "actual" expenditures in the budgetary comparison schedules equal the expenditures as recorded in SHARE for the fund. Encumbrances related to single year appropriations lapse at year end. Appropriation periods are sometimes for periods in excess of 12 months (multiple-year appropriations). When multiple-year appropriation periods lapse, the authority for the related budgets also lapse and encumbrances can no longer be charged to those budgets. The legal level of budgetary control shall be disclosed in the notes to the financial statements. Per Subsection C of Section 9 of the General Appropriation Act of 2017, all agencies, including legislative agencies, may request category transfers among personal services and employee benefits, contractual services and other. Therefore, the legal level of budgetary control is the appropriation program level (A-Code, P-Code, and Z-Code). A-Codes pertain to capital outlay appropriations (general obligation/ severance tax or state general fund). P-Codes pertain to program/ operating funds. Z-Codes pertain to special appropriations. The IPA shall compare total expenditures for each program to the program's approved final budget to evaluate compliance.

(12) Budgetary comparisons of state agencies shall show the original and final appropriated budget (same as final budget approved by DFA), the actual

amounts on the budgetary basis, and a column with the variance between the final budget and actual amounts. If a state agency presents budgetary comparisons by fund, the appropriation program code(s) (A-Code, P-Code, and Z-Code) shall be reported on the budgetary comparison schedule.

(13) Accounting for special capital outlay appropriations financed by bond proceeds:

(a) STO administers the debt service funds for various bond issues that are obligations of the state of New Mexico. STO does not report in its departmental financial statements bonds payable that are obligations of the state of New Mexico. These payables and the related bond face amounts (proceeds) are reported in the state's CAFR. The note disclosures associated with STO's departmental financial statements shall explain that, by statute, STO is responsible for making the state's bond payments and keeping the related records; however, it is not responsible for the related debt, the state is. Additionally, the note disclosures associated with STO's departmental financial statements shall refer the reader to detailed SI in the STO audit report and the statewide CAFR. The STO departmental financial statements shall include SI regarding the state of New Mexico bond obligations. The SI schedules shall show;

(i) the beginning and end-of-year bond payable balances, increases and decreases (separately presented), and the portions of each bond issuance that are due within one year, as required by GASBS 34.119;

(ii) the details of debt service requirements to maturity, as required by GASBS 38.10; and

(iii) any violations of bond covenants and related actions taken to address violations of bond covenants, as required by GASBS 38.9 and Section 12-6-5NMSA 1978.

(b) DFA has provided accounting and reporting guidance for state agencies that receive or administer special capital outlay appropriations from the state legislature that are financed by bond proceeds. DFA's guidance is available in the "FYI 2008 Audit Forum 9/30/08" section of DFA's website at http://www.nmdfa.state.nm.us/Forums.aspx. In the notes to the financial statements, agencies disclose that the bond proceeds were allocated by the legislature to the agency to administer disbursements to the project recipients, and the agency is not obligated in any manner for the related indebtedness. Agencies also disclose the specific revenue recognition policy for these appropriations. Each agency's IPA shall audit the agency's financial statement presentation of this capital outlay project information to ensure that they are presented in accordance with accounting principles that are generally accepted in the United States.

(14) Amounts "due from other state agencies" and "due to other state agencies": if a state agency reports amounts "due from" or "due to" other state agencies the notes shall disclose the amount "due to" or "due from" each agency, the name of each agency, the SHARE fund account numbers, and the purpose of the account balance.

(15) Investments in the state general fund investment pool (SGFIP): these balances are presented as cash and cash equivalents in the statements of net position and the balance sheets of the participant agencies, with the exception of the component appropriation funds (state general fund). The notes to the financial statements of the component appropriation funds shall contain GASBS 40 disclosures for the SGFIP. This disclosure may refer the reader to the separate audit report for STO for additional information regarding the SGFIP.

(16) Format for the statement of activities: state agencies that have more than one program or function shall use the financial statement format presented in GASBS 34, Illustrations B-1 through B-4. The simplified statement of activities (GASBS 34, Illustration B-5) may not be used for agencies that have multiple programs or functions. GASBS 34.41 requires governments to report direct expenses for each function.

(17) Oversight duties of DFA FCD: on October 3, 2008, the state controller and the state auditor distributed a letter to agencies regarding FCD's request for agencies' draft financial statements for the preparation of the CAFR for the state. Agencies were concerned about violating Section 12-6-5NMSA 1978. However, Subsections of Section 6-5-2.1 NMSA 1978 states that FCD shall "have access to and authority to examine books, accounts, reports, vouchers, correspondence files and other records, bank accounts, money and other property of a state agency." In addition, Section 6-5-4.1 NMSA 1978 mandates that FCD shall compile the CAFR. After some consideration and discussion of the conflicting statutes, the state controller and the state auditor concluded that "pursuant to these rules, Sections 6-5-4.1 and Section 12-6-5NMSA 1978 should be construed to give effect to both statutes and the corresponding administrative rules. Therefore, an agency shall provide a copy of its draft audited financial statements to FCD in order that FCD may compile the CAFR. However, the agency may only release that information to FCD and not to the public. The agency's audit report also is not public record unless released in accordance with Section 12-6-5NMSA 1978." The unaudited draft financial statements submitted to DFA shall exclude the opinions and findings. The entire letter is available at: http://www.nmdfa.state.nm.us/uploads/FileLinks/293b21bdbc044c04bd0dbc6de01def7e/DFA-FCD%20Oversight%20Letter.pdf.

B. Pertaining to audits of housing authorities:

(1) Housing authorities within the state of New Mexico consist of regional housing

authorities, component units or departments of local governments, component units of housing authorities, and housing authorities created by intergovernmental agreements between cities and counties that are authorized to exercise all powers under the Municipal Housing Law, Section 3-45-1 et seq. NMSA 1978.

(2) The financial statements of a housing authority that is a department, program or component unit of a primary government shall be included in the financial audit report of the primary government by discrete presentation unless an exemption from this requirement has been obtained from the state auditor. In the event that a primary government determines that a housing authority is a department or program of, rather than a component unit of, the primary government, a request for exemption from the discrete presentation requirement shall be submitted to the state auditor, by the primary government. The request for exemption shall include evidence that the housing authority is not a separate legal entity from the primary government and that the corporate powers of the housing authority are held by the primary government. Evidence included in the request shall address these issues:

(a) the housing authority is not a corporation registered with the secretary of state;

(b) there was never a resolution or ordinance making the housing authority a public body corporate; and

(c) the housing authority was authorized under Section 3-45-1 et seq. NMSA 1978.

(d) Upon receipt of the exemption granted by the state auditor from the requirement for discrete presentation, the housing authority department or program shall be included in the financial report of the primary government like any other department or program of the primary government.

(3) Audits of public housing authorities that are departments of a local government shall be conducted by the same IPA that performs the audit of the local government. Separate audit contracts shall not be approved.

(a) Local governments are encouraged to include representatives from public housing authorities that are departments of the local government in the IPA selection process.

(b) The IPA shall include the housing authority's governing board and management representatives in the entrance and exit conferences with the primary government. If it is not possible to hold such combined conferences, the IPA shall hold separate entrance and exit conferences with housing authority's management and a member of the governing board. The OSA has the authority to notify the agency or IPA that the state auditor shall be informed of the date of the entrance conference, any progress meetings and the exit conference. If such notification is received, the IPA and agency shall invite the state auditor or his designee to attend all such conferences no later than 72 hours before the proposed conference.

(4) The following information relates to housing authorities that are component units of a local government.

(a) The housing authority shall account for financial activity in proprietary funds.

(b) At the public housing authority's discretion, the agency may "be audited separately from the audit of its local primary government entity. If a separate audit is made, the public housing authority audit shall be included in the local primary government entity audit and need not be conducted by the same auditor who audits the financial affairs of the local primary government entity" (Subsection E of Section 12-6-3 NMSA 1978). Statute further stipulates in Subsection A of Section 12-6-4 NMSA 1978 that "a public housing authority other than a regional housing authority shall not bear the cost of an audit conducted solely at the request of its local primary government entity."

(c) Audit reports of separate audits of component unit housing authorities shall be released by the state auditor separately from the primary government's report under a separate release letter to the housing authority.

(5) Public housing authorities and their IPAs shall follow the requirements of *guidelines on reporting and attestation requirements of uniform financial reporting standards* (UFRS), which is available on the U.S. department of housing and urban development's website under a search for UFRS. Additional administrative issues related to audits of public housing authorities follow.

(a) Housing authority audit contracts include the cost of the audit firm's AU-C 725 opinion on the financial data schedule (FDS). The preparation and submission cost for this HUD requirement shall be included in the audit contract. The public housing authority shall electronically submit a final approved FDS based on the audited financial statements no later than nine months after the public housing authority's fiscal year end. The IPA shall:

(i) electronically report on the comparison of the electronic FDS submission in the REAC staging database through the use of an identification (ID) and password;

(ii) include a hard copy of the FDS in the audit report;

(iii) render an AU-C 725 opinion on the FDS; and

(iv) explain in the notes any material differences between the FDS and the financial statements.

(b)
The IPA shall consider whether any fee accountant used by the housing authority is a service organization and, if applicable, follow the requirements of AU-C 402 regarding service organizations.

(c)
The IPA shall provide the housing authority with an itemized cost breakdown by program area for audit services rendered in conjunction with the housing authority.

(6) Single audit reporting issue: If a single audit is performed on the separate audit report for the public housing authority, including the housing authority's schedule of expenditures of federal awards, the housing authority federal funds do not need to be subjected a second time to a single audit during the single audit of the primary government. In this situation, the housing authority's federal expenditures do not need to be included in the primary government's schedule of expenditures of federal awards. See AAG GAS 6.15 for more information.

C. Pertaining to audits of school districts:

(1) In the event that a state-chartered charter school subject to oversight by PED is not subject to the requirement to use the same auditor as PED, that charter school is reminded that their audit contract shall be submitted to PED for approval. Charter schools shall ensure that sufficient time is allowed for PED review refer to Subsection F of Section 2.2.2.8 NMAC for the due date for submission of the audit contract to the OSA.

(2) Regional education cooperative (REC) audits:

(a)
A separate financial and compliance audit is required on activities of RECs. The IPA shall provide copies of the REC report to the participating school districts and PED once the report has been released by the state auditor.

(b)
Audits of RECs shall include tests for compliance with Section 6.23.3 NMAC.

(c)
Any 'on-behalf' payments for fringe benefits and salaries made by RECs for employees of school districts shall be accounted for in accordance with GASB Cod. Sec. N50.135 and communicated to the employer in accordance with GASB Cod. Sec. N50.131.

(d)
The audit report of each REC shall include a cash reconciliation schedule which reconciles the cash balance as of the end of the previous fiscal year to the cash balance as of the end of the current fiscal year. This schedule shall account for cash in the same categories used by the REC in its monthly cash reports to the PED. If there are differences in cash per the REC financial statements and cash per the REC accounting records, the IPA shall provide the adjusting entries to the REC to reconcile cash per the financial statements to cash per the REC accounting records. If cash per the REC accounting records differs from the cash amount the REC reports to PED in the monthly cash report, the IPA shall issue a finding which explains that the PED reports do not reconcile to the REC accounting records.

(3) School district audits shall address the following issues:

(a)
Audits of school districts shall include tests for compliance with Section 6.20.2 NMAC and PED's manual of procedures for public schools accounting and budgeting (PSAB), with specific emphasis on supplement 7, cash controls.

(b)
The audit report of each school district shall include a cash reconciliation schedule which reconciles the cash balance as of the end of the previous fiscal year to the cash balance as of the end of the current fiscal year. This schedule is also required for each charter school chartered by a school district and each charter school chartered by PED. This schedule shall account for cash in the same categories used by the district in its monthly cash reports to PED. Subsection D of Section 6.20.2.13 NMAC states that school districts shall use the "cash basis of accounting for budgeting and reporting". The financial statements are prepared on the accrual basis of accounting. Subsection E of Section 6.20.2.13 NMAC states that "if there are differences between the financial statements, school district records and department records, the IPA should provide the adjusting entries to the school district to reconcile the report to the school district records." If there are difference between the school district records and the PED report amounts, other than those explained by the adjusting entries, the IPA shall issue a finding which explains that the PED reports do not reconcile to the school district records.

(c)
Any joint ventures or other entities created by a school district are agencies subject to the Audit Act.

(d)
Agency fund reporting: under GASBS 34 a statement of changes in fiduciary net position is required for pension trust funds, investment trust funds, and private-purpose trust funds. However, agency funds have no net position and are excluded from this presentation (GASBS 34.110 as amended by GASBS 63). It is a requirement of the state auditor that a schedule of changes in assets and liabilities - agency funds for the fiscal year be included as SI in the audit report for each school district and each charter school. The schedules shall show the changes (both additions and deductions) in the agency funds summarized by school or for each activity. The schedule requires an AU-C 725 opinion in the independent auditor's report.

(e)
Relating to capital expenditures by the New Mexico public school facilities authority (PSFA), school districts shall review capital expenditures made by PSFA for repairs and building construction projects of the school district. School districts shall also determine the amount of capital expenditures that shall be added to the

capital assets of the school district and account for those additions properly. The IPA shall test the school district capital asset additions for proper inclusion of these expenditures.

(f) Functions of the general fund: school district audit reports shall include individual fund financial statements and budgetary comparisons for the following functions of the general fund: operational, transportation, instructional materials and teacherage (if applicable).

(4) Pertaining to charter schools:

(a) A charter school is a conversion school or start-up school within a school district authorized by the local school board or PED to operate as a charter school. A charter school is considered a public school, accredited by the state board of public education and accountable to the school district's local school board, or PED, for ensuring compliance with applicable laws, rules and charter provisions. A charter school is administered and governed by a governing body in a manner set forth in the charter.

(b) Certain GASBS 14 criteria (as amended by GASBS 39, 61, and 80) shall be applied to determine whether a charter school is a component unit of the chartering entity (the district or PED). The chartering agency (primary government) shall make the determination whether the charter school is a component unit of the primary government.

(c) No charter school that has been determined to be a component unit may be omitted from the financial statements of the primary government based on materiality. All charter schools that are component units shall be included in the basic financial statements using one of the presentation methods described in GASBS 34.126, as amended.

D. Pertaining to audits of counties: Tax roll reconciliation county governments: Audit reports for counties shall include two supplementary information schedules.

(1) The first one is a "tax roll reconciliation of changes in the county treasurer's property taxes receivable" showing the June 30 receivable balance and a breakout of the receivable for the most recent fiscal year ended, and a total for the previous nine fiscal years. Per Subsection C of Section 7-38-81 NMSA 1978, property taxes that have been delinquent for more than 10 years, together with any penalties and interest, are presumed to have been paid.

(2) The second schedule titled "county treasurer's property tax schedule" shall show by property tax type and agency, the amount of taxes: levied; collected in the current year; collected to-date; distributed in the current year; distributed to-date; the amount determined to be uncollectible in the current year; the uncollectible amount to-date; and the outstanding receivable balance at the end of the fiscal year. This information is necessary for proper revenue recognition on the part of the county as well as on the part of the recipient agencies, under GASBS 33. If the county does not have a system set up to gather and report the necessary information for the property tax schedule, the IPA shall issue a finding.

E. Pertaining to audits of educational institutions:

(1) Educational institutions are reminded that audit contracts shall be submitted to HED for approval. Refer to Subsection F of Section 2.2.2.8 NMAC for the due date for submission of the audit contract to the OSA.

(2) Budgetary comparisons: the legal level of budgetary control per Section 5.3.4.10 NMAC shall be disclosed in the notes to the financial statements. The state auditor requires that every educational institution's audit report include budgetary comparisons as SI. The budgetary comparisons shall be audited and an auditor's opinion shall be rendered. An AU-C 725 opinion does not meet this requirement. The budgetary comparisons shall show columns for: the original budget; the revised budget; actual amounts on the budgetary basis; and a variance column. The IPA shall confirm the final adjusted and approved budget with HED. The IPA shall compare the financial statement budget comparison to the related September 15 budget submission to HED. The only differences that should exist between the HED budget submission and the financial statement budgetary comparisons are adjustments made by the institution after September 15 and audit adjustments. If the HED budget submission does not tie to the financial statement budgetary comparison, taking into account only those differences, then the IPA shall write a related finding. A reconciliation of actual revenue and expense amounts on the budgetary basis to the GAAP basis financial statements shall be disclosed at the bottom of the budgetary comparisons or in the notes to the financial statements. The reconciliation is required only at the "rolled up" level of "unrestricted and restricted - all operations" and shall include revenues and expenses. HED approved the following categories which shall be used for the budgetary comparisons.

(a) Unrestricted and restricted - All operations (schedule 1): beginning fund balance/net position; unrestricted and restricted revenues; state general fund appropriations; federal revenue sources; tuition and fees; land and permanent fund; endowments and private gifts; other; total unrestricted & restricted revenues; unrestricted and restricted expenditures; instruction; academic support; student services; institutional support; operation and maintenance of plant; student social & cultural activities; research; public service; internal services; student aid, grants & stipends; auxiliary services; intercollegiate athletics; independent operations; capital outlay; renewal & replacement; retirement of indebtedness; total unrestricted & restricted expenditures; net transfers; change in fund balance/net position

(budgetary basis); ending fund balance/net position.

(b) Unrestricted instruction & general (schedule 2); beginning fund balance/ net position; unrestricted revenues; tuition; miscellaneous fees; federal government appropriations; state government appropriations; local government appropriations; federal government contracts/grants; state government contracts/grants; local government contracts/grants; private contracts/grants; endowments; land & permanent fund; private gifts; sales and services; other; total unrestricted revenues; unrestricted expenditures; instruction; academic support; student services; institutional support; operation & maintenance of plant; total unrestricted expenditures; net transfers; change in fund balance/net position (budgetary basis); ending fund balance/net position.

(c) Restricted instruction & general (schedule 3); beginning fund balance/ net position; restricted revenues; tuition; miscellaneous fees; federal government appropriations; state government appropriations; local government appropriations; federal government contracts/grants; state government contracts/grants; local government contracts/grants; private contracts/grants; endowments; land & permanent fund; private gifts; sales and services; other; total restricted revenues; restricted expenditures; instruction; academic support; student services; institutional support; operation & maintenance of plant; total restricted expenditures; net transfers; change in fund balance/net position (budgetary basis); ending fund balance/net position.

(3) Educational institutions shall present their financial statements using the business type activities model.

(4) Compensated absence liability is reported as follows: the statement of net position reflects the current portion of compensated absences under current liabilities and the long-term portion of compensated absences under noncurrent liabilities.

(5) Component unit issues: educational institutions shall comply with the requirements of Subsection A of Section 2.2.2.10 NMAC. Additionally:

(a) individual component unit budgetary comparisons are required if the component unit has a "legally adopted budget." A component unit has a legally adopted budget if it receives any federal funds, state funds, or any other appropriated funds whose expenditure authority derives from an appropriation bill or ordinance that was signed into law; and

(b) there is no level of materiality for reporting findings of component units that do not receive public funds. All component unit findings shall be disclosed in the primary government's audit report.

(6) Management discussion and analysis (MD&A): The MD&A of educational institutions shall include analysis of significant variations between original and final budget amounts and between final budget amount and actual budget results. The analysis shall include any currently known reasons for those variations that are expected to have a significant effect on future services or liquidity.

(7) Educational institutions established by Section 11 of Article XII of the New Mexico state constitution shall provide the department of finance and administration's financial control division with a draft copy of their financial statements excluding opinions and findings, pursuant to Subsection A of Section 2.2.2.12 NMAC.

F. Pertaining to audits of hospitals: hospitals subject to this rule shall prepare *indigent care cost and funding reports* and *calculations of cost of providing indigent care worksheets* schedules in accordance with the definitions for indigent care cost and funding components and the applicable financial assistance policies, using the form provided by the OSA, for the three-year period ending June 30 of the year under audit. These schedules shall be included as supplementary information in the audit report and the auditor shall apply the procedures required by AU-C 725 in order to determine whether the schedules are fairly stated, in all material respects, in relation to the financial statements as a whole. The IPA shall include these supplementary information schedules in the related reporting in the other-matter paragraph pursuant to AU-C 725.09, regarding whether such information is fairly stated in all material respects in relation to the financial statements as a whole. The IPA shall submit an electronic excel version of the indigent care schedules using the form provided by the OSA with the final PDF version of the audit report as required by Subsection B of Section 2.2.2.9 NMAC. If a hospital subject to the requirements of this subsection is a component unit of another government, and the component unit issues a separate audit report outside of the primary government's audit report, the primary government is not required to include this information in its audit report. The GAO may aggregate, analyze and publish indigent care information. IPAs performing audits of hospitals shall perform the procedures described below.

(1) On the *indigent care cost and funding reports*:

(a) recalculate the mathematical accuracy;

(b) compare funding amounts associated with Legislative appropriations to the amounts listed in the corresponding New Mexico Appropriations Act;

(c) compare amounts listed under 'funding for indigent care' to supporting detail;

(d) compare amounts listed under 'cost of providing indigent care' to the *calculations of cost of providing indigent care worksheets*;

(e) compare the amounts listed under 'patients receiving indigent care

services' to supporting detail.

(2) On the *calculations of cost of providing indigent care worksheets*: compare amounts listed under each line item to supporting detail by patient account.

(3) Select a sample of the supporting detail by patient account associated with the *calculations of cost of providing indigent care worksheets* and perform the following procedures on the sampled items:

(a) obtain documentation supporting management's determination that the patient qualified for indigent care and compare with the policies in effect during the three-year period ending June 30 of the year under audit;

(b) compare the total charges on the patient's account to the supporting detail;

(c) note if a co-pay was required from the patient in accordance with the policies. Obtain information from management as to whether any required payment was received. If a payment was received, compare it to the supporting detail provided for the 'funding for indigent care' on the *indigent care cost and funding reports*;

(d) for 'direct costs paid to other providers on behalf of patients qualifying for indigent care', compare the costs to supporting invoices;

(e) obtain supporting information with respect to each percentage listed under 'ratio of cost to charges'. Compare the support to the calculation of the percentage and recalculate the mathematical accuracy of the percentage.

G. Pertaining to audits of investing agencies: Investing agencies, which are defined as STO, PERA, ERB, and the state investment council, shall prepare *schedules of asset management costs* which include management fee information by investment class.

(1) For all asset classes except private asset classes and alternative investment classes, the schedules shall, at minimum, include the following information:

(a) relating to consultants: the name of the firm or individual, the location of the consultant (in-state or out-of-state), a brief description of investments subject to the agreement, and fees;

(b) relating to third-party marketers (as defined in Section 6-8-22 NMSA 1978): the name of the firm or individual, the location of the marketer (in-state or out-of-state), a brief description of investments subject to the agreement, and any fees, commissions or retainers;

(c) relating to traditional asset classes: name of the investment, asset class, value of the investment, and fees (including both "direct" and "embedded" costs).

(2) For private asset classes and alternative investment classes, the schedules shall, at minimum, include the following information:

(a) relating to consultants: the aggregate fees by asset class and consultant location (in-state or out-of-state), and a brief description of investments included in each asset class;

(b) relating to third-party marketers (as defined in Section 6-8-22 NMSA 1978): aggregate fees, commissions and retainers by asset class and third-party marketer location (in-state or out-of-state), and a brief description of investments included in each asset class;

(c) relating to alternative asset classes: the total fees by asset class (including both "direct" and "embedded" costs), and a brief description of the investments included in each asset class.

(3) These schedules shall be included as unaudited other information in the audit report. The IPA shall submit an electronic excel version of the schedules of asset management costs using the form provided by the OSA with the final PDF version of the audit report as required by Subsection B of Section 2.2.2.9 NMAC. The GAO may aggregate, analyze and publish asset management cost information.

H. Pertaining to audits of local public bodies: Budgetary comparisons; auditors shall test local public body budgets for compliance with required reserves and disclose those reserves on the face of the financial statements and in notes financial statements (if applicable).

[2.2.2.12 NMAC, Rp, 2.2.2.12 NMAC; A, xx/xx/2018]

2.2.2.15 SPECIAL AUDITS, ATTESTATION ENGAGEMENTS, PERFORMANCE AUDITS AND FORENSIC AUDITS:

A. Fraud, waste or abuse in government reported by agencies, IPAs or members of the public:

(1) Definition of fraud: Fraud includes, but is not limited to, fraudulent financial reporting, misappropriation of assets, corruption, and use of public funds for activities prohibited by the constitution or laws of the state of New Mexico. Fraudulent financial reporting means intentional misstatements or omissions of amounts or disclosures in the financial statements to deceive financial statement users, which may include intentional alteration of accounting records, misrepresentation of transactions, or intentional misapplication of accounting principles. Misappropriation of assets means theft of an agency's assets, including theft of property, embezzlement of receipts, or fraudulent payments. Corruption means bribery and other illegal acts. (GAO-14-704G federal internal control standards paragraph 8.02).

(2) Definitions of waste and abuse: Waste is the act of using or expending resources carelessly, extravagantly, or to no purpose. Abuse involves behavior that is deficient or improper when

compared with behavior that a prudent person would consider reasonable and necessary operational practice given the facts and circumstances. This includes the misuse of authority or position for personal gain or for the benefit of another. Waste and abuse do not necessarily involve fraud or illegal acts. However, they may be an indication of potential fraud or illegal acts and may still impact the achievement of defined objectives. (GAO-14-704G federal internal control standards paragraph 8.03).

(3) Reports of fraud, waste & abuse: Pursuant to the authority set forth Section 12-6-3 NMSA 1978, the state auditor may conduct initial fact-finding procedures in connection with reports of financial fraud, waste and abuse in government made by agencies, IPAs or members of the public. Reports may be made telephonically or in writing through the fraud hotline or website established by the state auditor for the confidential reporting of financial fraud, waste, and abuse in government. Reports may be made telephonically to the fraud hotline by calling 1-866-OSA-FRAUD (1-866-672-3728) or reported in writing through the state auditor's website at www.saonm.org. Reports received or created by the state auditor are audit information and audit documentation in connection with the state auditor's statutory duty to examine and audit the financial affairs of every agency, or in connection with the state auditor's statutory discretion to audit the financial affairs and transactions of an agency in whole or in part.

(4) Confidential sources: The identity of a person making a report directly to the state auditor orally or in writing, or telephonically or in writing through the state auditor's fraud hotline or website, alleging financial fraud, waste, or abuse in government is confidential audit information and may not be disclosed, unless the person making the report agrees to the disclosure of that person's name.

(5) Confidentiality of files: A report alleging financial fraud, waste, or abuse in government that is made directly to the state auditor orally or in writing, or telephonically or in writing through the state auditor's fraud hotline or website, any resulting special audit, performance audit, attestation engagement or forensic audit, and all records and files related thereto are confidential audit documentation and may not be disclosed prior to the release of an audit report, except to an independent auditor, performance audit team or forensic audit team in connection with a special audit, performance audit, attestation engagement, forensic audit or other existing or potential engagement regarding the financial affairs or transactions of an agency.

(6) The OSA may make inquiries of agencies as part of the fact-finding process performed by the OSA's special investigations division. Agencies shall respond to OSA inquiries within [~~twenty one (21)~~] five (5) calendar days of receipt. IPAs shall test compliance with this requirement and report noncompliance as a finding in the annual financial and compliance audit report.

B. Special audit or attestation examinations, performance audits and forensic audits:

(1) Designation: Pursuant to Section 12-6-3 NMSA 1978, in addition to the annual audit, the state auditor may cause the financial affairs and transactions of an agency to be audited in whole or in part. Accordingly, the state auditor may designate an agency for special audit, attestation engagement, performance audit or forensic audit regarding the financial affairs and transactions of an agency or local public body based on information or a report received from an agency, IPA or member of the public. For purposes of this rule, the term "special audit, attestation engagement, performance audit or forensic audit" includes, without limitation, agreed-upon procedures, consulting, and contract close-out (results-based award) engagements that address financial fraud, waste or abuse in government. The state auditor shall inform the agency of the designation by sending the agency a notification letter. The state auditor may specify the audit subject matter, the scope and any procedures required, the AICPA professional standards that apply, and for a performance audit, performance aspects to be included and the potential findings and reporting elements that the auditors expect to develop. Pursuant to Section 200.503 of Uniform Guidance, if a single audit was previously performed, the special audit, attestation engagement, performance audit or forensic audit shall be planned and performed in such a way as to build upon work performed, including the audit documentation, sampling, and testing already performed by other auditors. The attestation and performance audit engagements may be conducted pursuant to government auditing standards if so specified by the OSA.

(2) Costs: All reasonable costs of special audits, attestation engagements, forensic audits, or single-entity performance audits conducted pursuant to this section shall be borne by the agency audited pursuant to Section 12-6-4 NMSA 1978. The state auditor, in its sole discretion, may apportion among the entities audited some or all of the reasonable costs of a multi-entity performance audit.

(3) Who performs the engagement: The state auditor may perform the special audit, attestation engagement, performance audit or forensic audit, alone or with other professionals selected by the state auditor. Alternatively, the state auditor may require the engagement to be performed by an IPA or a team that may be comprised of any of the following: independent public accountants; individuals with masters degrees or doctorates in a relevant field such as business, public administration, public policy, finance, or economics; individuals with their juris doctorate; CFE-certified fraud examiners; CFF-certified forensic auditors; CIA-certified internal auditors; or other specialists. If the

state auditor designates an agency for an engagement to be conducted by an IPA or professional team, the agency shall:

(a) upon receipt of notification to proceed from the state auditor, identify all elements or services to be solicited, obtain the state auditor's written approval of the proposed scope of work, and request quotations or proposals for each applicable element of the engagement;

(b) follow all applicable procurement requirements which may include, but are not limited to, Uniform Guidance, Procurement Code (Section 13-1 NMSA 1978), or equivalent home rule procurement provisions when selecting an IPA or team to perform the engagement;

(c) submit the following information to the state auditor by the due date specified by the state auditor:

(i) a completed [~~recommendation form~~] template for special audits, attestation engagements, performance audits or forensic audits (the form) provided at www.osanm.org, which the agency shall print on agency letterhead; and

(ii) a completed audit contract form including the contract fee, start and completion date, and the specific scope of services to be performed in the format prescribed by the OSA, provided at www.osanm.org, with all required signatures on the contract.

(d) If the agency fails to select an IPA and submit the [~~recommendation form and~~] signed contract to OSA by the due date specified by the state auditor, or, if none within 60 days of notification of designation from the state auditor, the state auditor may conduct the audit or select the IPA for that agency in accordance with the process described at Subsection F of Section 2.2.2.8 NMAC.

(4) Errors**:** **[**~~Recommendation forms and contracts~~] Contracts that are submitted to the OSA with errors or omissions shall be rejected by the state auditor. The state auditor shall return the rejected [~~recommendation form and~~] contract to the agency indicating the reason(s) for the rejection.

(5) Recommendation rejections: In the event the agency's recommendation is not approved by the state auditor, the state auditor shall promptly communicate the decision, including the reason(s) for rejection, to the agency, at which time the agency shall promptly submit a different recommendation. This process shall continue until the state auditor approves a recommendation and related contract. During this process, whenever a recommendation and related contract are not approved, the agency may submit a written request to the state auditor for reconsideration of the disapproval. The agency shall submit its request no later than 15 calendar days from the date of the disapproval and shall include documentation in support of its recommendation. If warranted, after review of the request, the state auditor may hold an informal meeting to discuss the request. The state auditor shall set the meeting in a timely manner with consideration given to the agency's circumstances.

(6) Contract Amendments: Any proposed contract amendments shall be processed in accordance with Subsection N of Section 2.2.2.8 NMAC.

(7) Access to records and documents: For any special audit, attestation engagement, performance audit or forensic audit, the state auditor and any engaged professionals shall have available to them all documents necessary to conduct the special audit, attestation engagement, performance audit or forensic audit. Furthermore, pursuant to Section 12-6-11 NMSA 1978, when necessary for a special audit, attestation engagement, performance audit or forensic audit, the state auditor may apply to the district court of Santa Fe county for issuance of a subpoena to compel the attendance of witnesses and the production of books and records.

(8) Entrance, progress and exit conferences: The IPA or other professional shall hold an entrance conference and an exit conference with the agency, unless the IPA or other professional has submitted a written request to the state auditor for an exemption from this requirement and has obtained written approval of the exemption. The OSA has the authority to notify the agency or IPA or other professional that the state auditor shall be informed of the date of the entrance conference, any progress meetings and the exit conference. If such notification is received, the IPA or other professional and the agency shall invite the state auditor or his designee to attend all such conferences no later than 72 hours before the proposed conference or meeting. The state auditor may also require the IPA or other professional to submit its audit plan to the state auditor for review and approval.

(9) Required reporting: All reports for special audits, attestation engagements, performance audits, or forensic audits related to financial fraud, waste or abuse in government undertaken pursuant to Section 2.2.2.15 NMAC (regardless of whether they are conducted pursuant to AICPA standards for consulting services or for attestation engagements) shall report as findings any fraud, illegal acts, non-compliance or internal control deficiencies, pursuant to Section 12-6-5NMSA 1978. Each finding shall comply with the requirements of Subsection L of Section 2.2.2.10 NMAC.

(10) Report review: The state auditor shall review reports of any special audit, attestation engagement, performance audit or forensic audit made pursuant to this section for compliance with the professional services contract and this rule. Upon completion of the report, the IPA or other professional shall deliver the organized and bound report to the state auditor with a copy of any signed management representation letter. Unfinished or excessively deficient reports shall

be rejected by the state auditor. If the report is rejected the firm shall submit an electronic version of the corrected rejected report for state auditor review. The name of the electronic file shall be "corrected rejected report" followed by the agency name and fiscal year. The IPA or other professional shall respond to all review comments as directed by the state auditor.

(11) Report release: After OSA's review of the report for compliance with the professional services contract and this rule, the state auditor shall authorize the IPA to print and submit the final report. [~~The required number of hardcopies specified in the professional services contract and an~~] An electronic version of the report, in the PDF format described at Subsection B of Section 2.2.2.9 NMAC, shall be delivered to the state auditor within five business days. The state auditor shall not release the report until all the required documents are received by the state auditor. The state auditor shall provide the agency with a letter authorizing final payment to the IPA and the release of the report pursuant to Section 12-6-5NMSA 1978. Agency and local public body personnel shall not release information to the public relating to the special audit, attestation engagement, performance audit or forensic audit engagement until the report is released and has become a public record pursuant to Section 12-6-5NMSA 1978. Except for the exception under Subsection B of Section 2.2.2.15 NMAC, at all times during the engagement and after the engagement report becomes a public record, the IPA or other professional(s) shall not disclose to the public confidential information about the auditee or about the engagement. Confidential information is information that is not generally known to the public through common means of providing public information like the news media and internet.

(12) Disclosure by professionals: The IPA or other professional shall not disclose confidential information provided to them by the state auditor unless otherwise specified by the state auditor. Disclosure of confidential information by the IPA or other professional may result in legal action by the state auditor, or in the case of an IPA, restriction pursuant to Subsection D of Section 2.2.2.8 NMAC.

(13) Payment: Progress payments up to (but not including) ninety percent of the contract amount do not require state auditor approval and may be made by the agency if the agency monitors the progress of the services procured. If requested by the state auditor, the agency shall provide a copy of the approved progress billing(s). Final payments of ninety percent and above may be made by the agency only after the state auditor has stated in a letter to the agency that the report has been released by the state auditor.

C. Agency-initiated special audits, attestation engagements, performance audits and forensic audits:

(1) Applicability: With the exception of agencies that are authorized by statute to conduct performance audits and forensic audits, this section applies to all instances in which an agency enters into a professional services contract for a special audit, attestation engagement, performance audit, or forensic audit relating to financial fraud, waste or abuse, but the agency has not been designated by the state auditor for the engagement pursuant to Subsection B of Section 2.2.2.15 NMAC. For purposes of this rule, the term "special audit, attestation engagement, performance audit or forensic audit" includes, without limitation, agreed-upon procedures, consulting, and contract close-out (results-based award) engagements that address financial fraud, waste or abuse in government.

(2) Contracting: An agency, IPA or other professional shall not enter into a professional services contract for a special audit, attestation engagement, performance audit, or forensic audit regarding the financial affairs and transactions of an agency and relating to financial fraud, waste or abuse in government without the prior written approval of the state auditor. The proposed professional services contract shall be submitted to the state auditor for review and approval after it has been signed by the agency and the IPA or other professional, unless the agency or IPA or other professional applies to the state auditor for an exemption and the state auditor grants the exemption. When contracting with an IPA or other professional, the agency shall contract only with an IPA or other professional that has been approved by the state auditor to conduct such work. The state auditor may, in its sole discretion, require a non-IPA professional to submit proof of qualifications, a firm profile or equivalent documentation prior to approving the contract. The contract shall include the contract fee, start and completion date, and the specific scope of services to be performed, and shall follow any template that the state auditor may provide.

(3) Applicability of other rules: The provisions outlined in Subsection B of Section 2.2.2.15 NMAC apply to agency-initiated special audits, attestation engagements, performance audits and forensic audits.

[2.2.2.15 NMAC - Rp, 2.2.2.15 NMAC; A, A, xx/xx/2018]

2.2.2.16 ANNUAL FINANCIAL PROCEDURES REQUIRED FOR LOCAL PUBLIC BODIES WITH ANNUAL REVENUES LESS THAN FIVE HUNDRED THOUSAND DOLLARS ($500,000) (TIERED SYSTEM):

A. Annual revenue determines type of financial reporting: All local public bodies shall comply with the requirements of Section 6-6-3 NMSA 1978. Pursuant to Section 12-6-3 NMSA 1978, the annual revenue of a local public body determines the type of financial reporting a local public body shall submit to the OSA. Local

public bodies are mutual domestic water consumers associations, land grants, incorporated municipalities, and special districts. The annual revenue of a local public body shall be calculated on a cash basis inclusive of state grants but excluding capital outlay funds, federal and private grants. If a local public body reporting under the requirements of 2.2.2.16 NMAC is a fiscal agent, the fiscal agent must include the revenues and capital outlays of agencies for which it is fiscally responsible. For the purpose of Section 2.2.2.16 NMAC "capital outlay" is funding provided through capital appropriations of the New Mexico legislature. For the purpose of Section 2.2.2.16 NMAC "private grant" means funding provided by a non-governmental entity.

B. Determination of revenue and services: Annually, following the procedures described in Subsection F of Section 2.2.2.8 NMAC, the state auditor shall provide local public bodies written authorization to obtain services to conduct a financial audit or other procedures. Upon receipt of the authorization, a local public body shall determine its annual revenue in accordance with Subsection A of Section 2.2.2.16 NMAC. The following requirements for financial reporting apply to the following annual revenue amounts (tiers):

(1) if a local public body's annual revenue is less than ten thousand dollars ($10,000) and the local public body did not directly expend at least fifty percent of, or the remainder of, a single capital outlay award, then the local public body is exempt from submitting a financial report to the state auditor, except as otherwise provided in Subsection C of Section 2.2.2.16 NMAC;

(2) if a local public body's annual revenue is ten thousand dollars ($10,000) or more but less than fifty thousand dollars ($50,000), then the local public body is exempt from submitting a financial report to the state auditor, except as otherwise provided in Subsection C of Section 2.2.2.16 NMAC;

(3) if a local public body's annual revenue is less than fifty thousand dollars ($50,000), and the local public body expended at least fifty percent of, or the remainder of, a single capital outlay award during the fiscal year, then the local public body shall procure the services of an IPA for the performance of a tier three agreed upon procedures engagement in accordance with the audit contract for a tier three agreed upon procedures engagement;

(4) if a local public body's annual revenue is greater than fifty thousand dollars ($50,000) but less than two hundred-fifty thousand dollars ($250,000), then the local public body shall procure the services of an IPA for the performance of a tier four agreed upon procedures engagement in accordance with the audit contract for a tier four agreed upon procedures engagement;

(5) if a local public body's annual revenue is greater than fifty thousand dollars ($50,000) but less than two hundred-fifty thousand dollars ($250,000), and the local public body expended any capital outlay funds during the fiscal year, then the local public body shall procure the services of an IPA for the performance of a tier five agreed upon procedures engagement in accordance with the audit contract for a tier five agreed upon procedures engagement;

(6) if a local public body's annual revenue is two hundred-fifty thousand dollars ($250,000) or greater, but less than five hundred thousand dollars ($500,000), the local public body shall procure services of an IPA for the performance of a tier six agreed upon procedures engagement in accordance with the audit contract for a tier six agreed upon procedures engagement;

(7) if a local public body's annual revenue is five hundred thousand dollars ($500,000) or more, this section shall not apply and the local public body shall procure services of an IPA for the performance of a financial and compliance audit in accordance with other provisions of this rule;

(8) notwithstanding the annual revenue of a local public body, if the local public body expended seven hundred-fifty thousand dollars ($750,000) or more of federal funds subject to a federal single audit during the fiscal year then the local public body shall procure a single audit.

C. Exemption from financial reporting: A local public body that is exempt from financial reporting to the state auditor pursuant to Subsection B of Section 2.2.2.16 NMAC shall submit written certification to LGD and the state auditor. The certification shall be provided on the form made by the state auditor, available through OSA-Connect. The local public body shall certify, at a minimum:

(1) the local public body's annual revenue for the fiscal year; and

(2) that the local public body did not expend fifty percent of or the remainder of a single capital outlay award during the fiscal year.

D. Procurement of IPA services: A local public body required to obtain an agreed-upon procedures engagement shall procure the services of an IPA in accordance with Subsection F of Section 2.2.2.8 NMAC.

E. Requirements of the IPA selected to perform the agreed-upon procedures:

(1) The IPA shall provide the local public body with a dated engagement letter during the planning stages of the engagement, describing the services to be provided. See Subsection F of Section 2.2.2.10 NMAC for applicable restrictions on the engagement letter.

(2) The IPA may not subcontract any portion of the services to be performed under the contract with the local public body except for the activation of a contingency subcontractor form in the event the IPA is unable to complete the engagement.

(3) The IPA shall hold an entrance conference

and an exit conference with the local public body unless the IPA has submitted a written request to the OSA for an exemption from this requirement and has obtained written approval of the exemption from the OSA. Unless the cost of the AUP is five thousand dollars ($5,000) (excluding GRT) or less, the exit conference shall be held in person; a telephone or webcam exit conference shall not meet this requirement. The OSA has the authority to notify the agency or IPA that the state auditor shall be informed of the date of the entrance conference, any progress meetings and the exit conference. If such notification is received, the IPA and agency shall invite the state auditor or his designee to attend all such conferences no later than 72 hours before the proposed conference or meeting.

(4) The IPA shall submit the report to the OSA for review in accordance with the procedures described at Subsection B of Section 2.2.2.9 NMAC. Before submitting the report to OSA for review, the IPA shall review the report using the AUP report review guide available on the OSA's website at www.saonm.org. The report shall be submitted to the OSA for review with the completed AUP report review guide. Once the audit report is officially released to the agency by the state auditor (by a release letter) and the required waiting period of five calendar days has passed, unless waived by the agency in writing, the audit report shall be presented by the IPA, to a quorum of the governing authority of the agency at a meeting held in accordance with the Open Meetings Act, if applicable. This requirement only applies to agencies with a governing authority, such as a board of directors, board of county commissioners, or city council, which is subject to the Open Meetings Act. The IPA shall ensure that the required communications to those charged with governance are made in accordance with AU-C 260.12 to 260.14.

F. Progress payments:

(1) Progress payments up to ninety percent of the contract amount do not require state auditor approval and may be made by the local public body if the local public body ensures that progress payments made do not exceed the percentage of work completed by the IPA. If requested by the state auditor, the local public body shall provide the OSA a copy of the approved progress billing(s).

(2) Final payments from ninety percent to one hundred percent may be made by the local public body only after the state auditor has stated in a letter to the local public body that the agreed-upon procedures report has been released by the state auditor and the [~~engagement and~~] management representation letter have been received by the state auditor.

G. Report due dates, notification letters and confidentiality:

(1) For local public bodies with a June 30 fiscal year-end that qualify for the tiered system, the report or certification due date is December 15. Local public bodies with a fiscal year end other than June 30 shall submit the agreed-upon procedures report or certification no later than five months after the fiscal year-end. Late agreed-upon procedures reports (not the current reporting period) are due not more than six months after the date the contract was executed. An organized bound hard copy of the report shall be submitted to the OSA. Agreed-upon procedures reports submitted via fax or email shall not be accepted. A copy of the signed dated management representation letter shall be submitted with the report. If a due date falls on a weekend or holiday, or if the OSA is closed due to inclement weather, the report is due the following business day by 5:00 pm. If the report is mailed to the state auditor, it shall be postmarked no later than the due date to be considered filed by the due date. If the due date falls on a weekend or holiday the audit report shall be postmarked by the following business day.

(2) As soon as the IPA becomes aware that circumstances exist that will make the local public body's agreed-upon procedures report be submitted after the applicable due date, the auditor shall notify the state auditor and oversight agency of the situation in writing. This notification shall consist of a letter, not an email. However, a scanned version of the official letter sent via email is acceptable. There shall be a separate notification for each late agreed-upon procedures report. The notification shall include a specific explanation regarding why the report will be late, when the IPA expects to submit the report and a concurring signature by the local public body. If the IPA will not meet the expected report submission date, then the IPA shall send a revised notification letter. In the event the contract was signed after the report due date, the notification letter shall still be submitted to the OSA explaining the reason the agreed-upon procedures report will be submitted after the report due date. A copy of the letter shall be sent to the LGD, if LGD oversees the local public body. The late report notification letter is not required if the report was submitted to the OSA for review by the deadline, and then rejected by the OSA, making the report late when resubmitted.

(3) Local public body personnel shall not release information to the public relating to the agreed-upon procedures engagement until the report is released and has become a public record pursuant to Section 12-6-5NMSA 1978. At all times during the engagement and after the agreed-upon procedures report becomes a public record, the IPA shall follow applicable professional standards and Section 2.2.2 NMAC regarding the release of any information relating to the agreed-upon procedures engagement.

H. Findings: All agreed upon procedures engagements shall report as findings any fraud, illegal acts, non-compliance or internal control deficiencies, consistent with Section 12-6-5NMSA

1978. The findings shall include the required content listed at Subsection L of Section 2.2.2.10 NMAC.

I. Review of agreed-upon procedures reports and related workpapers: Agreed-upon procedures reports shall be reviewed by the OSA for compliance with professional standards and the professional services contract. Noncompliant reports shall be rejected and not considered received. Such reports shall be returned to the firm and a copy of the rejection letter shall be sent to the local public body. If the OSA rejects and returns an agreed upon procedures report to the IPA, the report shall be corrected and resubmitted to the OSA by the due date, or the IPA shall include a finding for non-compliance with the due date. The IPA shall submit an electronic version of the corrected rejected report for OSA review. The name of the electronic file shall be "corrected rejected report" followed by the agency name and fiscal year. The OSA encourages early submission of reports to avoid findings for late reports. After its review of the agreed-upon procedures report for compliance with professional standards and the professional services contract, the OSA shall authorize the IPA to print and submit the final report. [~~The required number of hardcopies of the final report as specified in the professional services contract, an electronic excel version of the findings summary form and an~~] An electronic version of the agreed upon procedures report, in PDF format as described at Subsection B of Section 2.2.2.9 NMAC, shall all be delivered to the OSA within five business days. The OSA shall not release the agreed-upon procedures report until the electronic version of the report is received by the OSA. The OSA shall provide the local public body with a letter authorizing the release of the report after the required five day waiting period, and final payment to the IPA. Released reports may be selected by the OSA for comprehensive report and workpaper reviews. After such a comprehensive report and workpaper review is completed, the OSA shall issue a letter to advise the IPA about the results of the review. The IPA shall respond to all review comments as directed. If during the course of its review, the OSA finds significant deficiencies that warrant a determination that the engagement was not performed in accordance with provisions of the contract, applicable AICPA standards, or the requirements of this rule, any or all of the following action(s) may be taken:

(1) the IPA may be required to correct the deficiencies in the report or audit documentation, and reissue the agreed upon procedures report to the agency and any others receiving copies;

(2) the IPA's eligibility to perform future engagements may be limited in number or type of engagement pursuant to Subsection D of Section 2.2.2.8 NMAC;

(3) for future reports, for some or all contracts, the IPA may be required to submit working papers with the reports for review by the OSA prior to the release of the report; or

(4) the IPA may be referred to the New Mexico public accountancy board for possible licensure action.

J. IPA Independence: IPA's that perform agreed-upon procedure engagements under Section 2.2.2.16 NMAC shall maintain independence in fact and appearance, in all matters relating to the engagement.

(1) An IPA who performs the local public body's annual agreed-upon procedures engagement shall not enter into any special audit or non-attest service contracts with that local public body without the prior written approval of the state auditor.

(2) To obtain this approval, the IPA shall follow the requirements set forth in Subsection L of Section 2.2.2.8 NMAC.

[2.2.2.16 NMAC, Rp, 2.2.2.16, 2/27/2018; A, xx/xx/2018]

PUBLIC EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

Public Hearing. The New Mexico Public Education Department (PED) gives notice that it will conduct a public hearing in Mabry Hall located at the Jerry Apodaca Education Building, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, on Tuesday, January 29, 2019 from 3:00 p.m. to 5:00 p.m. (MST). The purpose of the public hearing is to receive public input on the proposed amendments to 6.30.14 NMAC, Parent Bill of Rights. At the hearing, the PED will provide a verbal summary statement on record. Attendees who wish to provide public comment on record will be given three (3) minutes to make a statement regarding the rule changes. Written comment will also be accepted at the hearing.

Explanation of Purpose and Summary of Text. The purpose of this rule is to outline the specific rights guaranteed to every parent and family of public school students in New Mexico. Parent and family engagement in the education of their children is a critical component to increasing student achievement and college and career readiness.

Statutory Authorizations: Sections 22-1-1.1, 22-2-2, 22-5-15, and 22-2C-11 NMSA 1978.

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

Public Comment. Interested parties may provide comment at the public hearing or may submit written comments by mail to the Policy Division, New Mexico Public Education Department, 300 Don Gaspar Avenue, Room 101, Santa Fe, New Mexico 87501, by electronic mail to rule.feedback@state.nm.us, or by fax to (505) 827-6520. All written comments must be received no later than 5:00 p.m. (MST) on

Tuesday, January 29, 2019. The PED encourages the early submission of written comments. The public comment period is from Thursday, December 27, 2018 to Tuesday, January 29, 2019 at 5:00 p.m. (MST). The PED will review all feedback received during the public comment period and issue communication regarding the final decision at a later date.

Copies of the proposed new rule may be accessed through the page titled "Rule Notification" on the PED's website at http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/, or may be obtained from the Policy Division at (505) 827-6452 during regular business hours.

Individuals with disabilities who require the above information in an alternative format, or who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact the Policy Division at (505) 827-6452 as soon as possible before the date of the public hearing. The PED requires at least ten (10) calendar days' advance notice to provide any special accommodations requested.

REGULATION AND LICENSING DEPARTMENT
OPTOMETRY, BOARD OF

PUBLIC RULE HEARING AND REGULAR BOARD MEETING

The New Mexico Board of Optometry will hold a rule hearing on Friday, January 28, 2019, at 10:00 a.m. Following the rule hearing, the Board will convene a board meeting to adopt the rules and take care of regular business. The rule hearing and board meeting will be held at the New Mexico State Capitol, 490 Old Santa Fe Trail, Santa Fe, New Mexico, in Room 326.

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

16.16.4 NMAC - Requirements for Licensure
16.16.11 NMAC - License Expiration Due to Non- Renewal; Reactivation
16.16.13 NMAC - Continuing Education

To obtain and review copies of the proposed changes you may go to the Board's website at: http://www.rld.state.nm.us/boards/Optometry_Rules_and_Laws.aspx, or contact the Boards and Commissions Division at (505) 476-4622.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes to Cynthia Lyons, Board Administrator, via electronic mail at optometry.bd@state.nm.us, or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Thursday, January 27, 2019. Persons will also be given the opportunity to present their comments at the rule hearing.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact Cynthia Lyons, Board Administrator at (505) 476-4622.

Statutory Authority: Legal authority for this rulemaking can be found in the Optometry Act, NMSA 1978 Sections 61-2-1 through -18 (1985, as amended through 2010) which, among other provisions, specifically authorizes the Board to "adopt rules necessary to implement the provisions of the Optometry Act." Subsection D of Section 61-2-6 NMSA 1978.

Summary of Proposed Changes:

16.16.4 NMAC – Requirements for Licensure
Requirements for Licensure by Endorsement states that practitioners from other states go through all the same requirements as new graduates. This change will expedite licensure for applicants by endorsement.

16.16.11 NMAC – License Expiration Due to Non- Renewal; Reactivation
Clarify penalty fee to reflect fee for reinstatement by reducing the fees associated with Non-renewal reactivation, in order to make it easier for previously licensed optometrists to resume practicing in New Mexico. This would help with the current shortage of Optometrist.

16.16.13 NMAC - Continuing Education
Proposed change is a semantic change only and will have no impact on licensed Doctors of Optometry to Paragraph (2) of Subsection A of 16.16.13.8 NMAC.

TAXATION AND REVENUE DEPARTMENT

NOTICE OF HEARING AND PROPOSED RULES

The New Mexico Taxation and Revenue Department proposes to amend the following rule:

Tax Administration Act, Section 7-1-71.4 NMSA 1978
3.1.4.17 NMAC - Approved Electronic Media

The proposals were placed on file in the Office of the Secretary on December 13, 2018. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of the proposals, if filed, will be filed as required by law on or about March 26, 2019.

A public hearing will be held on the proposals on Wednesday, January 30, 2019, at 10:00 a.m. in the Secretary's Conference Room on the third floor of the Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Alicia Romero at alicia.romero@state.nm.us. The Taxation and Revenue Department will make every effort to

accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received at least 10 calendar days prior to the scheduled hearing. Accessible copies of the proposals are available upon request; contact the Tax Policy Office at policy.office@state.nm.us. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 or by email to policy.office@state.nm.us on or before January 30, 2019, at 9:00 a.m. All written comments received by the agency will be posted on www.tax.newmexico.gov no more than 3 business days following receipt to allow for public review.

3.1.4.17 APPROVED ELECTRONIC MEDIA: Department approved electronic media includes [~~:~~

~~A.~~] an electronic transmission of the personal income tax return data submitted in an approved format using a computer language designated by the department [~~, or~~

~~B. a paper return with a PDF 2D barcode printed on the form, which contains the tax return information in a department approved format~~].

[3.1.4.17 NMAC - N, 1/31/08; A, xx/xx/2019]

End of Notices of Rulemaking and Proposed Rules

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Adopted Rules

Effective Date and Validity of Rule Filings

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

AGRICULTURE DEPARTMENT

The board of regents of New Mexico state university, approved and adopted, at its 11/29/2018 meeting, to repeal its rule 21.9.2 NMAC - Conducting an election of district supervisors (filed 9/30/2005), effective 1/1/2019.

The board of regents of New Mexico state university, approved and adopted, at its 11/29/2018 meeting, to repeal its rule 21.9.3 NMAC - Conducting a referendum (filed 9/30/2005), effective 1/1/2019.

CHILDREN, YOUTH AND FAMILIES DEPARTMENT

On December 13, 2018, the Children, Youth and Families Department repealed 8.14.14 NMAC, New Mexico Juvenile Detention Standards, filed 07/31/2001, and replaced it with 8.14.14 NMAC, New Mexico Juvenile Detention Standards, effective January 1, 2019.

CHILDREN, YOUTH AND FAMILIES DEPARTMENT

TITLE 8 SOCIAL SERVICES
CHAPTER 14 JUVENILE JUSTICE
PART 14 NEW MEXICO JUVENILE DETENTION STANDARDS

8.14.14.1 ISSUING AGENCY: Children, Youth and Families Department.
[8.14.14.1 NMAC - Rp 8.14.14.1 NMAC, 01/01/2019]

8.14.14.2 SCOPE: This regulation applies to all New Mexico juvenile detention centers operating under the certification of the children, youth and families department and managed by county and local jurisdictions. Juvenile detention centers detain delinquent offenders, youthful offenders, and serious youthful offenders. Juvenile detention centers detain juveniles pending court hearings but do not provide for long-term care and rehabilitation of adjudicated juveniles. Juvenile detention centers shall not detain children younger than the age limit identified in the Children's Code, status offenders, persons charged or previously adjudicated as delinquents or youthful offenders who are 18 years of age and older who have previously been detained with an adult population, or persons who are 18 years of age and older who are participating in a juvenile specialty court program serving custodial sanctions.
[8.14.14.2 NMAC – Rp 8.14.14.2 NMAC, 01/01/2019]

8.14.14.3 STATUTORY AUTHORITY: Section 32A-2-4 NMSA 1978, as amended, cited as the Children's Code.
[8.14.14.3 NMAC - Rp. 8.14.14.3 NMAC, 01/01/2019]

8.14.14.4 DURATION: Permanent.
[8.14.14.4 NMAC - Rp. 8.14.14.4 NMAC, 01/01/2019]

8.14.14.5 EFFECTIVE DATE: January 1, 2019.
[8.14.15.5 NMAC - Rp. 8.14.14.5 NMAC, 01/01/2019]

8.14.14.6 OBJECTIVE: To promulgate standards for the maintenance and operation of all juvenile detention centers including standards for the site, design, construction, equipment, care, programming, education, staffing, and medical and behavioral health care. The department shall certify as approved all juvenile detention centers in the state meeting the standards promulgated.
[8.14.14.6 NMAC - Rp. 8.14.14.6 NMAC, 01/01/2019]

8.14.14.7 DEFINITIONS:

A. Terms beginning with the letter "A":

(1) "Abuse and neglect" perpetrated by an adult on a child/juvenile, as defined in the Children's Code.

(2) "**Action plan**" a written document in response to a sanction submitted by the center to the department for approval which states the actions that the center plans to implement, with specific time frames and responsible parties for each, to correct the deficiencies found by the department in a previous inspection or review of documents.

(3) "**Adjudicate**" to make a finding of whether a juvenile committed a delinquent and/or criminal act.

(4) "**Administrator**" the person in charge of the daily operation of the center. The administrator may be the person named on the certification or an authorized representative of the applicant or designee.

(5) "**Annual certification**" is an authorization for a center to operate for a one-year period of time. The effective date is noted on the face of the document. The annual certification is issued on an initial and renewal basis following investigation of an initial application for certification or the inspection of the center by the department, unless

a complaint is received during the certification period that warrants the issuance of a sanction.

(6) "**Applicant"** the county, municipality, or other center operator or administrator in whose name a certification for a center has been issued and who is legally responsible for compliance with applicable standards.

(7) **"Application"** the forms, attachments, documents, and drawings required as part of the process of granting or denying an annual certification or provisional certification.

(8) "**Authority"** the Children's Code.

B. Terms beginning with the letter "B": [RESERVED]

C. Terms beginning with the letter "C":

(1) "**Capacity**" the number of beds available for juveniles in the center as established through certification standards without a waiver provision.

(2) "**Certification"** the document issued by the department which authorizes the operation of a center pursuant to these detention standards. The term "certification" may include an annual certification and/or a provisional certification.

(3) "**Certifying authority**" the New Mexico children, youth and families department.

(4) "Chemical restraints" aerosols, sprays, or foggers used on juveniles, including mace and pepper sprays, not including pharmaceutical restraints administered by a medical provider.

(5) "**Collocated center"** a center located within or as part of or on the same immediate grounds of an existing county or municipal jail or courthouse, which contains a jail, provided that all state and federal requirements for a collocated center are met. No center that is not an existing collocated center, as of December 31, 1993, shall be certified as a collocated center.

D. Terms beginning with the letter "D":

(1) "**Deficiency"** a violation of or failure to comply with these standards.

(2) "**Delinquent offender**" a delinquent child (under the age of 18) who is subject to juvenile sanctions only and who is not a youthful offender or a serious youthful offender, as defined in the Delinquency Act.

(3) "**Denial of an application and denial of annual certification**" action by the department refusing to grant an annual certification or provisional certification.

(4) "**Department"** the New Mexico children, youth and families department.

(5) **"Detention center"** Detention facility, as defined in the Delinquency Act.

(6) "**Direct care staff**" staff of the center who provide supervision, security, custody, and control of center juveniles; this excludes contractors, volunteers, and student interns.

(7) "**Direct supervision**" direct care staff who provide direct supervision, observation, interaction, and programming by being physically present with juveniles at all times.

(8) "**Director**" the director of the juvenile justice services division of the New Mexico children, youth and families department.

E. Terms beginning with the letter "E": "**Emergency suspension of certification**" the department's prohibition of the operation of a center for a stated period of time by temporary withdrawal of the certification, prior to a hearing on the matter, when immediate action is required to protect health and safety of staff and/or juveniles.

F. Terms beginning with the letter "F":

(1) "**Final decision**" the written document following a hearing stating the final determination of the secretary.

(2) "**Five-day hearing**" the hearing noted in the emergency suspension and notice of hearing.

G. Terms beginning with the letter "G": [RESERVED]

H. Terms beginning with the letter "H":

(1) "**Health and safety deficiencies**" non-compliance with any standard which relates to conditions or circumstances leading to death, physical harm, or psychological harm to juveniles; any pervasive conditions that pose a threat to the physical safety of juveniles; any pervasive neglect or abuse of juveniles; or the pervasive detainment of status offenders.

(2) "**Hearing officer**" a person the secretary designates to conduct pre-hearing conferences and hearings, and to issue reports and recommendations, based on the information produced at the hearing.

I. Terms beginning with the letter "I":

(1) "ICJ" interstate compact on juveniles is a contract between states that regulates interstate movement of juveniles under court supervision, who have run away from home, or who have left their state of residence.

(2) "**Inspection**" an entry into, and examination of, the center's premises, records, including interviews with staff and juveniles, and any relevant information needed to show compliance with these standards.

J. Terms beginning with the letter "J": "**Juvenile**" generally any person who is younger than 18 years of age; however, for the purposes of these standards, a "juvenile" refers to any individual held in a juvenile detention center.

K. Terms beginning with the letter "K": [RESERVED]

L. Terms beginning with the letter "L": [RESERVED]

M. Terms beginning with the letter "M":

(1)
"**Maintenance**" keeping building(s) and grounds in a repaired, safe, sanitary, and presentable condition.

(2)
"**Management**" the juvenile detention center manager, supervisor, director, superintendent, or administrator.

N. Terms beginning with the letter "N": [RESERVED]

O. Terms beginning with the letter "O": "**Official notice**" information concerning the status of a center's certification.

P. Terms beginning with the letter "P":

(1) "**Partial compliance**" that a center is found to meet the conditions of participation, with moderate to few non-health and safety deficiencies and is able to receive a temporary certification so long as the implementation of a corrective action plan is achieved.

(2) "PREA" prison rape elimination act.

(3)
"**Prospective applicant**" the county, municipality, or other center operator or administrator, in whose name a certification for operation has been submitted.

(4)
"**Provisional certification**" a temporary certification, not to exceed two consecutive 120-day provisional certifications, to operate a center.

Q. Terms beginning with the letter "Q": [RESERVED]

R. Terms beginning with the letter "R":

(1) "RAI" risk assessment instrument.

(2)
"**Recipient**" the person or entity who receives service of notice.

(3)
"**Revocation of certification**" the department's prohibition of operation of a center by withdrawal of a certification.

(4) "Room confinement" when a juvenile is in a room by force, security, or staff direction and is not permitted to come out without staff instruction.

S. Terms beginning with the letter "S":

(1)
"**Sanctions**" a measure imposed by the department for violations of these standards.

(2) "SARA" screenings, admissions, and releases applications.

(3)
"**Secretary**" the cabinet secretary of the New Mexico children, youth and families department.

(4) "**Serious incident**" Environmental hazards; medical emergencies requiring transport, regardless of admission to a clinic or hospital; quarantine; serious injury or illness requiring medical intervention or treatment; behavioral health issues, including suicide ideation, suicide attempt, or transport to a behavioral health facility for evaluation, treatment, or placement; serious contraband (e.g., weapons, narcotics); violent acts by a client regardless of the victim; escapes; lockdowns; and abuse and neglect of a juvenile as defined by the Children's Code. Serious Incidents are reported to the local juvenile probation officer supervisor and the department's detention compliance monitor within 24 hours of the incident or by the next business day via email or by fax if the report contains protected information. Additionally, detention centers are responsible for taking appropriate actions, notifying law enforcement, and investigating when necessary.

(5) "**Serious youthful offender**" a person (age 15-18) who is charged with and indicted or bound over for trial for first degree murder, as defined in the Delinquency Act.

(6) "**Soft restraints**" fabric devices that utilize Velcro to restraint individuals without restricting breath. While in an approved soft restraint, the juvenile must be afforded some movement and not be restricted to one particular position. Approved soft restraints do not employ metal buckles or fasteners or in any way attach the juvenile's legs and/or ankles to the torso.

(7) "**Standard of compliance**" the degree of compliance required by these standards is designated by the use of the words shall, must, and may. Shall and must designate mandatory requirements that may not be waived. May is permissive and designates other requirements that may be determined to be non-applicable by the department.

(8) "**Status offender**" a juvenile who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult. (See also 28 CFR 31.304.)

(9)
"**Substantial compliance**" that a center is found to meet the conditions of participation, without deficiencies, or with minor or few non-health and safety deficiencies, and is able to receive full certification.

(10)
"**Suspension of certification**" the department's prohibition of operation of a center for a stated period of time through withdrawal of the certification, after notice and an opportunity for a hearing.

(11)
"**Supervision**" direct observation and guidance by staff by being physically present with the juveniles.

T. Terms beginning with the letter "T": [RESERVED]

U. Terms beginning with the letter "U": [RESERVED]

V. Terms beginning with the letter "V": [RESERVED]

W. Terms beginning with the letter "W": "**Waiver**" a temporary or provisional certification to operate a center which does not conform with the standards for a period of time set by the secretary. A waiver from the department may be granted to a center for a maximum of two years. Any request for a waiver for re-certification of a waiver, denied by the department is not subject to the hearing process and procedures.

X. Terms beginning with the letter "X": [RESERVED]

Y. Terms beginning with the letter "Y": "Youthful offender" a delinquent child subject to adult or juvenile sanctions who

is age 14-18 at the time of the offense and who is adjudicated for offenses contained and defined in the Delinquency Act.

Z. Terms beginning with the letter "Z": [RESERVED]

[8.14.14.7 NMAC - Rp. 8.14.14.7 NMAC, 01/01/2019]

8.14.14.8 LEGAL AUTHORITY:

A. The following standards are promulgated by the department pursuant to the Children's Code. These are minimum standards to assess basic operations of juvenile detention centers in New Mexico.

B. The department shall have access to the administrator or designee and the center for inspection of the center for compliance with these standards. Compliance is determined during annual inspections or during more frequent inspections as necessary.

C. The center shall oblige all of these standards and applicable state and federal laws.

[8.14.14.8 NMAC - Rp. 8.14.14.8 NMAC, 01/01/2019]

8.14.14.9 STAFFING:

A. The education and experience qualifications of the center administrator include, at a minimum, one of the following: a bachelor's degree in an appropriate discipline, four years of experience working with juveniles, or three years in detention supervision and administration.

B. Eligible candidates for center staff shall be 18 years of age or older, be eligible to work in the US, possess a high school diploma or its equivalent, and successfully pass a background check and a physical examination.

C. Background checks are conducted on potential new staff, consultants, contractors, volunteers, and student interns. Candidates with any felony convictions or any child abuse and/or neglect convictions are barred from employment. The center and/or the county where the center is located shall have written policies and procedures setting out which additional convictions shall prohibit employment and other records that are required to be checked.

D. The center shall have written policies and procedures governing issues of confidentiality of social, education, and medical records of its staff, consultants, contractors, volunteers, and student interns.

E. The center shall have written policies and procedures governing operational shift assignments and post orders that state the duties and responsibilities for each assigned position in the center; these shift assignments are reviewed at least annually and updated as necessary.

F. The center shall have a written job description for each position or group of like positions which clearly states qualification, requirements, and responsibilities.

G. The center shall maintain employment records for staff, contractors, volunteers, and student interns.

H. The center shall have written policies and procedures that provide staff with access to their records and a process to address corrections to such records.

I. The center shall have a grievance process for staff.

[8.14.14.9 NMAC - Rp. 8.14.14.9 NMAC, 01/01/2019]

8.14.14.10 STAFF TRAINING:

A. Training shall be provided annually to all staff by qualified instructors. Each staff signs an acknowledgment that they have been trained and understand the center's policies and procedures.

B. The center shall have written policies and procedures that ensure all new fulltime staff receive 40 hours of orientation/ training before being independently assigned to a particular job. This detention center orientation/training is to include at a minimum: orientation in the purpose, goals, and policies and procedures of the center; working conditions; post-orders; first aid/ CPR; fire and emergency protocols; suicide prevention; behavior management methods; restraint techniques; PREA; alcohol and drug withdrawal; mandatory abuse and neglect reporting; and an overview of the juvenile justice and correctional fields. Credit for prior training received is acceptable so long as the training occurred within the past year.

C. The center shall have written policies and procedures that ensure all support staff, medical providers, and behavioral health clinicians who have regular contact with juveniles receive an additional 16 hours of training in juvenile detention issues each subsequent year.

D. The center shall have written policies and procedures that ensure all part-time staff, contractors, volunteers, and student interns receive training appropriate to their assignments.

E. The center shall have written policies and procedures that ensure all new juvenile detention officers receive an additional 80 hours of training during their first year of employment. Additionally, all juvenile detention officers receive 40 hours of training each subsequent year of their employment. Trainings may include the following topic areas:

(1) security procedures,

(2) supervision of juveniles,

(3) behavior management methods,

(4) report writing,

(5) rules for juveniles,

(6) rights and responsibilities of juveniles,

(7) fire and emergency protocols,

(8) key control,

(9) interpersonal relations,

(10) cultural/ linguistic competency,

(11) child/ adolescent growth and development,

(12) communication skills,

(13) first aid/ CPR,

(14) suicide prevention,

(15) certified course in restraint techniques,

(16) intake criteria/and reporting,

(17) PREA,

(18) impacts of childhood trauma, and

(19) alcohol and drug withdrawal.

F. All training records are maintained in the staff's file.

[8.14.14.10 NMAC - Rp. 8.14.14.10 NMAC, 01/01/2019]

8.14.14.11 JUVENILE RECORDS:

A. The center shall have written policies and procedures consistent with state and federal laws to provide individuals and agencies access to records for the purposes of research, evaluation, and statistical analysis in accordance with a formal written agreement that authorizes access, specifies uses of data, ensures confidentiality, and supports security.

B. The center shall have written policies and procedures which govern record management, including the establishment, utilization, content, privacy, security, and preservation of records; and a schedule for the retirement or destruction of inactive case records consistent with state record requirements. These policies and procedures shall be reviewed annually.

C. The center shall have written policies and procedures to protects the juvenile's assets and provide accountability for the protection of the juvenile's assets, including the segregation of client's funds.

D. The center shall have written policies and procedures for an admittance record that is completed for every juvenile and contains the following information:

(1) court case number, if any, and detention center admission number;

(2) date and time of admission and release;

(3) name and nicknames, if any;

(4) last known address;

(5) immigration status;

(6) legal status (authority for detention);

(7) name of attorney, if any;

(8) name, title, and signature of delivering officer;

(9) specific charge(s);

(10) sex/gender;

(11) date of birth;

(12) place of birth;

(13) race or nationality;

(14) education and school attended;

(15) employment, if any;

(16) medical/ health status;

(17) consent to treat forms;

(18) name, relationship, address, and phone number of parent(s)/guardian(s) and/ or person(s) the juvenile resides with at time of admission;

(19) driver's license number and social security number;

(20) Medicaid number, if applicable;

(21) court and disposition, if any;

(22) additional remarks noting any open wounds or sores requiring treatment, evidence of disease, body vermin, piercings, or tattoos;

(23) person recording data;

(24) inventory of property;

(25) emergency contact;

(26) nature of offense/offense codes;

(27) photo, if juvenile is 13 years old or older; and

(28) fingerprints, if juvenile is 13 years old or older.

E. The center shall have written policies and procedures governing record management for every juvenile and contains the following information:

(1) intake information;

(2) documented legal authority to accept juvenile;

(3) information on referral source;

(4) record of court appearances;

(5) behavioral health risk assessment;

(6) record of assets, cash, and valuables held;

(7) notations of temporary absences from the center, if any;

(8) visitors' names and dates of visits, if any;

(9) record of telephone calls, if any;

(10) juvenile probation officer(s) and/or or caseworker(s) assigned;

(11) program rules and disciplinary policy, signed by juvenile;

(12) grievance and disciplinary records;

(13) referrals to other agencies, if any;

(14) final discharge or transfer report;

(15) nature of offense/offense codes; and

(16) documentation declining admissions to any juvenile who appears to be under the influence of drugs or alcohol.

F. There shall be a single master file identifying all juveniles detained in the center. Its contents shall be identified and separated according to an established format by the center.

G. The center shall use a release of information form that complies with applicable state and federal laws. The juvenile's parent/ guardian/custodian or the court shall sign a release of information form before any release of information, including records and images, to the public. Once signed, a copy of the release of information form is maintained in the juvenile's record.

Without parental or court consent, no records, images, or information about adjudicated juveniles shall be released if, by law, it is to be sealed in the future. Without parental or court consent, no information, including records and images about pre-adjudicated juveniles, shall be released. Images include any photographs, mug-shots, and video.

H. The center shall have written policies and procedures that safeguard records from unauthorized and improper disclosure. Manual records are marked "confidential" and kept in locked files that are also marked "confidential". Computerized/automated records are confidential and protected. All information is subject to disclosure to the department.

[8.14.14.11 NMAC - Rp. 8.14.14.11 NMAC, 01/01/2019]

8.14.14.12 PHYSICAL PLANT:

A. A detention center for juveniles may be collocated within, as part of, or on the same immediate grounds of an existing municipal or county jail or courthouse which contains a jail, provided that all state and federal requirements for a collocated center are met, in accordance with these standards. (See also 28 CFR 31.303.)

B. The requirements for collocated centers include the following:

(1) separation, achieved architecturally or through time-phasing of common, non-residential areas, between juveniles and adults, so that there can be no sustained sight or sound contact between juveniles and detained adults in the center;

(2) total separation in all juvenile and adult programs, including recreation, education, vocation, medical and behavioral health care, dining, sleeping and general living activities;

(3) an independent and comprehensive operational plan for the juvenile detention center providing for a full range of separate services is in place; and

(4) separate juvenile and adult staff, including management at an administrative level, security staff, and direct care staff.

C. Specialized services staff such as cooks, bookkeepers, medical providers, and maintenance workers, who do not directly supervise juveniles and adults, can serve both.

D. The day to day management, security, and direct care functions of the juvenile detention center are vested in a totally separate staff, dedicated solely to the juvenile population.

E. The center's site must meet the following standards:

(1) an area large enough to provide an outdoor recreation area for the maximum capacity of juveniles;

(2) the outdoor recreation area must be enclosed by a wall or fence at least 16 feet high and located strategically to prevent juveniles and the general public from seeing one another, except at a reasonable distance, to prevent passing contraband;

(3) the property must be large enough to prevent encroachment of new construction on adjoining properties;

(4) the site must be sufficiently large to discourage exposure at windows and to prevent passing contraband through or over a fence or wall;

(5) there should be sufficient area to allow future expansion of the center; and

(6) there should be adequate parking space for staff and visitors.

F. All approvals of local zoning boards, city or county commissioners, or other responsible local bodies are necessary to receive certification.

G. The center shall comply with all applicable federal, state, and local health, safety, and building codes and accessibility requirement of the American's with Disabilities Act.

H. The population in housing or living units cannot exceed the rated capacity of certification, unless otherwise waived by the department.

I. Multi-purpose facilities shall be made equally available to male and female juveniles while maintaining necessary privacy, sight and sound separation, and physical separation.

J. Water for showers is temperature controlled.

K. Living units are primarily designed for single-occupancy sleeping rooms. Any use of multiple occupancy rooms cannot exceed 20 percent of the single bed capacity of the unit. There are at least 80 percent of all beds in rooms designed for single-occupancy only.

L. New construction requirements for single-occupancy sleeping rooms include the following:

(1) at least 70 square feet of floor space,

(2) the toilet is above floor level and is available for use,

(3) wash basin and drinking water,

(4) hot and cold running water,

(5) a bed above floor level,

(6) natural or artificial light, and

(7) shower facilities.

M. At no time shall male and female juveniles occupy the same sleeping room, privacy must be provided with no direct sight or sound contact between male and female juveniles.

N. Temperature control and ventilation shall be available in the event of a power failure. All heating, air conditioning, piping, boilers, and ventilation equipment shall be installed and maintained to meet all requirements of current state and local mechanical, electrical, and construction codes. Temperatures shall be maintained at a reasonable degree at all times.

O. The total indoor/outdoor activity space apart from the sleeping area provides at least 100 square feet per juvenile.

P. The center shall provide adequate, appropriate space for the following:

(1) visitation with some privacy, as security allows;

(2) religious services;

(3) interviews in or near the living unit;

(4) telephone calls;

(5) secure storage space for juveniles' property and personal belongings;

(6) storage for clothing, bedding, and center supplies;

(7) separate and locked spaces for mechanical equipment with inventory lists and sign in/out logs that are maintained;

(8) sleeping rooms and housing units used by disabled juveniles are designed for their use and shall provide the maximum possible integration with the general population and ensure their safety and security;

(9) all areas of the center that are accessible to the public shall be accessible to and usable by disabled staff, juveniles, and visitors;

(10) a dayroom for each housing unit or cluster with a minimum of 35 square feet of floor space per juvenile and be separate and distinct from the sleeping area, which is adjacent and accessible; and

(11) units housing male and female juveniles, sharing day rooms, restrooms, and activity areas, shall provide separate and private areas for males and females and prevent all sight and sound contact between males and females when in their sleeping quarters, shower areas, or other areas requiring privacy.

Q. There shall be a written plan for preventive maintenance of the physical plant with provisions for emergency repairs or replacement of equipment. This plan shall be reviewed annually and updated as needed.

[8.14.14.12 NMAC - Rp. 8.14.14.12 NMAC, 01/01/2019]

8.14.14.13 SAFETY AND EMERGENCY:

A. The center shall comply with applicable state, federal, and local sanitation, safety, and health codes pertaining to fire, evacuations, emergencies, and safe, secure storage.

B. The center shall provide that a qualified fire and safety officer perform a comprehensive and thorough inspection of the center for compliance with safety and fire prevention standards annually and the center provides documentation of the inspection.

C. The center shall maintain fire alarms, an automatic detection system, and the availability of fire hoses or extinguishers at appropriate locations throughout the center.

D. Policies and procedures shall specify the center's fire prevention practices; evacuation of staff, juveniles, and visitors; a provision for an adequate fire protection service; a system of fire inspection and testing of equipment semi-annually; and an annual inspection by the state fire marshal or other qualified person(s) approved by the state fire marshal.

E. The center must be equipped with the following safety containers:

(1) noncombustible receptacles for smoking materials and separate containers for other combustible refuse at readily accessible locations, and

(2) special containers for flammable liquids and rags used with flammable liquids.

F. The center must provide space to securely store the following items readily accessible to authorized persons only:

(1) restraining devices and related security equipment, and

(2) all flammable, toxic, chemical, and caustic materials.

G. Center furnishings are purchased with proof of the fire safety performance requirements of the materials selected.

H. The center must have access to an alternate power source to maintain essential services in an emergency. Power generators and other emergency equipment and systems are tested at least monthly for effectiveness and shall be repaired or replaced as necessary. Documentation of tests shall be maintained.

I. The center shall provide for the prompt release of juveniles from locked areas in case of fire or other emergency, and a secondary release system shall be in place in the center. These release procedures shall be set out in the safety and emergency procedures.

J. The center shall have exits that are properly positioned, clearly, distinctly, and permanently marked, in order to evacuate juveniles, staff, and visitors in the event of fire or other emergency. All housing areas and places of assembly for 50 or more persons shall have two exits.

K. The center shall have a written plan for evacuation in the event of fire or other emergency that is approved through the fire marshal.

L. The evacuation plan shall be reviewed annually, updated as necessary, and documented. The plan shall include the following:

(1) location of building/floor plans,

(2) use of exit signs and directional arrows for traffic flow,

(3) location of publicly posted plans,

(4) documented fire drills are conducted monthly, rotating drills between the shifts, and

(5) documented evacuation drills conducted annually.

M. The center shall have written policies and procedures to provide for safe, appropriate response to and handling of the following emergencies:

(1) active shooter,

(2) bomb threats,

(3) hostage taking,

(4) riots,

(5) natural disasters,

(6) chemical leaks,

(7) hunger strikes,

(8) mass arrests, and

(9) employee strikes and/or walkouts.

N. The center shall have written policies and procedures governing the control and use of all flammable, toxic, and caustic materials.

[8.14.14.13 NMAC - Rp. 8.14.14.13 NMAC, 01/01/2019]

8.14.14.14 SECURITY, STAFFING, AND CONTROL:

A. All centers shall submit a plan to the department within 90 days of beginning operations, which demonstrates the center's ability to provide adequate management, control, supervision, staff coverage, program activities, and security, and address at a minimum:

(1) center structure,

(2) population flow,

(3) staff ratios,

(4) adequate supervision during day time, lockdowns, room confinements, suicide prevention coverage times, and sleeping hours,

(5) indoor and outdoor recreational activities,

(6) staff training,

(7) staff absence policy (e.g., sick leave, vacation, etc.),

(8) policies and procedures to ensure juveniles shall be safe from physical and verbal assault, harassment, threats of violence, theft, intimidation, and sexual misconduct, including sexual harassment and sexual abuse, and

(9) policies and procedures to safeguard against all sight and sound contact between juveniles and detained adults.

B. All centers shall maintain staff/juvenile ratios with a minimum of one juvenile detention officer for every eight juveniles during day and swing shifts, and a ratio of one juvenile detention officer for every 16 juveniles during sleeping hours.

C. Staff of the same gender as the juvenile shall be present when conducting strip (visual) and pat searches and monitoring shower and toilet areas, except in exigent circumstances. Additionally, there is no direct sight or sound contact between males and females in these areas or living quarters.

D. The center shall operate a control center which is staffed at all times.

E. The center perimeter shall be secured in such a way that juveniles remain within the perimeter and that access by the general public is denied without proper authorization.

F. The center shall have written policies and procedures requiring that all security perimeter entrances and exterior doors are kept locked except when used for entry or exit and in cases of emergencies.

G. The center shall have written policies and procedures to govern the availability, control, inventory and use of physical/mechanical restraints and include the following:

(1) restraints are only used for justifiable self-defense, protection of juveniles from hurting themselves, protection of others, protection of property, and the prevention of escapes;

(2) restraints are only used as a last resort after all other attempted less restrictive interventions have failed;

(3) following the intake process, staff consider the juvenile's medical condition and history of abuse when utilizing restraints;

(4) mechanical restraints shall only be applied by, or with the authorization of, the center administrator or designee, medical provider, or behavioral health clinician; and

(5) restraints shall be defined in policies and procedures as "the use of any physical intervention, mechanical device, or pharmaceutical used to restrict movement of a juvenile or the movement or normal function of a portion of an individual's body during isolated, serious incidents".

H. The center is responsible for training staff on the proper techniques for applying restraints, both physical and mechanical, and for properly monitoring juveniles who are in restraints. The center may not use restraints:

(1) as punishment or sanctions,

(2) for convenience of staff, or

(3) as a substitute for programs or activities.

I. Center staff monitor a juvenile placed in mechanical restraints at a minimum of every five minutes and record each of those checks in the juvenile's records.

(1) At the onset of a mechanical restraint, a medical provider must be notified. Within one hour of a mechanical restraint, a medical provider must assess the juvenile regardless of how long the restraint was in use. A mechanical restraint may not be in effect for a period longer than one hour for every 24 hour period without written authorization from the center administrator.

(2) The mechanical restraint devices used at the center must be manufactured and developed specifically for such use and, therefore, designed to cause the least possible physical discomfort and avoid physical injury to the juvenile.

(3) The only approved mechanical restraint devices are the following:

(a) handcuffs,

(b) waist chain/belts,

(c) foot shackles,

(d) safety helmets,

(e) spit guards,

(f) disposable/flexible cuffs, and

(g) soft restraints as defined by these standards.

(4) The use of all other mechanical restraint devices is prohibited.

(5) The use of restraint chairs is prohibited.

(6) The use of chemical/aerosol restraints is prohibited.

(7) The use of restraints in a courtroom is prohibited, unless ordered by the judge.

J. The administration of pharmaceutical restraints shall not be used except under the direction and authorization of a medical provider after all other efforts to manage behavior have failed.

K. Written policies and procedures shall provide for weekly inspection and maintenance of mechanical restraints devices.

L. All use of force incidents including physical, mechanical, and pharmaceutical restraints are reported (in writing) to and reviewed by the center administrator within 24 hours. Additionally, the following information shall be recorded in the log maintained for that purpose prior to the end of the shift on which the restraint occurred:

(1) the name of the juvenile,

(2) the date and time restraints were used,

(3) the type of restraint used,

(4) the name of the staff requesting use of the restraint,

(5) the name of the supervisor or medical provider authorizing the use of restraint,

(6) the name of the staff who actually conducted the restraint,

(7) the reason for the use of the restraint, and

(8) the date and time the juvenile was released from the restraint.

M. All use of force incidents including physical, mechanical, and pharmaceutical restraints and all serious incidents are reported to the local juvenile probation officer supervisor and the department's detention compliance monitor within 24 hours of the incident or by the next business day via email or by fax if the report contains protected information.

N. The center shall have written policies and procedures requiring that staff inspect every area of the center daily and submit a written report to the center's administrator whenever deficiencies are noted. All such documentation shall be readily available to the department.

O. The center shall have a written policies and procedures to search staff, contractors, volunteers, student interns, juveniles, and visitors for contraband. Information on contraband and notification of searches are posted at the center's main entrance.

P. Strip (visual) searches shall be conducted without specific authorization only upon admittance or return to the center. At all other times, searches shall be conducted based on reasonable suspicion, and must be authorized by the center administrator or designee.

Q. The center shall notify the local juvenile probation officer supervisor and the department's detention compliance monitor of any suspension of services or center closure (temporary or permanent). The notification must be submitted 30 days prior to the change. A statement describing provision of essential services, continuation of client care, possible alternative placement, and a plan to restore normal operations shall accompany the notification.

R. Firearms are not permitted in the center except as defined by the center policies and procedures.

S. The center shall have written policies and procedures governing the control and use of keys and an accounting of all material related to the ingress/egress to the center.

T. The center shall have written policies and procedures governing the control and use of tools and medical and culinary equipment.

U. The center shall have written policies and procedures for handling escapes, walkaways, and unauthorized absences. The policies and procedures shall include documenting, investigating, and reporting to the department.

V. The center shall have written policies and procedures that provides for a communications system within the center, and between the center and the community, specifically in the event of an emergency.

W. The center shall have written policies and procedures governing the transportation of juveniles when transportation is provided by center staff.

X. The center shall have written policies and procedures to provide transportation in emergencies or evacuation from the center including all notifications to the public and to the department.

Y. The center shall have written policies and procedures governing the transportation of juveniles from one jurisdiction to another.

Z. The center shall have written policies and procedures prohibiting the admittance of children younger than the age limit identified in the Children's Code, status offenders, persons charged or previously adjudicated as delinquents or youthful offenders who are 18 years of age and older who have previously been detained with an adult population, and persons who are 18 years of age and older who are participating in a juvenile specialty court program serving custodial sanctions.

[8.14.14.14 NMAC - Rp. 8.14.14.14 NMAC, 01/01/2019]

8.14.14.15 FOOD SERVICE:

A. Food services shall comply with the applicable sanitation and health codes as promulgated by state, federal, and local authorities.

B. The center shall have written policies and procedures requiring that food service staff develop planned menus that are nutritionally balanced and approved by a state licensed dietician. In the planning and preparation of all meals, food flavor, texture, temperature, appearance, and palatability shall be considered.

C. A staff member, experienced in food service management, shall supervise food service operations, unless such food services are contracted with another agency in which case, the staff member shall monitor the contract for compliance.

D. The center shall have written policies and procedures that provide for special diets as prescribed by appropriate medical or dental health care providers and religious dietary laws.

E. The center shall have written policies and procedures that require food service providers to serve at least three meals, two of which are hot, at regular meal times during each 24-hour period. There shall be no more than 14 hours between the evening meal and breakfast. The center food service supervisor may allow variation, so long as the three meals provided within the 24-hour period meet the daily basic nutritional requirements and the 14-hour requirement.

[8.14.14.15 NMAC - Rp. 8.14.14.15 NMAC, 01/01/2019]

8.14.14.16 SANITATION AND HYGIENE:

A. The center must comply with applicable state, federal, and local sanitation and health codes.

B. The center shall take actions to prevent and control vermin and pests.

C. Hair care services shall be available to juveniles.

D. The center shall have written policies and procedures requiring that articles necessary for maintaining personal hygiene are provided to all juveniles, including toothbrushes, toothpaste, soap, shampoo, and feminine hygiene products.

E. The center shall have written policies and procedures that provide for suitable, clean bedding and linens: one sheet, one pillow and pillowcase, one mattress, and sufficient blankets to provide comfort regardless of temperature conditions; and linen exchange at least weekly or more often as necessary.

F. The center shall maintain a surplus supply of clothing, linens, and bedding for the center's maximum juvenile population.

G. The center shall clean, and when necessary, disinfect juveniles' bedding and clothing before storage or issuance.

[8.14.14.16 NMAC - Rp. 8.14.14.16 NMAC, 01/01/2019]

8.14.14.17 MEDICAL AND BEHAVIORAL HEALTH CARE:

A. The center shall have written policies and procedures that provide for the delivery of health care services, including medical, dental, and behavioral health care, under the control of a designated health authority. When this authority is other than a health care provider, final medical judgment rests with a designated, responsible, licensed physician. Arrangements are made with the health care provider in advance of need.

B. Medical, including psychiatric and dental, matters involving medical judgment are performed by a licensed physician and/or dentist respectively. The center's policies and procedures that are applicable to center staff are also applicable to health care providers.

C. The center shall have written health care policies and procedures approved by the responsible physician and/or health authority that provide for a regular schedule of examinations, emergency protocols, inventory of all medical materials dispensed, and medical record retention.

D. The center shall have written policies and procedures that shall address the management of serious, communicable, and infectious diseases.

E. The department of health shall be notified of any outbreak of an infectious disease.

F. The center shall enter into an agreement with a nearby medical service provider and/or hospital for all medical services that the center cannot provide.

G. Appropriate state and federal license, certification or registration requirements, and restrictions apply to staff who provide health care services to juveniles. Verification of current credentials and job descriptions are kept on file in the center and/or in the county where the center is located.

H. The center shall have written policies and procedures requiring that first aid kits are available. A medical provider approves the contents, locations, and procedure for periodic inspections.

I. The center shall have written policies and procedures that provide for medical examination of any staff or juvenile suspected of carrying a communicable disease.

J. At the time of a juvenile's admission, program staff shall be informed of juveniles' special medical, physical, and behavioral health conditions that might require additional attention, further evaluation, or safety monitoring.

K. The center shall have written policies and procedures requiring a medical and behavioral health evaluation be performed by medical providers and behavioral health clinicians on all juveniles, within 72 hours of arrival at the center. All findings and evaluations are recorded.

L. The center shall have written policies and procedures requiring that juveniles be informed orally and in writing of the process for accessing medical and behavioral health services.

M. Juveniles' medical and behavioral health complaints are monitored and responded to daily, or as needed, and are documented.

N. The center shall provide sick call for non-emergency medical service, conducted by a physician or medical provider.

O. Sick call is available to each juvenile at least weekly.

P. The center shall have written policies and procedures that provide for the prompt notification of a juvenile's parent/guardian/custodian in case of illness, surgery, injury, or death.

Q. The center shall provide access to 24-hour emergency medical and behavioral health care.

R. The center shall have written policies and procedures that provide for screening, care, and/or referral for care of juveniles who display behavioral health, developmental, or intellectual delay needs. When such juveniles are identified, proceedings are instituted pursuant to the Children's Code.

S. The center shall have written policies and procedures for detoxification services, performed under medical supervision, from alcohol, opiates, barbiturates, and other drugs. The center shall not provide detoxification services unless they are approved and staffed by medical providers.

T. The center shall have written policies and procedures that provide for proper management of pharmaceuticals and address the following subjects:

(1) handling psychotropic medications,

(2) medication receipts,

(3) storage,

(4) dispensing,

(5) administration,

(6) distribution,

(7) inventory,

(8) all controlled substances, and

(9) syringes and needles.

U. The center shall have written policies and procedures that provide that all staff administering or distributing medication have training from a medical provider, and are accountable for administering medications according to orders. The administration of medications are recorded on a form approved by the responsible physician and/or pharmacist including the appointment of a treatment guardian ad litem as required under the Children's Code.

V. The center shall have written policies and procedures that provide that stimulants, tranquilizers, and psychotropic drugs that require intramuscular administration are prescribed only by a physician and are administered by a physician, registered nurse, or medical provider.

W. The center shall have written policies and procedures that prohibit the use of stimulants, tranquilizers, or psychotropic drugs for purposes of behavior management or experimentation and research.

X. The center shall have written policies and procedures that prohibit the use of juveniles for medical, pharmaceutical, or cosmetic experiments. This policy does not preclude individual treatment of a juvenile based on the need for a specific medical procedure that is not generally available.

Y. The center shall have written policies and procedures requiring that a health record be kept on each juvenile containing the following:

(1) the completed receiving screening form;

(2) health appraisal data forms;

(3) all findings, diagnoses, treatments, dispositions, prescribed medications and their administration, laboratory, x-ray, and diagnostic studies;

(4) signature and title of staff documenting the information;

(5) consent and refusal for treatment forms;

(6) release of information forms;

(7) place, date, and time of health encounters;

(8) health service reports, e.g., dental, behavioral health, and consultations;

(9) treatment plan, including nursing care plan and progress reports; and

(10) discharge summary of hospitalization and other termination summaries.

Z. The method of recording entries in the records, the form and format of the records, and the procedures for their maintenance and safekeeping are approved by the health authority.

AA. The center shall have written policies and procedures upholding the principle of confidentiality of the health record:

(1) the active health record shall be maintained separately from the detention record;

(2) access to the health record shall be controlled by the medical provider in accordance with HIPAA; and

(3) medical providers and behavioral health clinicians may share with the center administrator information regarding a juvenile's medical and behavioral health management and ability to participate in programs.

BB. The center shall have written policies and procedures that provide when a juvenile is in need of hospitalization, security staff accompanies and stays with the juvenile at least during admission. If the juvenile is admitted, the center administrator notifies the court.

CC. The center shall have written policies and procedures to handle all behavioral health emergencies and all necessary services (including placement change) for any juvenile experiencing a behavioral health emergency. Juveniles are afforded access to behavioral health care and crisis intervention services in accordance with their needs.

(1) During any and all medical or behavioral health required observations, staff visually checks the juvenile every five minutes. Each check is documented, the juvenile's behavior described, and the reason for the juvenile to remain on observation noted.

(2) Juveniles placed on observation are visited at least one time each day by staff from

administrative, supervisory, medical, behavioral health, or education. A log recording who required the observation, persons visiting the juvenile, the person authorizing the release, and the time of release is maintained and available for inspection by the department. [8.14.14.17 NMAC - Rp. 8.14.14.17 NMAC, 01/01/2019]

8.14.14.18
JUVENILE RIGHTS AND RESPONSIBILITIES:

A. The center shall have written policies and procedures stating that juveniles are not subject to discrimination based on race, color, national origin, religion, sex (including pregnancy and childbirth) mental or physical disability, genetic information, marital status, sexual orientation, gender identity, serious medical condition, domestic abuse reporting status, and citizenship.

B. Any juvenile who is not a delinquent offender, but who is abused or neglected, and juveniles charged with status offenses, shall not be held in the center (exception: out-of-state runaways, mandated by state and federal laws as provided in an ICJ).

C. The center shall have written policies and procedures requiring equal access to programs and services for male and female juveniles.

D. The center shall have written policies and procedures requiring that supervision of juveniles be provided by trained staff, contractors, or volunteers.

E. A written grievance procedure shall be explained and made available to all juveniles. It must allow for at least one timely level of appeal. Release of a juvenile is not a remedy.

F. The center shall have written policies and procedures that provide for review of all disciplinary hearings and dispositions by the center administrator or designee.

G. The center shall have written policies and procedures that provide when a juvenile is charged with a rules violation that they are given a written copy of the alleged violation within 24 hours of the discovery of the violation.

H. The center shall have written policies and procedures that provide when a juvenile is charged with rule violations that they are scheduled for and receive a hearing within 72 hours of the incident. The center administrator may postpone a hearing for good cause.

I. The center shall have written policies and procedures that provide juveniles charged with rule violations are present at the hearing, unless they waive that right in writing or through unsafe behavior. Juveniles may be excluded during the testimony of anyone whose testimony must be given in confidence. The reason for the juvenile's absence or exclusion is documented.

J. The center shall have written policies and procedures that provide disciplinary hearings are conducted by an impartial person or panel trained in center policies and procedures. The staff charging the juvenile cannot serve as the hearing officer. The following is included in each disciplinary hearing:

(1) a record of the disciplinary hearing and a copy of the written decision is given to the juvenile with an explanation of the right to appeal;

(2) the juvenile may appeal a decision of the disciplinary hearing officer(s) to the administrator or higher supervisory authority; the administrator or higher supervisory authority either affirms or reverses the decision of the disciplinary hearing officer(s) within five days of the appeal; and

(3) how the juvenile is sanctioned for the rule violation is documented.

K. At least one hour of recreation shall be provided daily to juveniles and when the weather permits, outdoor exercise. A structured one-hour of leisure time activity shall be provided in addition to the recreation time. The center shall provide an appropriate range of daily indoor and outdoor recreational and leisure activities which meet the needs of juveniles of various ages, interests, and abilities.

(1) Recreational activities shall provide a balance of group play, competitive games, and quiet individual activity.

(2) The center shall provide the necessary equipment for conducting appropriate indoor and outdoor recreational program.

L. Juveniles shall be provided access to their legal counsel.

M. Juveniles may make confidential contact with attorneys, authorized representatives, and advocates including, telephone communications, correspondence, and visits. However, attorneys, authorized representatives, and advocates are subject to the center's visitation search procedure.

N. Juveniles shall not be transferred to a county/adult jail solely on the basis of turning 18 years old while in a juvenile detention center.

O. The center shall have written policies and procedures permitting juveniles to participate in religious services and religious counseling on a voluntary basis, subject only to limitations necessary to maintain order and security.

P. Juveniles are not subject to corporal or cruel punishment, humiliation, mental abuse, isolation, solitary confinement, or punitive interference with the daily functions of living, including eating, sleeping, personal hygiene, and physical exercise. Juveniles are not denied access to education or required medical and behavioral health care.

Q. Juveniles are not required to participate in uncompensated employment unless the work is related to housekeeping, maintenance of the center or grounds, personal hygienic needs, or is part of an approved vocational or training program.

R. Juveniles are permitted visitors, subject only to the limitations necessary to maintain order and security.

S. Juveniles may

communicate or correspond with families and friends, as well as with public officials, the courts, and their attorneys, subject only to the limitations necessary to maintain order and security.

T. Juveniles may maintain the length and style of their hair, except if such style causes a risk to health and safety.

U. Juveniles may maintain facial hair, except if such style causes a risk to health and safety.

V. All written information is provided in a language that the juvenile can comprehend. Completion of orientation is documented by a statement that is signed and dated by the juvenile and placed in the master file.

W. Library materials are available to all juveniles.

X. Community and social service programs are accessible to all juveniles.

Y. Juveniles are afforded access to behavioral health care and crisis intervention services in accordance with their needs.

Z. The center shall have written policies and procedures to handle all behavioral health emergencies and to provide for all necessary services (including transportation or placement change) for any juvenile experiencing a behavioral health emergency.

AA. Juveniles may access telephone services, subject to written policies and procedures.

[8.14.14.18 NMAC - Rp. 8.14.14.18 NMAC, 01/01/2019]

8.14.14.19 RULES AND DISCIPLINE:

A. Rule violations, disciplinary procedures, and possible sanctions shall be posted in a conspicuous and accessible area. Information about the disciplinary process shall be given to each juvenile upon admission. The documents are translated into the language spoken by the juveniles within the community.

B. Each staff prepares a disciplinary report when a juvenile commits a reportable rule violation. Disciplinary reports include the following information:

(1) specified rule(s) violated,

(2) a formal statement of the charge,

(3) an explanation of the event, including who was involved, what happened, and the time and location of the incident,

(4) unusual juvenile behavior,

(5) staff and juvenile witnesses,

(6) disposition of any physical evidence,

(7) any immediate action taken, including the use of force (restraints),

(8) reporting staff's signature, and

(9) date and time report is made.

C. All documentation shall be kept in the juvenile's file and in the center's discipline file to document due process not for the purpose of accumulating disciplinary reports.

D. The center shall have written policies and procedures that govern room confinement:

(1) room confinement is prohibited for minor misbehavior,

(2) prior to room confinement, juveniles must have the reasons for the confinement explained to them and have an opportunity to explain the behavior leading to the confinement, and

(3) during any and all room confinements, staff contact is made with the juvenile at a minimum of every 15 minutes; each check is documented, the juvenile's behavior described, and the reason for the juvenile to remain in room confinement noted.

(4) When a juvenile is confinement for the safety of others or to maintain the security of the center, the juveniles may be confined for a time period of up to 22 hours; if the juvenile's behavior improves, they are returned to general population as soon as possible; confinement lasting 22 hours shall be reviewed and approved by the administrator or designee not involved in the incident leading up to the confinement.

E. Juveniles placed in confinement are visited at least one time each day by staff from administrative, supervisory, medical, behavioral health, or education. A log recording who authorized the removal from regular programming, persons visiting the juvenile, the person authorizing the release, and the time of release is maintained and available for inspection by the department.

F. Whenever a juvenile is removed from the regular program, a supervisor reviews the action and documents approval of the action. The juvenile probation officer is notified within one business day of the removal.

G. Deprivation of food, exercise, sleep, hygiene, access to medical and behavioral health care, and education are prohibited.

H. Behavior management methods shall be designed to provide incentives for positive behavior and afford proportional measures of accountability. Incentives for positive behavior may include privileges:

(1) special visits,

(2) extra phone calls,

(3) movies,

(4) music, and

(5) special events.

[8.14.14.19 NMAC - Rp. 8.14.14.19 NMAC, 01/01/2019]

8.14.14.20 ADMISSION PROCEDURES:

A. The center shall have written policies and procedures governing the intake and orientation of newly admitted juveniles including:

(1) notification of assigned juvenile probation officer,

(2) verification of legal authority to detain,

(3) search and inventory of the juvenile and possessions,

(4) disposition of clothing and personal possessions,

(5) medical screening,

(6) shower and hair care, as needed,

(7) issuance of clean clothing, as needed,

(8) notification of parent/guardian/custodian,

(9) recording of basic personal data and information to be used for mail and visiting lists,

(10) assignment to a housing unit, and

(11) assignment of a registration number (booking number/file number).

B. If center medical providers or behavioral health clinicians determine that a juvenile needs to be medically or psychiatrically treated and/or cleared prior to admission, the center may deny admissions and direct law enforcement to transport the juvenile to a hospital for medical or psychiatric clearance. Law enforcement shall provide a copy of the medical or psychiatric clearance document(s) to the center upon return.

C. The center shall provide an orientation handbook containing programs, services, rules, and rights and responsibilities to juveniles upon admission. The orientation handbook is translated into the language spoken by the juveniles and their families.

D. The center shall perform functions necessary to utilize SARA for recording the admission of any juveniles entering the center. All admissions must be recorded in the format the detention center is trained on to input data into SARA. Once the admission is completed, it is the responsibility of center staff to continue recording any transfers into the center or releases from the center in the format the center is trained on to input data into SARA.

E. A written itemized list is made of all personal property in the possession of a newly admitted juvenile; a copy of this list, which notes all property that will be held until release, is given to the juvenile and maintained in center admission file.

F. All juveniles may make up to three telephone calls to parents/guardians/custodians and attorneys during the admissions process or at the first practical opportunity. Telephone calls are documented.

[8.14.14.20 NMAC - Rp. 8.14.14.20 NMAC, 01/01/2019]

8.14.14.21 EDUCATION:

A. The center, in cooperation with the local education agency, develops and implements written policies and procedures which provide for the educational and instructional needs of juveniles, and complies with applicable state and federal educational standards. The center must maintain a current memorandum of understanding with the local education agency to provide educational services and testing for juveniles in detention. The memorandum of understanding contains mandatory attendance requirements, provision for special education testing and services, and transfer of education records to the juvenile's community school or to the department if the juvenile is committed. The memorandum of understanding sets forth the following requirements:

(1) space allocation,

(2) timing and identification of service provision for each teacher,

(3) educational assistant and special education staff and support staff,

(4) furniture,

(5) training schedule,

(6) length of the school year, days education is provided, and length of the school day,

(7) supplies for consumables and texts, and

(8) security coverage.

B. Technology is available to provide instruction and maintain education records, including telephone, faxes, and copiers.

C. A portfolio shall be developed for each student. The portfolio will be sent with the student when they return to their community school or if they are committed. Included in the portfolio are all relevant education records and the documentation of any records transferred.

D. Each center establishes an education curriculum and a process for selecting the curriculum for each juvenile, including high school equivalency track, credit recovery, post-secondary work, and standard high school credits. Each center documents how a juvenile receives an equal level of educational services compared with the student's community school setting.

E. Within 24 hours of the first school day, the following information is recorded:

(1) name,

(2) address,

(3) parent/guardian/custodian,

(4) last two schools attended,

(5) attendance,

(6) grade level,

(7) special education status,

(8) number of credits earned,

(9) home/native language,

(10) social security number,

(11) date of last IEP (individualized education plan), and

(12) the date of the last evaluation.

F. Within 24 hours of the first school day, the local education agency is contacted to verify the information provided by the juvenile. Incoming juveniles are evaluated to determine current grade levels for appropriate school placement and educational programming. All information and school records are documented in the portfolio.

G. An IEP is put in place based on all information received or a new IEP is developed and diagnostic evaluations are completed.

H. An individual curriculum based on the juvenile's identified needs is assigned and progress is recorded in the portfolio.
[8.14.14.21 NMAC - Rp. 8.14.14.21 NMAC, 01/01/2019]

8.14.14.22 RECREATION AND LEISURE PROGRAMMING:

A. The center shall have written policies and procedures requiring that juveniles have access to:

(1) recreation activities and leisure time daily,

(2) reading materials, and

(3) culturally appropriate activities and services.

B. The center shall develop and implement a daily activity schedule inclusive of meaningful leisure time activities to alleviate idleness and provide incentives for positive behavior.
[8.14.14.22 NMAC - Rp. 8.14.14.22 NMAC, 01/01/2019]

8.14.14.23 MAIL AND VISITING:

A. The center shall have written policies and procedures requiring that juveniles may communicate with their families.

B. There is no limit to the volume of letters a juvenile may send or receive, except when the center provides postage. In such cases, the center informs the juvenile of the quota which permits at least one letter per week.

C. Inspection of juvenile's mail may occur to safeguard the security of the center. Any letter from an attorney may not be opened.

D. The receipt and holdings of all money received/ held for the juvenile are handled in a separate account or receptacle that may only be accessed by a supervisor.

E. All incoming mail is distributed by midnight on the same day it is received, and outgoing mail is held for no more than 24 hours, excluding weekends and holidays.

F. Visitors register upon entry into the center and are subject to search.

G. The center shall maintain mail and visitor logs setting out the above information.
[8.14.14.23 NMAC - Rp. 8.14.14.23 NMAC, 01/01/2019]

8.14.14.24 RELEASE PREPARATION AND TRANSFER PROGRAMS:

A. The center shall have written policies and procedures that provide for releasing juveniles including:

(1) verification of identity,

(2) verification of release papers,

(3) completion of release arrangements, including the person or agency to whom the juvenile is to be released,

(4) return of personal items,

(5) administrative resolution of any pending action, including disciplinary proceedings (and appeals), grievances, claims for damages, or lost possessions,

(6) medical screening and arrangements for community follow-up care,

(7) transportation arrangements, and

(8) instructions on forwarding the juvenile's mail.

B. Juveniles are only released upon receipt of a written release order signed by an appropriate authority.

C. The center does not accept the presence of a detainer as an automatic bar to release. The center determines the basis of any such detainer, and may release the juvenile to a detainer, if appropriate.
[8.14.14.24 NMAC - Rp. 8.14.14.24 NMAC, 01/01/2019]

8.14.14.25 VOLUNTEER INVOLVEMENT:

A. Volunteer involvement in programs, direct services, and cooperative endeavors for juveniles is encouraged.

B. Center staff provides supervision for all volunteers and volunteer programs.

C. Volunteers are screened and recruited from all cultural and socioeconomic segments of the community.

D. Volunteers are issued identification cards. Background checks are conducted on all potential volunteers.

E. Volunteers agree, in writing, to abide by all center policies, procedures, and rules.

F. The administrator may curtail, postpone, or discontinue services of a volunteer or volunteer organization for any reason.
[8.14.14.25 NMAC - Rp. 8.14.14.25 NMAC, 01/01/2019]

8.14.14.26 RECORD COMPLIANCE: Each center shall maintain documentation, including records, policies, and procedures required by these standards and shall make them available to the department. Paper and electronic records and files shall be maintained and managed per state records requirements.
[8.14.14.26 NMAC - Rp. 8.14.14.26 NMAC, 01/01/2019]

8.14.14.27 WAIVERS AND VARIANCES:

A. A waiver means the department refrains from enforcing compliance with a portion of these standards for a limited time period provided the health, safety, and welfare of the juveniles and staff are not in danger. Waivers are not favored and will be granted at the sole discretion of the secretary for emergencies or other exceptional circumstances. Failure to plan, negligence, or other such similar factors are not grounds for a waiver. A waiver must be requested in writing. The factors to determine if a waiver shall be granted are based on the following:

(1) impact on the juveniles' health and safety,

(2) impact on staff safety,

(3) impact on any security measures in place, and

(4) the best interests of the community.

B. Any waiver must be in writing and must specify the time period of the waiver.

C. If on the date these standards are promulgated, a center is providing services prescribed under these standards, but fails to meet all building requirements, a variance may be granted at the sole discretion of the secretary if:

(1) the variance requested does not create a hazard to the health, safety, or welfare of the juveniles and staff,

(2) the variance requested does not deny access to any disabled person who is otherwise qualified to receive services from or visit the center,

(3) the building requirements for which variances are granted cannot be corrected without an unreasonable expense to the center,

(4) the variance requested is not in conflict with existing building codes, and

(5) the variance requested is recorded and made a permanent part of the center file.

D. Any variance granted continues to be in effect as long as the center continues to provide services pursuant to these standards; and these variances are not transferred to a different center or transferred/assigned upon the sale or transfer of the center from the current applicant.

E. If a new center is opened in an existing building, variances may be granted for those building requirements that the center cannot meet under the same criteria that the previous, certified center had been granted as set out above.

[8.14.14.27 NMAC - Rp. 8.14.14.27 NMAC, 01/01/2019]

HISTORY OF 8.14.14 NMAC: The material in this part was derived from that previously filed with the state Records Center and Archives under:
DOC 73-1, Facilities for the Detention of Children Minimum Standards, 6-29-73;
SIB 81-1, Local Facilities for the Detention of Children Standards, 4-1-82;
YA JFD 100, Legal Authority, Related Regulations and Definitions, 6-24-91;
YA JFD 400, Personnel, 6-24-91;
YA JFD 500, Staff Training, 6-24-91;
YA JFD 600, Juvenile Records, 6-24-91;
YA JFD 700, Physical Plant, 6-24-91;
YA JFD 800, Safety and Emergency Procedures, 6-24-91;
YA JFD 900, Security and Control, 6-24-91;
YA JFD 1000, Food Service, 6-24-91;
YA JFD 1100, Sanitation and Hygiene, 6-24-91;
YA JFD 1200, Medical and Health Care Services, 6-24-91;
YA JFD 1300, Juvenile Rights and Responsibilities, 6-24-91;
YA JFD 1400, Rules and Discipline, 6-24-91;
YA JFD 1500, Admission Procedures, 6-24-91;
YA JFD 1600, Programs, 6-24-91;
YA JFD 1700, Mail and Visiting, 6-24-91;
YA JFD 1800, Release Preparation and Transfer Programs, 6-24-91;
YA JFD 1900, Citizen and Volunteer Involvement, 6-24-91.

HISTORY OF REPEALED MATERIAL:
YA JFD 100, Legal Authority, Related Regulations and Definitions - Repealed, 7-31-01;
YA JFD 400, Personnel - Repealed, 7-31-01;
YA JFD 500, Staff Training - Repealed, 7-31-01;
YA JFD 600, Juvenile Records - Repealed, 7-31-01;
YA JFD 700, Physical Plant - Repealed, 7-31-01;
YA JFD 800, Safety and Emergency Procedures - Repealed, 7-31-01;
YA JFD 900, Security and Control - Repealed, 7-31-01;
YA JFD 1000, Food Service - Repealed, 7-31-01;
YA JFD 1100, Sanitation and Hygiene - Repealed, 7-31-01;
YA JFD 1200, Medical and Health Care Services - Repealed, 7-31-01;
YA JFD 1300, Juvenile Rights and Responsibilities - Repealed, 7-31-01;
YA JFD 1400, Rules and Discipline - Repealed, 7-31-01;
YA JFD 1500, Admission Procedures - Repealed, 7-31-01;
YA JFD 1600, Programs - Repealed, 7-31-01;
YA JFD 1700, Mail and Visiting - Repealed, 7-31-01;
YA JFD 1800, Release Preparation and Transfer Programs - Repealed, 7-31-01;
YA JFD 1900, Citizen and Volunteer Involvement - Repealed, 7-31-01;
NMAC 8.14.14, New Mexico Juvenile Detention Standards - Repealed, 01-01-2019.

CULTURAL AFFAIRS, DEPARTMENT OF

A public hearing was held by the Department of Cultural Affairs and Museum of New Mexico Regents on April 3 and April 6, 2018 for the purpose of repealing 4.51.57 MAC and replacing it with a new rule 4.51.57 NMAC. On November 16, 2018, the Museum of New Mexico Board of Regents repealed the current version of 4.51.57 NMAC and adopted a new rule 4.51.57 NMAC. The Department of Cultural Affairs Secretary repealed the current version of 4.51.57 NMAC and adopted the new version of 4.51.57 NMAC on November 28, 2018. The new version of 4.51.57 NMAC will be effective December 27, 2018

CULTURAL AFFAIRS, DEPARTMENT OF

TITLE 4 CULTURAL RESOURCES
CHAPTER 51 MUSEUM OF NEW MEXICO
PART 57 GOVERNANCE OF THE PORTAL PROGRAM AT THE PALACE OF THE GOVERNORS STATE HISTORY MUSEUM

4.51.57.1 ISSUING AGENCY: Department of Cultural Affairs and Museum of New Mexico Board of Regents.
[4.51.57.1 NMAC - Rp, 4.51.57.1 NMAC, 12/27/2018]

4.51.57.2 SCOPE: Museum of New Mexico, palace of the governors state history museum division and program applicants and participants.
[4.51.57.2 NMAC - Rp, 4.51.57.2 NMAC, 12/27/2018]

4.51.57.3 STATUTORY AUTHORITY: Subsection E of Section 9-4A-6 NMSA 1978 of the Cultural Affairs Department Act authorizes the secretary of the department of cultural affairs to make and adopt such reasonable procedural rules as necessary to carry out the duties of the department and its divisions. Subsections G and I of Section 18-3-3 NMSA 1978 authorize the board of regents to adopt such rules as may be appropriate to carry out the provisions of its statutory powers and duties, including the duty to cooperate with individuals to the extent necessary to establish and maintain the museum and its programs.
[4.51.57.3 NMAC - Rp, 4.51.57.3 NMAC, 12/27/2018]

4.51.57.4 DURATION: Permanent.
[4.51.57.4 NMAC - Rp, 4.51.57.4 NMAC, 12/27/2018]

4.51.57.5 EFFECTIVE DATE: 12/27/2018, unless a later date is cited at the end of a section.
[4.51.57.5 NMAC - Rp, 4.51.57.5 NMAC, 12/27/2018]

4.51.57.6 OBJECTIVE: The objective of this rule is to govern and regulate the operation of the program, including the quality and authenticity of items offered for sale on the portal of the museum. These rules are not in any way an assumption of responsibility by the division, the board of regents, or the secretary of the department of cultural affairs for the actions or representations made by participants.
[4.51.57.6 NMAC - Rp, 4.51.57.6 NMAC, 12/27/2018]

4.51.57.7 DEFINITIONS:

A. "Add-on" means a new or additional product offered in the program.

B. "Applicant" means an individual who submits an application to be a participant pursuant to these rules.

C. "Application" means the form used by the division for applicants to apply to participate in the program.

D. "Board of regents" means the board of regents of the museum of New Mexico.

E. "Child" means a son or daughter.

F. "Coordinator" means the division employee assigned by the director to serve as the liaison between the participants and the director.

G. "Demonstration" means the process by which applicants and participants demonstrate the ability to make the product(s) that applicants wish to sell in the program.

H. "Demonstration report" means the form described in 4.51.57.10 NMAC.

I. "Director" means the director of the division or the director's designee.

J. "Dishonest" means obtaining an unfair advantage during the election of portal committee members and officers or during the drawing, and includes, but is not limited to, taking two or more chips at the same time away from the drawing receptacle, getting in line for the morning draw after the duty officer has closed the line, drawing a numbered chip and giving the chip to another participant or member from a different household, or having more than one person from the same household in line for the morning draw or claiming more than one space per household on any given day.

K. "Division" means the palace of the governors state history museum division.

L. "Duty officer" means a portal committee member assigned by the portal committee to monitor the program area on a particular day.

M. "Findings" shall have the meaning given in Section 30-33-4 of the IACSA.

N. "Good standing" means a participant who sells in the program area at least once a year and is not on suspension or termination from the program.

O. "Household member" means a participant who resides in the same residence as another participant and who is related by blood, marriage, or adoption to the other participant and includes a(n) spouse, parent, legal guardian, grandparent, son or daughter, grandchild, sibling, cousin, aunt, uncle, niece, nephew, and in-law.

P. "Identity badge" means the museum issued identification card for program participants.

Q. "Indian market" means the event held annually by the southwest association of Indian arts during the third weekend in August.

R. "Inspection" means the examination by one or more portal committee members of products displayed by a participant for sale to ensure compliance with these rules.

S. "IACSA" means the Indian Arts and Crafts Sales Act, Sections 30-33-1 through 30-33-11 NMSA 1978.

T. "Maker's Mark" means a symbol that applicants or participants use to identify their products.

U. "Minor children" means a person under the age of 18.

V. "Monitoring form" means a written report completed by a portal committee member that documents violation(s) of these rules by a participant.

W. "Museum" means the palace of the governors state history museum.

X. "Native American" means any person who is an enrolled member of a Native American tribe as evidenced by a tribal enrollment card or certified tribal records, or any person who can meet the minimum qualifications for services offered by the United States government to Native Americans because of their special status as Native Americans as evidenced by a certificate of degree of Native American blood card.

Y. "Native American handmade" means any product in which the entire shaping and forming of the product from raw materials and its finishing and decoration were accomplished by Native American hand labor and manually controlled methods that permit the maker to control and vary the construction, shape, design or finish of each part of each individual product, but does not exclude the use of findings, hand tools and equipment for buffing, polishing, grinding, drilling, sawing or sewing and other processes approved by regulations adopted under the IACSA.

Z. "Native American tribe" means any tribe, band, nation, Alaska native village or other organized group or community that is eligible for the special programs and services provided by the United States government to Native Americans because of their status as Native Americans, or any tribe that has been formally recognized as a Native American tribe by a state legislature.

AA. "Parent" means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the participant when the participant was a son or daughter.

BB. "Participant" means an individual that has successfully completed the application process and has been accepted as an artist in the program.

CC. "Participant file" means the official program file which is a collection of papers, materials and documents relating to the individual program participant, and shall include, at a minimum, current address and contact information, proof that a participant is eligible and qualified to be a participant, e.g., application, documentation of demonstration, proof of tribal enrollment, clear description and picture of mark, a signed statement of responsibility, release, and agreement to participate in the portal program, and any disciplinary actions. A participant may review their file by making an appointment with the portal coordinator or director.

DD. "Portal committee" means the group of participants that monitors, in conjunction with the director coordinator, the daily operation of the program and the applicants' and participants' compliance with these rules.

EE. "Product" means Native American arts and crafts and traditional food stuffs offered for sale in the program that meet the requirements of these rules.

FF. "Program" means all activities that comprise the selection of participants and selling of products under these rules.

GG. "Program area" means the area described in 4.51.57.13 NMAC.

HH. "Reprimand" means the written notice or admonition to a participant of misconduct and the potential consequences of further misconduct.

II. "Son or daughter" means a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis.

JJ. "Space" means a designated area within the program area which is assigned, pursuant to this rule, to a participant to sell participant(s)'s product(s).

KK. "Spanish market" means the event held annually by the Spanish colonial art society during the third weekend of July.

LL. "Spouse" means a husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the state in which the marriage was entered into or, in the case of a marriage entered into outside of any state, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a same-sex or common law marriage that either was entered into in a State that recognizes such marriages or if entered into outside of any state, is valid in the place where entered into and could have been entered into in at least one state.

MM. "Statement of responsibility, release, and agreement to participate in the portal program" is a statement signed by a participant acknowledging that in exchange for being allowed to participate in the portal program, the participant agrees to abide by applicable department policies and rules.

NN. "Suspension" means temporarily revoking of a portal participant's privilege to sell participant's products for a defined period of time, no less than one day and no more than twelve months.

OO. "Termination" means permanently revoking a participant's privilege to sell products in the program.

PP. "These rules" means 4.51.57 NMAC, Governance of the Portal Program at the Palace of the Governors State History Museum. [4.51.57.7 NMAC - Rp, 4.51.57.7 NMAC, 12/27/2018]

4.51.57.8 RESOLUTIONS:

A. Whereas, the presence of Native American artists and artisans at the museum is an integral part of the history, tradition and function of the museum; and

B. Whereas, the museum of New Mexico has determined that reserving the museum portal for the display and sale of New Mexico Native American products not

only helps preserve traditional aspects of New Mexico Native American culture but is also educational to the visiting public because it provides the public the opportunity for contact with New Mexico Native American artists and artisans in a historically relevant context;

C. Now, therefore, be it resolved by the board of regents and the secretary of the department of cultural affairs that the display and sale of handmade Native American art at the museum shall be governed as described in these rules.

[4.51.57.8 NMAC - Rp, 4.51.57.8 NMAC, 12/27/2018]

4.51.57.9 ADMINISTRATION OF THE PROGRAM:

A. The director shall designate a coordinator in consultation with the portal committee. The director or coordinator shall oversee the program in consultation with the portal committee. The portal committee, director, or coordinator may request the assistance of the Indian affairs department, the all-pueblo governor's council, the museum of Indian arts and culture, and other tribal entities of New Mexico.

(1) The coordinator shall serve as liaison between the participants, and the division and director in conjunction with the portal committee.

(2) The coordinator shall maintain the official records and files of the portal program including participant files and applications, demonstration reports, correspondence, forms, and financial records. Official records and files are the property of the division. The portal committee shall have access to files of the portal program.

(3) The portal committee with the coordinator may develop and schedule educational activities and events and perform other duties as assigned by the director.

B. The division shall provide interpretive materials on the history and culture of New Mexico, Native Americans and on the tradition of the program.

C. The division shall make a reasonable effort to consult with the portal committee before removing a participant but reserves the absolute right to immediately remove participants for conduct or behavior that poses an immediate threat to others or for other emergency situations Permanent removal from the program is subject to the procedures outlined in 4.51.57.15 NMAC.

[4.51.57.9 NMAC - Rp, 4.51.57.14 NMAC, 12/27/2018]

4.51.57.10 PARTICIPANT QUALIFICATIONS AND APPLICATION PROCESS:

A. Qualification.

(1) To qualify as a participant artist in the program, an individual shall be 18 years of age or older, shall be Native American and shall be from a federally recognized tribe or pueblo of New Mexico.

(2) The director may, after consulting with the portal committee, allow in writing for a waiver of the requirement that a participant be a member of a New Mexico pueblo or tribe subject to such conditions as the director deems appropriate. The director, in consultation with the portal committee, shall issue such waivers in writing and grant them only to Native Americans when a waiver is consistent with the purpose of the program to present and preserve the historic Native American cultures of New Mexico.

B. Application process. No one shall sell in the program area until the director has approved the individual to be a participant based on an application, a demonstration, and the portal committee's recommendation.

(1) Application. Qualified individuals shall submit an application. The applicant shall submit the following in the application: name, contact information, emergency contacts, a proposed mark; proof of tribal enrollment; a signed statement of responsibility, release, and agreement to participate in the portal program; and any other information requested by the coordinator.

(2) Demonstration. An applicant shall demonstrate, at the applicant's studio or residence and with the applicant's own tools or equipment, the making of the applicant's product(s), including any add-ons, to establish that the product(s) meet the quality and authenticity standards of 4.51.57.16 NMAC. However, if there is an excess of twenty applicants in backlog, the director, in consultation with the portal committee, has discretion to authorize demonstrations away from an applicant's studio or residence provided the applicant uses the applicant's own tools. An applicant may, however, use borrowed equipment when such equipment cannot be easily transported.

(a) The applicant shall perform the demonstration in the presence of at least two portal committee members who shall evaluate the applicant's products. The portal committee members shall not be persons related by blood, marriage, or adoption, which includes a(n) spouse, parent, legal guardian, grandparent, son or daughter, grandchild, sibling, cousin, aunt, uncle, niece, or nephew of the participant. The director or coordinator may also witness the demonstration.

(b) The portal committee members who are present shall prepare, review, and sign a demonstration report before the members depart from the applicant's residence or studio. The demonstration report shall contain the name of the artist, the address where the demonstration occurred, date of demonstration, the observed product(s), methodology and materials, a detailed narrative, and photographs of the applicant making the product, if permitted by the applicant. The portal committee members shall submit the demonstration report to the coordinator by the following portal committee meeting.

(c) Subsequent demonstration(s). The portal committee may require a subsequent demonstration before or after an applicant becomes a participant. Reasons for a subsequent demonstration(s) may include, but are not limited to, a request by the applicant for a demonstration, unclear or missing information from a demonstration report, request for add-on, absence from the program for a year or more, or questions regarding the quality or authenticity of work.

(d) The portal coordinator and the portal committee will maintain a list of those applicants waiting to demonstrate. Only completed applications will be placed on this list and demonstrations will be scheduled in a manner that is most efficient for those who will be witnessing the demonstration.

(e) If the portal committee, portal coordinator or the director is unable to contact an applicant for any reason, the applicant's name will be placed on an inactive status list that may be maintained by the portal committee and portal coordinator. If the applicant contacts the portal committee, portal coordinator or the director at a later date, the applicant's name will be placed at the end of the demonstration waiting list.

(f) Whenever possible, a portal committee member shall not witness a demonstration by a fellow tribal member without the presence of another unaffiliated tribal member, the portal coordinator or the director.

(g) If the portal committee determines that the assistance of former portal committee members is needed with witnessing demonstrations, then with the director or coordinator's approval, those former portal committee members in good standing selected to help may witness demonstrations. However, if former portal committee members are enlisted to assist with witnessing a demonstration, at least one current portal committee member must also be present to witness the demonstration.

(3) No action of any type shall be taken on new applications or applications that require a demonstration during two months prior to the annual meeting. The director may waive this two month moratorium. This moratorium does not apply to actions taken in regard to violations of portal program rules. The portal committee shall begin conducting demonstrations and considering new applications after reviewing waiting list.

(4) The portal committee shall recommend to the director an applicant's approval or disapproval as a participant upon completion of the applicant's demonstration. The director shall approve or deny and sign the application, noting the decision. If an application is denied, the director shall state the reasons on the application. The coordinator shall then notify the applicant and the portal committee of the application's status.

(5) Appeal. An applicant aggrieved by a denial of an application under these rules may appeal the decision to the director. The applicant shall submit the appeal in writing within 10 calendar days of the director's decision and shall clearly and concisely explain why the denial was inappropriate. A decision of the director upholding the denial shall be the department of cultural affairs' final action in the matter.

(6) Participant status. Acceptance into the program does not make a participant an employee or agent of the division.

C. Good standing. Participants must be in good standing to continue to be eligible to vote in elections and run for election to the portal committee.

[4.51.57.10 NMAC - Rp, 4.51.57.11 NMAC, 12/27/2018]

4.51.57.11 THE PORTAL COMMITTEE:

A. Purpose. The portal committee shall be composed of up to ten active members and four alternates, who shall be appointed and elected pursuant to this section. The purpose of the portal committee includes, but is not limited to, monitoring the daily operations of the program for compliance with these rules, evaluating applications, and presenting participants' concerns and issues to the coordinator. In order to ensure diversity and broad representation, the portal committee shall be comprised of representatives from not less than five tribes or pueblos.

B. Selection.

(1) At the annual meeting, the director or coordinator shall oversee the election of new portal committee members and officers.

(2) Participants shall elect 14 participants who are present at the annual meeting to be portal committee members and alternates. Subject to Subsection A of 4.51.57.11 NMAC, the 10 participants who receive the highest number of votes shall be members of the portal committee. The four participants who receive the highest number of votes after the members of the portal committee have been selected shall serve as alternates.

(3) The membership shall elect three officers (chair, vice-chair, and secretary). The director or coordinator shall accept nominations from the floor for portal committee officers. The director shall close the nominations at the director's discretion. In the case of a tie, the coordinator shall break the tie.

C. Portal committee responsibilities.

(1) Portal committee members shall carry out their duties to the best of their abilities and in a professional manner.

(2) Portal committee members shall agree to abide by the code of conduct in 4.51.57.17 NMAC of these rules and shall carry out their duties and activities in conformity with these rules.

(3) The portal committee shall ensure fair and equitable treatment of all applicants and participants, without regard to tribal affiliation, political affiliation,

family relations, age, gender, sexual orientation, religious affiliation, or other legally protected status. Members shall not disregard certain rules nor shall they selectively enforce these rules.

(4) Portal committee members shall serve as duty officers on a rotating basis in accordance with the monthly duty officer schedule prepared by the portal committee secretary.

(5) The portal committee may form subcommittees as necessary to address specific issues and to assist the portal committee as a whole.

(6) The chairman shall preside at all portal committee meetings and work with the coordinator to organize and plan the business of the portal committee and the program.

(7) The vice-chairman shall serve as the chair in the chair's absence.

(8) The secretary shall keep the minutes of the portal committee meetings. The secretary shall submit meeting minutes to the coordinator by the next portal committee meeting.

(9) The secretary shall produce a monthly "duty officer schedule" and distribute it to the portal committee before the first day of each month. The secretary shall assign duty days by distributing the days as evenly and equitably as possible and by listing one or more portal committee members for duty each day.

(10) Unless a portal committee member's absence is approved by the portal committee chair, each portal committee member shall attend all portal committee meetings and perform various tasks to enable the portal committee to fulfill its duties and purposes.

(11) In order to allow for new program participants, the portal committee shall conduct at least 10 demonstrations for new applicants each year between portal committee elections if at least 10 applicants submit complete applications, in addition to add-ons.

(12) The portal committee shall assist participants in presenting the traditional and educational aspects of the program to the public.

(13) The portal committee shall monitor the daily operations of the program and assist the division in enforcing these rules and other applicable policies by serving as duty officers on a rotating basis.

(14) In the event of a resignation or removal of a portal committee member, the portal committee shall appoint another participant to serve on the portal committee observing alternate protocol. The appointed participant shall resume any duties of the outgoing member, including assigned duty officer days.

D. Resignation. If a portal committee member is unable to complete the portal committee member's term, the portal committee member shall submit a letter of resignation to the portal committee and the division.

E. Removal.

(1) If a portal committee member fails to fulfill the duties of a portal committee member, the portal committee shall try to assist the member to improve the member's participation and involvement before asking the member to resign. Examples of failing to fulfill a portal committee member's duties include but are not limited to missing two or more portal committee meetings within a one-year term, missing a scheduled duty officer day, failing to enforce or to fairly enforce these rules, failing to conduct inspections while serving as duty officer, and refusing to assist a duty officer.

(2) If a portal committee member is asked but refuses to resign, the portal committee may make a recommendation in writing to the director that the portal committee member be removed from the portal committee.

(3) Participants may make a recommendation in writing to the director through a petition, signed by at least fifty percent or more of the number of participants that attended the prior annual meeting, that a portal committee member be removed from the portal committee.

(4) A portal committee member who is aggrieved by removal from the portal committee may file an appeal in accordance with Subsection C of 4.51.57.15 NMAC.

[4.51.57.11 NMAC - Rp, 4.51.57.13 NMAC, 12/27/2018]

4.51.57.12 MEETINGS:

A. Annual Meeting. The purpose of the annual meeting is to give participants an opportunity to express issues of concern and to make recommendations regarding the program to the director.

(1) The annual meeting shall be held on a day in October, at a place to be provided by the division. The annual meeting shall be open to the public, and the coordinator should announce the meeting at least 30 days in advance.

(2) The director shall chair the annual meeting and shall work directly with the portal committee in the conduct of the meeting.

(3) The program shall not be conducted during the annual meeting, but shall open when the annual meeting is officially adjourned.

(4) Only participants with an identity badge and who are in good standing and in attendance at the annual meeting may cast a vote on matters taken to vote, including the election of the portal committee pursuant to 4.51.57.11 NMAC.

(5) If revisions to these rules are proposed, the portal committee and the coordinator shall make copies of the existing and proposed rules available for explanation and discussion.

(6) Rule proposal suggestions will be brought to and discussed with the portal committee prior to any draft compilation that is presented to the membership for consideration.

B. Committee meetings. The purpose of portal committee meetings is to discuss program matters.

(1) The portal committee shall meet at least twice a month or at their discretion and shall coordinate the location and times of meetings with the coordinator.

(2) In order to make any decision other than whether a quorum has been met, the portal committee shall have a quorum present, comprised of six portal committee members. Once a quorum is present, a vote shall be based upon a simple majority of portal committee members present.

(3) The director or coordinator may attend all portal committee meetings and may address the portal committee at any time.

(4) Any portal committee member who cannot attend a meeting shall notify the chair at least 24 hours prior to the meeting unless an emergency prevents the member from notifying the chair sooner.

(5) Committee meetings shall be open to all participants except when a participant requests privacy because of an anticipated discussion of a private matter such as a discipline.

C. Special meetings. The director or coordinator may schedule special meetings of the participants for matters or topics not addressed during the annual or monthly meeting.

[4.51.57.12 NMAC - Rp, 4.51.57.12 NMAC, 12/27/2018]

4.51.57.13 DAILY OPERATION: Within the program area defined below, the division permits a program involving the daily sales of Native American handmade products by qualified participants, subject to the following conditions. All participants are subject to all rules and conditions starting at 7:00 a.m.

A. Program area. The participants shall conduct the program upon the brick surface area under the portal that extends four feet from the southern wall of the museum and in between the plane of the eastern wall and the plane of the western wall of the same.

(1) The program shall not use the area extending west seven feet across from the museum's main entrance.

(2) During times of repair to the portal area, peak sales, or other circumstances, the director or coordinator may designate supplemental or alternate selling locations within the perimeter of the museum.

B. Spaces. The program area shall be divided into a number of spaces, each six feet deep from the wall and three feet, six inches wide along the wall. One space shall be situated against the banco (bench) and curb on each side of the portal at the corner structures.

(1) Participants shall obtain their own spaces; that is, no one may obtain a space for another participant. This includes moving other participant's cloths, intimidating other members out of claiming a space, etc.

(2) The first space west of the building entrance is reserved for the designated duty officer.

(3) Household members shall share a space. A household shall only use one space.

(4) Two participants may voluntarily agree to share one space, provided that both are present at the start of the draw. Both participants will be set up by 10:00 a.m. The primary space holder must remain until 12:00 p.m. (excluding emergencies). Should the primary space holder return later than 11:00 a.m., the space becomes vacant.

(5) The following spaces cannot be shared: 64, 65, 70, and 71.

C. Hours and dates of operation: The program shall commence each day at 7: 00 a.m. according to the duty officer's timepiece and shall terminate upon departure of the last participant from the program area even on days without a drawing. Beginning at 7:00 a.m., participants may place their cloths along the curb opposite the space they want, and may claim that space at 8:00 a.m. if no drawing is held. Any participant arriving after 8:00 a.m. shall set up immediately.

(1) A participant shall not set up prior to 8:00 a.m., and shall be completely set up by 10:00 a.m. Adding additional items after 10:00 a.m. is prohibited.

(2) No participant shall sell in the program area during Spanish market, Indian market, and during days or time periods that the director determines that museum needs preclude sales in the program area for reasons including, but not limited to, program area renovations.

D. Duty officer. Duty officers shall monitor the program and be responsible for assigning spaces, conducting inspections, and fulfilling other duties described herein.

(1) Committee members' duty days shall be on which they are assigned according to the monthly duty officer schedule prepared by the portal committee secretary.

(2) The duty officer shall be present at the program area by no later than 7:45 a.m. and shall remain on duty until at least 3:00 p.m. If the duty officer must leave before 3:00 p.m., the duty officer shall make arrangements with another portal committee member or alternate to serve as the duty officer.

(3) A portal committee member shall make arrangements with another portal committee member when they are unable to serve as duty officer.

(a) If a scheduled duty officer fails to make arrangements for another portal committee member or alternate to serve in the duty officer's place, any active portal committee member may serve as duty officer for that day. If more than one active portal committee member wishes to serve as duty officer, the portal committee shall hold a drawing to determine which one shall serve as duty officer for the day.

(b) If no portal committee members are present, an alternate portal committee member may volunteer as the duty officer. If more than one alternate portal committee member wishes to serve as duty officer, a drawing shall be held to determine which one shall serve as duty officer for the day. If no portal committee members or alternates are available, a former portal committee member may serve as duty officer. An extra set of draw materials will be available.

(4) The duty officer shall conduct inspections of participants' products in accordance with these rules.

(a) The duty officer shall document any violations observed during an inspection on a monitoring form. The participant and duty officer shall sign the monitoring form. The duty officer's signature shall serve as verification that the information on the monitoring form accurately represents what the duty officer observed. The participant's signature does not serve as an admission to the alleged violation, but acknowledges that the duty officer discussed the alleged violation with the participant.

(b) The duty officer shall explain the alleged violation and discuss the violation with the participant in a private manner, away from other participants. The duty officer shall include another portal committee member as a witness to the discussion.

(5) A duty officer may sell products while on duty if possible while also successfully completing all the duty officer's responsibilities and may request assistance from other portal committee members to accomplish their required duties.

(6) A duty officer's household member may occupy the duty officer's designated space while the duty officer fulfills the duty officer's duties.

(7) The duty offer shall immediately notify the coordinator or division security if a participant or member of the public behaves in a disruptive or dangerous manner

E. Drawing. The duty officer shall hold a drawing when there are more participants than available spaces. On these occasions, the duty officer shall count participants who are present at 8:00 a.m. and put a chip for each participant into a drawing receptacle. This receptacle shall contain numbered chips that correspond with the available spaces, except for the duty officer's space, as well as blank chips. Each participant shall draw a chip, one participant at a time.

(1) If all participants have drawn chips and all the numbered chips have not been drawn, the portal committee shall assign the space to the next participant on the waiting list. This includes spaces that are immediately abandoned by choice.

(2) Participants arriving after the draw may not share spaces, but may have their names added to the waiting list in the order of their appearance to be eligible for assignment to vacated vending spaces.

(3) Attempting to create an unfair advantage during the drawing is grounds for discipline. An example may be deliberately drawing more than one chip or trading chips.

F. Waiting list. The duty officer shall keep a waiting list for vending spaces vacated during the day. Participants, including those who arrived after all of the spaces were vacated, participated in the draw or arrived at the portal after the draw for vending spaces, shall notify the duty officer if they would like their name added to the waiting list. The duty officer shall add participant names in the order of receipt.

G. Abandonment.

(1) Any participant who leaves the participant's space, including half spaces, for a period exceeding one hour has abandoned that space. The duty officer shall assign the first person on the waiting list the first vacated space. If the first person is not present when a space has been vacated, the duty officer shall assign the second participant on the waiting list the vacated space, and so on until the waiting list has been exhausted.

(2) When a participant abandons a space and leaves items behind, the duty officer may remove a participant's cloth and merchandise. The duty office shall turn over the cloth and merchandise to the coordinator. The division, the coordinator, and the portal committee do not assume any responsibility for merchandise left unattended.

H. Director oversight. Should the portal committee or duty officer fail to operate the program as described in this section, the director may take the measures necessary to ensure the program continues to operate that day.

[4.51.57.13 NMAC - N, 12/27/2018]

4.51.57.14 PARTICIPANT RULES: Each participant shall accept and abide by these rules. Failure to abide by these rules shall result in discipline, up to and including suspension or termination from the program or ejection from the portal committee. Each participant accepts the division's absolute right to require a participant to leave the program area if the participant is not acting in a manner consistent with these rules.

A. Participants shall only sell products that are Native American handmade except as expressly provided otherwise by these rules. In addition, participants shall comply with the quality and authenticity standards in 4.51.57.16 NMAC, the IACSA, and the federal Indian Arts and Crafts Act of 1990 (P.L. 101-644).

B. A participant shall include the same maker's mark on all products offered for sale in the program by that participant. The maker's mark shall be approved and on file with the coordinator. The director or coordinator may issue a waiver from the requirement that all products include a maker's mark, giving exceptions to this rule,

notably for some types of beadwork, extremely small pieces of metal jewelry, or pottery after consulting with the portal committee.

C. Each participant shall display his or her identity badge while selling in the program area or while engaged in other program activities. The first time a participant forgets the identity badge, the duty officer shall issue a warning and place it in the participant's file. The second time a participant forgets the identity badge is grounds for disciplinary action pursuant to 4.51.57.15 NMAC. Participants shall not use identity badges in a fraudulent or unauthorized manner. If a participant needs a new identity badge, the division shall charge a $5.00 replacement fee. Identity badges are the property of the division and shall be surrendered upon the division's request. Identity badges are not transferable.

D. No tables or elevated stands are permitted. A six inch height limit will be observed.

E. Participants shall not hang or place anything on walls or posts in the program area.

F. Participants shall keep their areas clean while vending and shall remove any trash in their area before they depart. Participants may not be absent from their space for more than one hour.

G. When vending in the program, participants may only use electronic devices, such as credit card machines, when such devices are required for a sale. Participants shall keep mobile electronic devices silent at all times and shall not talk on such devices. Participants shall leave the program area before using mobile devices.

H. Participants shall completely cover their products with a cloth when they leave their space, regardless of the participant's reason for leaving.

I. Participants shall be respectful of the public and not disrupt the program, pedestrians, participants, or division staff members.

J. Participants shall not possess, be influenced by, or use alcohol or illegal drugs in the program area.

K. Participants shall not possess weapons of any kind in the program area.

L. Participants may have an assistant who shall also be a participant and from the same household. The assistant shall sit with the participant within that participant's assigned space.

M. A participant shall not engage other participants who are not members of the participant's household to sell nor shall any participant solicit sales for another within the program area.

N. A participant shall only sell products demonstrated and approved as part of the participant's application process and products made by household members.

(1) Waivers: The director may allow a waiver of the requirement that all items sold by a participant be from the same household.

(2) Such waivers shall be written, issued for a limited, renewable time period, and granted only to those participants who for health reasons are no longer able to sell products in the program area and whose economic livelihood would otherwise be destroyed. In doing so, however, the director may stipulate such conditions or restrictions as are needed to ensure that the waiver is consistent with the intent of the program, preserving and exhibiting New Mexican Native American arts and crafts. The exceptions made in each case shall be considered unique to that case and not applicable to any other case.

O. Participants shall submit to the portal coordinator changes to their name, address, phone number or other contact information within three months of any change.

P. Due to safety concerns, minor children are not allowed to accompany participants while setting up, selling and packing in the program area vicinity, except during the children's art festival, when minor children age five to 17 may participate.

Q. Each participant is solely responsible for accepting payment.

(1) No participant shall accept any payment prior to delivery of the item. Cash-on- delivery (C.O.D.) orders are permitted.

(2) The portal committee and the division are not liable for participants' use of credit card machines or the outcome of transactions resulting from the use of credit card machines.

[4.51.57.14 NMAC - Rp, 4.51.57.15 NMAC, 12/27/2018]

4.51.57.15 RULE VIOLATIONS:

A. Disciplines. The portal committee, duty officer, and coordinator shall consider the circumstances surrounding a reported rule violation, such as the severity of the violation, the number of times the violation has occurred, and any previous violations, to determine the appropriate discipline. If the coordinator determines that a violation of these rules likely occurred, the coordinator shall issue a verbal warning, written reprimand, or notice of contemplated suspension or termination from the program portal committee.

(1) If the coordinator issues a written reprimand to a participant, the participant may respond in writing and the coordinator shall retain that response in the participant's file.

(2) If the coordinator issues a written notice of contemplated suspension or termination from the program, or removal from the portal committee, the coordinator shall mail a copy to the participant's address on file or hand deliver the notice to the participant. The notice shall document the contemplated penalty; the effective date(s); the conduct or other basis for the disciplinary action; reference to the relevant provision of these rules; any previous incidents or efforts to inform the participant of the need for change or improvement; and the process and time limitations for

presenting exculpatory evidence or mitigating circumstances.

(3) A participant may present exculpatory evidence or mitigating circumstances during the portal committee's next meeting. The coordinator shall make a record of the meeting in the form of an audio recording, transcript, or neutral third-party report.

(4) After the meeting, the portal committee may determine a participant's suspension or termination from the program or a portal committee member's removal from the portal committee.

(5) If the portal committee suspends or terminates a participant from the program or removes a portal committee member from the portal committee, the coordinator shall issue written notice of the penalty by mailing a copy to the participant's address on file or hand delivering the notice to the participant, along with written findings of fact, and the process and time limitations for appealing the discipline.

(6) Written notices of verbal warnings, reprimands, or suspensions shall remain in a participant's file indefinitely, subject to records retention requirements. Termination notices shall remain in a participant's file indefinitely, subject to records retention requirements.

B. Penalty guidelines.

(1) Minor offenses. Minor offenses may be determined by the portal committee and may sometimes warrant a verbal and/or written warning that may be placed in a participants file. Resolution will be sought to deter the participant from repeating an offense.

(2) When determining whether an offense may be classified by degree (minor, moderate, serious), the portal committee will consider such things as frequency of occurrence, authenticity matters, harassment and any relevant issues which may assist in classifying an offense.

(3) Each participant found to have committed any violation will be extended every courtesy of respect while the portal committee examines every available fact. A just and fair examination will be performed protecting each individual's right to due process.

(4) Criminal activities under the portal may be grounds for immediate termination.

C. Appeals. Any participant who is aggrieved by a suspension or termination from the program or removal from the portal committee may appeal the penalty to the director. Upon an appeal under this section, the director may enforce or alter penalties issued by the coordinator.

(1) A participant shall have 10 calendar days from the date of the issued notice of discipline to appeal that discipline in writing. All appeals shall clearly and concisely explain why the imposed discipline is inappropriate. The coordinator shall place a copy of the notice and the participant's appeal, if any, in the participant's file.

(2) Suspensions or terminations from the program shall not begin until the participant's appeal has been acted upon by the director.

(3) The director shall review the portal committee's recommendation along with the participant's appeal and file before accepting, rejecting, or altering the portal committee's recommendation.

(4) A participant may appeal the director's decision in writing to the secretary of the department of cultural affairs within 10-calendar days; the secretary has discretionary review, meaning the secretary does not have to review the matter. The secretary's review shall be limited to the findings of fact and other parts of the record developed as directed in 4.51.57.15 NMAC. The secretary's decision not to review the matter or to deny the appeal is the department of cultural affairs' final action on the matter.

(5) Nothing in these rules shall eliminate the right of the division to immediately suspend a participant in cases in which a participant poses a threat to the safety of others.

[4.51.57.15 NMAC - N, 12/27/2018]

4.51.57.16 AUTHENTICITY AND QUALITY STANDARDS:

A. General Criteria:

(1) Participants shall accurately represent the materials and origins of all products and shall accurately identify the creator of all products and the methodology used to create all products.

(2) Generally prohibited materials: No participant shall use any reconstituted materials; color-shot, pre-drilled, semi-precious stones; imported heishi; or, pre-carved pieces in any jewelry exhibited or offered for sale under the portal.

B. Metalsmithing:

(1) Materials:

(a) Silver: Silver jewelry shall be made of sterling silver or fine silver, and not silver plate or commercial liquid silver. Gold overlay on sterling silver is allowable. All silver jewelry shall have "sterling" or .925 stamped on each piece.

(b) Gold: Gold jewelry must be appropriately stamped, 10K through 24K. All gold-filled jewelry must be appropriately stamped, 10 KGF through 24 KGF.

(c) Copper

(d) Brass: Red and Yellow

(e) Prohibited materials: In addition to the above prohibited materials, no participant shall use any plated silver; commercial liquid silver; reconstituted materials; color-shot, pre-drilled, semi-precious stones; imported heishi; faceted cabochons; lab grown, synthetic, cubic zirconium; gallery wire (also known as gallery bezel); or, pre-carved pieces in any jewelry exhibited or offered for sale in the program area. Given the wide range of patterned wire faceted stones available and its ever evolving nature, it would be burdensome to list each

allowed and not allowed. Before the application of such materials, participants must receive clarification from the portal committee that such use would be allowed.

(2) Maker's Mark:

(a) Each participant shall stamp metal jewelry with the participant's maker's mark.

(b) On metal jewelry with stones, participants shall place the maker's mark on the back of the piece opposite of the stone before the stone is set. If the design permits, the maker's mark must be placed on the back of the bezel cup before the stone is set. If the design of a reversible pendant (or other piece of jewelry) makes it impossible to stamp the maker's mark behind the stone, the pendant (or other piece of jewelry) shall be stamped on the bezel. The intention of this provision is to require the participant to stamp the piece before the stones are set, and to make it impossible to stamp such pieces after they are completed. Metal plates with a maker's mark that is soldered or attached by other means to a piece of metal jewelry shall not be permitted.

(3) Findings: Accepted findings used on jewelry sold in the program shall be the following:

(a) Sterling silver findings: All chains, all jump rings, all spring rings, all tie-on hooks and eyes, all crimp type hook and eye earring part, all toggle claps, all screw-on and clip-on earrings, all ear wire types, all ear posts and backs, omega clips, all cuff link and components, all necklace cones, all bolo tips, all bench made beads (2 mm to 9 mm seamless are acceptable), all size money clips, surgical wire for earrings, all size melon beads, and bezel cups in all sizes and shapes from 2 mm to 5 mm.

(b) Nickel or base metal findings: All size buckles backs, all bolo backs, all foxtail and tigertail, all conch backs key rings, including split rings, all barrel catches including eyeglass/chain attachments, all tie tacks, sets and clutches (backs), all scarf pins (stick pins) backs, all pin bars and pinsets (backs), all barrette backs, all tie bar slides, all alligator clips, all expansion centers, all size spring bars, keyholders (safety pins)-large and medium sizes, all size money clips, and wire used in "memory bracelets", and wire post earrings.

(c) 10K-24K gold findings: All ear posts and nuts, joint catches, jump rings, spring rings, bolo backs, bolo tips, and necklace cones. Also 2mm to 9 mm seamless beads.

(d) Gold filled findings: All posts and nut sets, all French wire styles, all hooks and eyes, all spring rings, all size jump rings, all neck chains; all beads, all tie tack backs, all bolo tips, all ear clips, stick pins and clutches, and all size cones.

(e) Red brass or brass findings: All buckle backs, all key ring backs, all concho backs, all bolo backs, all bolo tips, all hooks and eyes, all brass beads, and all size money clips.

(f) Leather findings: All size straps for concho belts and all size braided bolo cords. Vinyl bolo cords are not permitted.

(g) All copper findings. All buckle backs, all key rings backs, all concho backs, all bolo backs, all bolo tips, all hooks and eyes, all brass beads, and all size money clips.

C. Beadwork:

(1) Permitted beadwork materials: Silver, brass or any other metal which has been incorporated with beadwork into the final product shall be Native American handmade. The following materials shall be permitted: all size glass beads, brass beads, all types of legal feathers, all types of leather, porcupine quills (natural color only), genuine natural bone hair pipes, and genuine natural bone disc beads, dentalia shells, and lead crystals.

(2) Beadwork findings: Because beadwork is different from silversmithing, the following findings shall be permitted when incorporated into beadwork items: buckle backings (blanks), barrette backings, bolo backs and tips, sterling silver, aluminum and tin cones for fringe dangles only, metal spots of nickel or brass, barrel screw clasps, hooks and eyes, spring rings, crimp beads, eye pins and head pins, jump rings, split key rings, tie tack mounts, tiger tail, and all earring findings.

(3) Prohibited beadwork materials: The following materials shall not be permitted when incorporated into beadwork: plastic bone hair pipe and pre-cut or pre-shaped, abalone disk.

D. Pottery:

(1) All pottery or clay items shall be handmade of completely natural, earth clay that has been collected from traditional areas and processed by the participant and fired outdoors in the traditional method using natural materials. The director may approve in writing clay from sources other than traditional areas.

(2) Pre-processed or commercially obtained clay or ceramic is not permitted, either alone or in combination with natural clay. Pottery or clay items made of greenware are not permitted.

(3) Acceptable hand-building methods are coil, pinched and slab. Stabilizing bases are allowed for large clay items.

(4) All pottery or clay items must be signed by carving in the item before it is fired. The artisan's mark must also be added prior to firing. Post-firing signatures or artisan's marks and signatures in pencil or paint, without a pre-firing carved signature, are not permitted.

(5) All pottery or clay items that are painted or decorated may only be painted or decorated with natural vegetable or mineral paint, acrylic paint, and /or clear acrylic sealers.

(6) Products may not be fired in an electric kiln.

(7) The post-firing technique of inlaying beads

or stones, engraving, or torching of pottery or clay items is permitted.

E. Traditional food stuffs:

(1) Participants may offer traditional food stuffs for sale. Participants shall make foodstuffs in the participant's household within 24 hours of offering.

(2) The following food may be sold: oven bread, uncut fruit and vegetables, tamales, pies, cookies without filling, fry bread, piñon nuts, parched corn, piki bread (paper bread), and ristras (chile strings).

(3) All participants who vend food shall obtain from the city of Santa Fe a valid food handlers card or certificate, which the participant shall exhibit at all times.

(4) All food shall be packaged and labeled with the participant's mark and ingredients.

(5) The director or portal committee shall approve other additional kinds of foods before the participant offers it for sale to the public.

(6) Program food sales may only be conducted from the participant's space.

F. Sandpainting:

(1) All sandpainting shall be Native American handmade of natural materials. No commercial and dyed sand is permitted. However, use of commercial protective sealants is allowed.

(2) Pre-made frames are not allowed.

(3) The participant shall impress each sandpainting with the maker's mark on the face of the sandpainting while the sand is wet. This does not preclude additional marking or signatures, e.g., on the back of the painting.

G. Leatherwork:

(1) Participants shall permanently mark all leatherwork. Marking with ink is not permitted.

(2) Leatherwork without beadwork shall have a branded or stamped mark.

(3) Leatherwork with beadwork shall have a branded, stamped or beaded mark. The maker's mark may also be incorporated into the beaded design.

(4) Leatherwork shall not be marked with any type of ink.

H. Heishi: Heishi products shall be handmade from natural materials, stabilized materials, jet serpentine, pipestone, sea shells and stones. Heishi beads shall be hand rolled, of any size, shape or strand length, with all materials cut, drilled, strung, and shaped by hand.

(1) Materials allowed:

(a) natural and stabilized stones, shells, coral, apple coral;

(b) glass beads and coral when incorporated into one's own work;

(c) pearls and machine-made silver beads when incorporated with your own work.

(2) Prohibited material:

(a) commercial, pre-made, or pre-strung beads;

(b) imported, pre-made heishi, plastic block or chemically made stones, pre-carved, pre-drilled or artificially enhanced material.

(3) Findings allowed: Heishi offered for sale in the program may contain the same findings as beadwork jewelry.

(4) Trademark discs: Makers of heishi and nuggets that are metal discs as their trademark on their products must incorporate the disc into the body area of the item. The metal disc may not be attached to the clasp using a jump ring or any other fastener nor be in the vicinity of the ends of the piece.

I. Other goods: Native American handmade products that are not specifically named in this rule, including but not limited to Native American handmade paintings, basketry, and textiles, are permitted if their size and form permit sales from a space on the portal area without impeding on other participant's spaces and while allowing the public to view the product easily.

[4.51.57.16 NMAC - N, 12/27/2018]

4.51.57.17 PORTAL CODE OF CONDUCT: Participants shall not:

A. require or accept any gifts, favors, or loans from anyone with whom the participant is involved in any manner in the course of the participant's duties that are conditioned upon promised performance of portal committee member or participant duties;

B. use any information obtained through or during the participant's or portal committee member's term for the participant's, member's or another's private financial gain;

C. use any equipment, property, or supplies belonging to the state of New Mexico for personal purposes;

D. alter official documents of the program with the intent to defraud portal committee members or the division;

E. tamper with program files, official documents or records, including removing or destroying files, documents or records from the program's office or computer, or from the program archives or the museum;

F. mishandle, misappropriate, or divert for personal use any funds raised by the program or portal committee or through activities sponsored or sanctioned by the museum;

G. falsify any program documents whatsoever;

H. possess, use, sell, or purchase any forbidden items while engaged in portal committee or program activities, including firearms, illegal drugs, or stolen property; or

I. engage in any other unprofessional conduct that is inconsistent with the interests of the program, the museum or the department of cultural affairs.

[4.51.57.17 NMAC - N, 12/27/2018]

HISTORY OF 4.51.57 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives under:
Rule No. 37, Guidelines, Rules, and Regulations Governing the Portal Program at the Palace of the Governors, 5/11/83.
Rule No. 37, Guidelines, Rules, and Regulations Governing the Portal Program at the Palace of the Governors, 2/11/87.
Rule No. 37, Guidelines, Rules, and Regulations Governing the Portal Program at the Palace of the Governors, 4/7/87.
Rule No. 37, Guidelines, Rules, and Regulations Governing the Portal Program at the Palace of the Governors, 5/27/87.
Rule No. 37, Guidelines, Rules, and Regulations Governing the Portal Program at the Palace of the Governors, 8/12/88.
Rule No. 37, Guidelines, Rules, and Regulations Governing the Portal Program at the Palace of the Governors, 5/26/89.
Rule No. 37, Guidelines, Rules, and Regulations Governing the Portal Program at the Palace of the Governors, 6/7/89.
Rule No. 37, Guidelines, Rules, and Regulations Governing the Portal Program at the Palace of the Governors, 6/16/89.
MNM: Rule No. 57, Rules and Regulations Governing the Portal Program at the Palace of the Governors, 7/31/91.
MNM: Rule No. 57, Rules and Regulations Governing the Portal Program at the Palace of the Governors, 7/13/95.

History of Repealed Material:
4.51.57 NMAC, Governance of the Portal Program at the Palace of the Governors, Repealed effective 12/27/2018]

Other History:
MNM: Rule No. 57, Rules and Regulations Governing the Portal Program at the Palace of the Governors (filed 7/13/95) was renumbered, reformatted, amended and replaced by 4.51.57 NMAC, Governance of the Portal Program at the Palace of the Governors, effective 9/15/08.

CULTURAL AFFAIRS, DEPARTMENT OF

This is an amendment to 4.12.11 NMAC, Sections 1, 7 through 10, 12, and 15, effective 01/01/2019.

Explanatory paragraph: In 4.12.11.7 NMAC Subsection B through C, and Subsections E through F were not published as there were no changes. In 4.12.11.9 NMAC, Subsections A through C, Subsection E, and Paragraphs (1) through (5) of Subsection F were not published as there were no changes.

4.12.11.1 ISSUING AGENCY: Department of Cultural Affairs, New Mexico Arts (NMA) Division, Art in Public Places Program.
[4.12.11.1 NMAC - Rp, 4.12.11.1 NMAC, 9-30-2009; A, 01-01-2019]

4.12.11.7 DEFINITIONS: As used in this rule, in addition to those defined at 4.12.1.7 NMAC the following definitions apply.

A. "AIPP funds" means the [~~1% for art allocations~~] funds allocated for the acquisition and installation of art from appropriations for new construction or renovations, as described in the arts in public places act, and is comprised of site-specific funds, see Section 13-4A-4(A) NMSA 1978, and auxiliary funds, see section 13-4A-4(B) NMSA 1978.
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D. "Art selection committee" means the committee that selects the artwork and the artist for a commission or purchase project. See Subsections [~~(L), (S), and (W)~~] (M), (T), and (X) of 4.12.11.7 NMAC for the different types of art selection committees.
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G. "Auxiliary Funds" means the AIPP funds allocated pursuant to Subsection B of Section 13-4A-4 NMSA 1978 for new construction or renovation of structures which are excluded from the provisions of the Art in Public Places Act under Subsection E of Section 13-4A-3 NMSA 1978. "Auxiliary Funds" may be expended on the acquisition and installation of art for existing public buildings as well as for administrative costs incurred by NMA for the implementation for the Art in Public Places Act.

[~~G.~~] H. "Building" means a relatively permanent structure or facility which includes fixtures and other built-ins and that is used for any of a wide variety of activities, including but not limited to plazas, parks and arenas.

[~~H.~~] I. "Commission" or **"commission project"** means the process of selecting a work of art to be designed and created for a specific building or site. [~~Commission projects have budgets of forty thousand dollars ($40,000) or greater.~~]

[~~I.~~] J. "Construct" means to make or form a building or make major renovations to a building and may include the cost of commissioning a building for energy efficient green building standards (i.e. LEED certification), as required by law; used interchangeably with "build".

[~~J.~~] K. "Deaccession" means the act of permanently removing an artwork from the state's public art collection.

[~~K.~~] L. "Finalist" means the individuals or artist teams selected from all artist submissions by the LSC to present maquettes, drawings, and other material for consideration as the selected artist for a commission project.

[~~L.~~] M. "Local selection committee or LSC" means the committee of five to eleven members excluding AIPP staff, that selects a site, develops a prospectus, and select an artist for the site.

[~~M.~~] N. "Maquette" means a finalist's scale model of the

proposed artwork or other appropriate means of expressing the artist's idea.

[~~N.~~] **O. "New Mexico artist"** means an artist who resides in New Mexico. If an artist resides in New Mexico for only part of the year, to qualify as a New Mexican artist, the artist must reside in New Mexico for at least ninety days out of the year and have maintained this part-time residency for at least two years consecutively.

[~~O.~~] **P. "Public art collection"** means the collection of artwork which has been acquired by the NMA for display in public building throughout the state.

[~~P.~~] **Q. "Project director"** means the delegated individual who is responsible for working with the AIPP staff to oversee the art selection process for a commission project. The project director is usually a representative or designee of the owner or the group using the building under construction or renovation.

[~~Q.~~] **R. "Prospectus"** means the document issued by the arts division for the purpose of publicly stating the criteria for the specific project. The prospectus is made available to all artists who are interested in applying and are created for each commission project.

[~~R.~~] **S. "Purchase project" or "purchase"** means the process of acquiring an artwork that has previously been created by an artist and is selected by the RBC for their site. [~~Projects with budgets up to forty thousand dollars ($40,000) are purchase projects.~~] NMA shall determine the maximum number of artworks a site may purchase.

[~~S.~~] **T. "Regional buying committee" or "RBC"** means the committee made up of two to three local representatives of a public building or site receiving AIPP funds for the purchase of artwork. The RBC is responsible for the selection of artwork for their site.

[~~T.~~] **U. "Selection criteria"** means a varying list of qualifications included in the prospectus, which an artist's submission must meet to be considered by an art selection committee for a public art project.

[~~U.~~] **V. "Site"** means the place where the public artwork shall be located.

[~~V.~~] **W. "Site specific"** means artwork that is created for, and tailored to a particular site and community. Pre-existing artwork does not qualify as site specific.

[~~W.~~] **X. "Submission review panel" or "SRP"** means the committee comprised of a minimum of five members who are artists or arts professionals that review artist submissions for purchase projects and make recommendations to NMA, following a set of criteria, for the selection of a manageable number of artworks to be viewed by RBC and purchased by public agencies.

[4.12.11.7 NMAC - Rp, 4.12.11.7 NMAC, 9-30-2009; A, 01-01-2019]

4.12.11.8 ADMINISTRATION OF AIPP PROGRAM AND FUNDS: The AIPP program shall administer and use funds derived from the Art in Public Places Act to acquire works of art, in [~~consolation~~] consultation with art selection committees through either the commission process or the purchase process, [~~or~~] for installation and display in [~~public building~~], upon, or around public buildings throughout New Mexico which reflect the cultural, ethnic and artistic diversity of New Mexico, the region, and the nation. Public artworks may be an integral part of the building, attached to the building, detached within or outside the structures or placed on public lands, part of a temporary exhibit or loaned or exhibited by the agency in other public facilities.

A. The AIPP program may aggregate AIPP funds, when appropriate and with concurrence of the site owner, for a more significant public art project. There is no limit to the amount of funds that may be aggregated and allocated for a specific project.

B. The [~~NMA~~] AIPP Program shall determine how auxiliary funds will be utilized.

(1) Auxiliary funds may be used to acquire and install works of art for existing public buildings in accordance with the Art in Public Places Act, or works of art that are available for loan in, upon, or around public buildings.

(2) Auxiliary funds may also be used NMA for administrative costs incurred by NMA for the implementation of the Art in Public Places Act.

C. Applicability of Art in Public Places Act.

[~~C.~~] (1) [~~If an individual project that is part of~~ A statewide repair appropriation is ~~for an amount over one hundred thousand dollars ($100,000), then that project's funds are~~] not subject to the one percent allocation.

[~~D.~~] (2) Determination of whether the Art in Public Places Act applies to a project is made by the AIPP Program and is based on the original appropriation.

[~~E.~~] (3) Reauthorized appropriations for which the original appropriation was subject to the Art in Public Places Act shall remain subject to the AIPP allocation. In these instances, the one percent allocation shall be placed in the auxiliary fund. If the original appropriation was [~~nor~~] not subject to the Art in Public Places Act, then no funds will be allocated to the AIPP, regardless of the purpose of the reauthorized appropriation.

D. If after four (4) years and five (5) documented attempts to contact the site owner to spend site-specific AIPP funds, the funds remain unspent, the AIPP funds may, at the discretion of the AIPP Program, be designated as auxiliary funds. Written notice of the auxiliary designation shall be sent to the site owner with a copy retained in the project file.

[4.12.11.8 NMAC - Rp, 4.12.11.8 NMAC, 9-30-2009; A, 01-01-2019]

4.12.11.9 GENERAL COMMISSION PROCEDURES: ***

D. Membership composition.

(1) The LSC is composed of five to [~~eleven~~] 11

members excluding the AIPP staff.
***

F. LSC responsibilities.
***

(6) A [~~two-thirds (2/3)~~] majority vote is required for an artist to be selected as the final artist and the selection shall be formally approved, duly moved and seconded.
[4.12.11.9 NMAC - Rp, 4.12.11.9 NMAC, 9-30-2009; A, 01-01-2019]

4.12.11.10 GENERAL PURCHASE PROCEDURES:

A. NMA shall develop and advertise a prospectus that invites artists meeting specific criteria outlined in the prospectus, to apply with previously created artwork for review to be selected by sites. [~~having budgets up to forty thousand dollars ($40,000).~~]
[4.12.11.10 NMAC - N, 9-30-2009; A, 01-01-2019]

4.12.11.12 DEVELOPMENT OF THE PROSPECTUS:

A. There are two types of prospectuses.

(1) Purchase prospectus - created by AIPP staff for several sites. [~~having budgets up to forty thousand dollars ($40,000).~~] Each site's RBC selects artwork for its facility.

(2) Commission prospectus - created by AIPP staff in collaboration with the LSC. [~~for sites having budgets beyond forty thousand dollars ($40,000).~~] These are site-specific works created exclusively for a certain location.

B. For a commission prospectus.

(1) The LSC shall consider various criteria in order to identify what type of art it is looking for.

[~~**C.**~~] The criteria must be written into a prospectus.

[~~**D.**~~] (2) LSC members have a responsibility to determine as much about what they want as possible and to include that information in the prospectus, in order not to waste their own time reviewing needless submissions, or the time of artists in preparing inappropriate submissions.

[~~**E.**~~] **C.** Factors to be considered for the prospectus include the following.

(1) Location - interior, exterior and any other particular locations should be considered. When possible, AIPP staff encourages the art selection committee to select artwork that can be an integral part of the structure.

(2) Medium - determination of suitable materials composing the artwork, size/scale of the artwork, two or three dimensional artwork, maintenance and the budget available in relation to the scope of the project and potential sites.

(3) Style - the style an artist uses to express his ideas. For example, traditional, folk-art, abstract, non-objective, figurative, representational, etc.

(4) Eligibility - all competitions are open to New Mexico artists, and, depending on the scope of a project, the competition may be open to larger regions.

(5) Receipt deadline - the designated date when artist submissions must be received by NMA to remain eligible for the project. The art selection committee shall not review late submissions or incomplete artist submissions.

(6) Art selection process - all AIPP projects must be open and fair competitions.

(7) Submission requirements - the specific materials the artist must submit as part of the artist submission.

[~~**F.**~~] **D.** Distribution of the prospectus - the prospectus shall be advertised and distributed in such a way as to reach as many artists as possible and shall include one or more of the following methods:

(1) NMA email blast, newsletter, [~~*artspeak,* and~~] the NMA website [~~- the NMA staff shall publish the availability of prospectuses in its quarterly newsletter, which is mailed to artists and galleries throughout the United States. The current prospectuses are posted on the NMA website at www.nmarts.org.~~] --www.nmarts.org, and NMA social media outlets (e.g. Facebook, Instagram) or other comparable methods.

(2) Public service announcements - the NMA staff shall send public service announcements to appropriate media, including newspapers, arts publications, and radio stations, locally, statewide and nationally.

(3) Press advertisements - the art selection committee may designate one member who shall make sure the project is advertised in the local media.

(4) Other information outlets - traditional media outlets are often insufficient to generate the participation of certain artists. If an art selection committee is interested in a particular constituency group, the art selection committee members shall make an effort to make whatever contact possible with members of that group and enlist their help in spreading the word.

(5) Invitational competition. - in addition to having a competition open to all eligible artists, prospectuses may be distributed to targeted artists to encourage them to apply.
[4.12.11.12 NMAC - Rp, 4.12.11.12 NMAC, 9-30-2009; A, 01-01-2019]

4.12.11.15 VARIATIONS TO PROCEDURES:

A. NMA has established these procedures as guidelines to be followed in the art selection process.

B. Opportunities may be identified during the art selection process that may require modification to these procedures.

C. Variations may be incorporated into the art selection process with the approval of the AIPP program [~~manager~~] director.
[4.12.11.15 NMAC - Rp, 4.12.11.15 NMAC, 9-30-2009; A, 01-01-2019]

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

This is an amendment to 19.15.26 NMAC, amending Sections 1 through 3, 6 through 8 and 12 and 13, effective 12/27/2018.

19.15.26.1 ISSUING AGENCY: [~~Energy, Minerals and Natural Resources Department, Oil Conservation Division~~] Oil Conservation Commission.
[19.15.26.1 NMAC - Rp, 19.15.9.1 NMAC, 12/1/2008; A, 12/27/2018]

19.15.26.2 SCOPE: 19.15.26 NMAC applies to persons [~~engaged for secondary or other enhanced recovery of oil or gas; pressure maintenance; salt water disposal and underground storage of oil or gas.~~] constructing, operating or closing an injection well under the Oil and Gas Act. 19.15.26 NMAC does not apply to other classes of injection wells regulated under the Water Quality Act, the Geothermal Resources Development Act or the Surface Mining Act.
[19.15.26.2 NMAC - Rp, 19.15.9.2 NMAC, 12/1/2008; A, 12/27/2018]

19.15.26.3 STATUTORY AUTHORITY: 19.15.26 NMAC is adopted pursuant to the Oil and Gas Act, [~~NMSA 1978,~~] Section 70-2-6, Section 70-2-11 and [~~Section 70-2-12 which authorizes the division to permit the injection of gas or other substances into a pool for repressuring, cycling, pressure maintenance, secondary or other enhanced recovering operations; and to regulate the disposition of water produced or used in connection with drilling for or producing oil or gas and to direct subsurface disposal of the water~~] Paragraphs (13), (14), (15), (21) and (22) of Subsection B of Section 70-2-12 NMSA 1978.
[19.15.26.3 NMAC - Rp, 19.15.9.3 NMAC, 12/1/2008; A, 12/27/2018]

19.15.26.6 OBJECTIVE: To regulate [~~secondary or other enhanced recovery, pressure maintenance, salt water disposal and underground storage to prevent waste, protect correlative rights and protect public health, fresh water and the environment~~] injection wells under the Oil and Gas Act and to maintain primary enforcement authority for the Safe Drinking Water Act (42 U.S.C. 300f et seq.) Underground Injection Control (UIC) program for UIC Class II wells.
[19.15.26.6 NMAC - Rp, 19.15.9.6 NMAC, 12/1/2008; A, 12/27/2018]

19.15.26.7 DEFINITIONS: [~~**A.** "Affected person" means the division designated operator; in the absence of an operator, a lessee whose interest is evidence by a written conveyance document either of record or known to the applicant as of the date the applicant files the application; or in the absence of an operator or lessee, a mineral interest owner whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date the applicant filed the application for permit to inject.~~

~~**B. "Pressure maintenance project"** means a project in which an operator injects fluids into the producing horizon in an effort to build up or maintain the reservoir pressure in an area that has not reached the advanced or stripper state of depletion.~~

~~**C. "Water flood project"** means a project in which an operator injects water into a producing horizon in sufficient quantities and under sufficient pressure to stimulate oil production from other wells in the area, and is limited to those areas in which the wells have reached an advanced state of depletion and are regarded as what is commonly referred to as stripper wells~~].
"Fluid" means any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas or any other form or state.
19.15.26.7 NMAC - Rp, 19.15.9.701 NMAC, 12/1/2008; A, 12/27/2018]

19.15.26.8 INJECTION OF FLUIDS INTO RESERVOIRS:

A. Permit for injection required. [~~An operator shall not inject gas, liquefied petroleum gas, air, water or other fluid into a reservoir or formation to maintain reservoir pressure or for secondary or other enhanced recovery or for storage or inject water into a formation for disposal except pursuant to a permit the division has granted after notice and hearing, or that the division has granted by administrative order as authorized in 19.15.26.8 NMAC. The division shall grant a permit for injection under 19.15.26.8 NMAC only to an operator who is in compliance with Subsection A of 19.15.5.9 NMAC. The division may revoke a permit for injection issued under 19.15.26.8 NMAC after notice and hearing if the operator is not in compliance with Subsection A of 19.15.5.9 NMAC.~~]

(1) A permit is required under 19.15.26 NMAC for any injection wells that inject:

(a) produced water or other fluids that are brought to the surface in connection with natural gas storage operations or conventional oil or natural gas production and may be commingled with waste waters from gas plants that are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection;

(b) fluids for enhanced recovery of oil or natural gas; and

(c) fluids for storage of hydrocarbons that are liquid at standard temperature and pressure.

(2) The division shall grant a permit for injection under 19.15.26.8 NMAC only to an operator who is in compliance with Subsection A of 19.15.5.9 NMAC. The division may revoke a permit for injection issued under 19.15.26.8 NMAC after notice and hearing if the operator is not in compliance with Subsection A of 19.15.5.9 NMAC.

B. Method of making application.

(1) The operator shall apply for authority to [~~inject gas, liquefied petroleum gas, air, water or other medium into a formation for any reason, including the establishment of or the expansion of water flood projects, enhanced recovery projects, pressure maintenance projects or salt water disposal,~~] construct and operate an injection well by submitting form C-108 complete with all attachments to the division.

(2) The applicant shall furnish, by certified or registered mail, a copy of the application to each owner of the land surface on which each injection or disposal well is to be located and to each leasehold operator [~~or~~] and other affected [~~person~~] persons, as defined in Subsection A of 19.15.2.7 NMAC, within any tract wholly or partially contained within one-half mile of the well.

C. Administrative approval.

(1) If the application is for administrative approval rather than for a hearing, it shall be accompanied by a copy of a legal notice the applicant published in a newspaper of general circulation in the county in which the proposed injection well is located. The legal notice shall include:

(a) the applicant's name, address, phone number and contact party;

(b) the injection well's intended purpose, with the exact location of single wells or the section, township and range location of multiple wells;

(c) the formation name and depth with expected maximum injection rates and pressures; and

(d) a notation that interested parties shall file objections or requests for hearing with the division within 15 days.

(2) The division shall not approve an application for administrative approval until 15 days following the division's receipt of form C-108 complete with all attachments including evidence of mailing as required under Paragraph (2) of Subsection B of 19.15.26.8 NMAC and proof of publication as required by Paragraph (1) of Subsection C of 19.15.26.8 NMAC.

(3) If the division does not receive an objection within the 15-day period, and a hearing is not otherwise required, the division may approve the application administratively.

D. Hearings. If a written objection to an application for administrative approval of an injection well is filed within 15 days after receipt of a complete application, if 19.15.26.8 NMAC requires a hearing or if the director deems a hearing advisable, the division shall set the application for hearing and give notice of the hearing.

E. Produced water disposal wells.

(1) The director may grant an application for a produced water disposal well administratively, without hearing, only when the waters to be disposed of are mineralized to such a degree as to be unfit for domestic, stock, irrigation or other general use and when the waters are to be disposed of into a formation older than Triassic (Lea county only) and the division receives no objections pursuant to Subsection C of 19.15.26.8 NMAC.

(2) The division shall not permit disposal into zones containing waters having total dissolved solids concentrations of 10,000 mg/1 or less except after public notice and hearing, provided that the division may, by order issued after public notice and hearing, establish exempted aquifers for such zones where the division may administratively approve the injection.

(3) Notwithstanding the provisions of Paragraph (2) of Subsection E of 19.15.26.8 NMAC, the director may authorize disposal into such zones administratively if the waters to be disposed of are of higher quality than the native water in the disposal zone.

F. [~~**Pressure maintenance projects.**~~

~~**(1)** The division shall set applications for establishment of pressure maintenance projects for hearing. The division shall fix the project area and the allowable formula for a pressure maintenance project on an individual basis after notice and hearing.~~

~~**(2)** The division may authorize an operator to expand a pressure maintenance project and place additional wells on injection after hearing or administratively, subject to the notice requirements of Subsection B of 19.15.26.8 NMAC.~~

~~**(3)** The director may grant an exception to the hearing requirements of Subsection A of 19.15.26.8 NMAC for the conversion to injection of additional wells within a project area provided that the wells are necessary to develop or maintain efficient pressure maintenance within the project and provided that the division receives no objections pursuant to Subsection C of 19.15.26.8 NMAC.~~

~~**(4)** An established pressure maintenance project shall have only one designated operator. The division shall set an application for exception for hearing.~~

~~**G. Water flood projects.**~~**] Pressure maintenance, secondary recovery and enhanced oil recovery injection projects.**

(1) The division shall set applications for establishment of [~~water flood~~] pressure maintenance, secondary recovery and enhanced oil recovery injection projects for hearing. The division shall fix the project area and the allowable formula for an injection project on an individual basis after notice and hearing.

(2) The project area of [~~a water flood~~] an injection project shall comprise the spacing or proration units a given operator owns or operates upon which injection wells are located plus spacing or proration units the same operator owns or operates that directly or diagonally offset the injection tracts

and have producing wells completed on them in the same formation; provided however, that the division may include in the project area additional spacing or proration units not directly or diagonally offsetting an injection tract if, after notice and hearing, the operator establishes that the additional units have wells completed on the unit that have experienced a substantial response to water injection.

(3) The allowable the division assigns to wells in [~~a water flood~~] an injection project area shall equal the wells' ability to produce and is not subject to the depth bracket allowable for the pool or to the market demand percentage factor.

(4) Nothing in Subsection [~~G~~] F of 19.15.26.8 NMAC shall prohibit the division's assignment of special allowables to wells in buffer zones after notice and hearing. The division may assign special allowables in the limited instances where it is established at a hearing that it is imperative for the protection of correlative rights to do so.

(5) The division [~~shall~~] may authorize the expansion of [~~water flood~~] injection projects and the placement of additional wells on injection after hearing or administratively, subject to the notice requirements of Subsection B of 19.15.26.8 NMAC.

(6) The director may grant an exception to the hearing requirements of Subsection A of 19.15.26.8 NMAC for conversion to injection of additional wells provided that the [~~well is~~] wells are necessary to develop or maintain thorough and efficient [~~water flood~~] injection operations for an authorized project and provided that the division does not receive an objection pursuant to Subsection C of 19.15.26.8 NMAC.

(7) An established [~~water flood~~] injection project shall have only one designated operator. The division shall set for hearing an application for exception.

[~~H.~~] G. Storage wells.

(1) The director may grant administratively, without hearing, an application for the underground storage of liquefied petroleum gas or liquid hydrocarbons in secure caverns within massive salt beds, [~~and~~] provided the applicant has complied with the notice provisions of Subsection B of 19.15.26.8 NMAC and the division receives no objections pursuant to Subsection C of 19.15.26.8 NMAC.

(2) In addition to the filing requirements of Subsection B of 19.15.26.8 NMAC, the applicant for approval of a storage well under Subsection [~~H~~] G of 19.15.26.8 NMAC shall file the following:

(a) with the director, financial assurance in accordance with the provisions of 19.5.8 NMAC; and

(b) with the appropriate division district office:

(i) form C-101;

(ii) form C-102; and

(iii) form C-105.

[19.15.26.8 NMAC - Rp, 19.15.9.701 NMAC, 12/1/2008; A, 12/27/2018]

19.15.26.12 COMMENCEMENT, DISCONTINUANCE AND ABANDONMENT OF INJECTION OPERATIONS:

A. The following provisions apply to injection projects, storage projects, [~~salt~~] produced water disposal wells and special purpose injection wells.

B. Notice of commencement and discontinuance.

(1) Immediately upon the commencement of injection operations in a well, the operator shall notify the division of the date the operations began.

(2) Within 30 days after permanent cessation of gas or liquefied petroleum gas storage operations or within 30 days after discontinuance of injection operations into any other well, the operator shall notify the division of the date of the discontinuance and the reasons for the discontinuance.

(3) Before temporarily abandoning or plugging an injection well, the operator shall obtain approval from the appropriate division district office in the same manner as when temporarily abandoning or plugging oil and gas wells or dry holes.

C. Abandonment of injection operations.

(1) Whenever there is a continuous [~~one year~~] one-year period of non-injection into all wells in an injection or storage project or into a [~~salt~~] produced water disposal well or special purpose injection well, the division shall consider the project or well abandoned, and the authority for injection shall automatically terminate ipso facto.

(2) For good cause shown, the director may grant an administrative extension or extensions of injection authority as an exception to Paragraph (1) of Subsection C of 19.15.26.12 NMAC, provided that any such extension may be granted only prior to the end of one year or continuous non-injection, or during the term of a previously granted extension.

[19.15.26.12 NMAC - Rp, 19.15.9.705 NMAC, 12/1/2008; A, 12/27/2018]

19.15.26.13 RECORDS AND REPORTS:

A. The operator of an injection well or project for secondary or other enhanced recovery, pressure maintenance, gas storage, [~~salt~~] produced water disposal or injection of other fluids shall keep accurate records and shall report monthly to the division gas or fluid volumes injected, stored or produced as required on the appropriate form listed below:

(1) secondary or other enhanced recovery on form C-115;

(2) pressure maintenance on form C-115 and as otherwise prescribed by the division;

(3) **[**~~salt~~] produced water disposal not regulated by 19.15.36 NMAC on form C-115;

(4) [~~salt~~] produced water disposal at surface waste management facilities regulated by 19.15.36 NMAC on form C-120-A;

(5) gas storage on form C-131-A; and

(6) injection of other fluids on a division-prescribed form.

B. The operator of a liquefied petroleum gas storage project shall report to the division annually on form C-131-B.

[19.15.26.13 NMAC - Rp, 19.15.9.706 NMAC, 12/1/2008; A, 12/27/2018]

ENVIRONMENT DEPARTMENT

A public hearing was held on October 12, 2018 for the purpose of repealing the current emergency version of 20.5.123 NMAC, Corrective Action Fund Administration, effective July 31, 2018, and to replace it with a new rule 20.5.123 NMAC of the same name. On November 19, 2018, the Secretary of the Environment Department repealed the current emergency version of 20.5.123 NMAC, Corrective Action Fund Administration, and adopted the new 20.5.123 NMAC, effective December 27, 2018.

ENVIRONMENT DEPARTMENT

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 5 PETROLEUM STORAGE TANKS
PART 123 CORRECTIVE ACTION FUND ADMINISTRATION

20.5.123.1 ISSUING AGENCY: New Mexico Environment Department.
[20.5.123.1 NMAC – Rp. 20.5.123.1 NMAC, 12/27/2018]

20.5.123.2 SCOPE: This part applies to owners and operators of storage tanks as provided in 20.5 NMAC and as provided in 20.5.101 NMAC to contractors, offerors, and designated representatives, and to all payments made by the department to or on behalf of storage tank owners and operators under the Ground Water Protection Act, Sections 74-6B-1 through 74-6B-14 NMSA 1978. If the owner and operator are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance.
[20.5.123.2 NMAC – Rp. 20.5.123.2 NMAC, 12/27/2018]

20.5.123.3 STATUTORY AUTHORITY: 20.5.123 NMAC is adopted by the Secretary of Environment pursuant to the provisions of the Department of Environment Act, Sections 9-7A-1 through 9-7A-15 NMSA 1978 and the Ground Water Protection Act, Sections 74-6B-1 through 74-6B-14 NMSA 1978.
[20.5.123.3 NMAC – Rp. 20.5.123.3 NMAC, 12/27/2018]

20.5.123.4 DURATION: Permanent.
[20.5.123.4 NMAC – Rp. 20.5.123.4 NMAC, 12/27/2018]

20.5.123.5 EFFECTIVE DATE: December 27, 2018, unless a later date is indicated in the rule history note at the end of a section.
[20.5.123.5 NMAC – Rp. 20.5.123.5 NMAC, 12/27/2018]

20.5.123.6 OBJECTIVE: The purpose of 20.5.123 NMAC is to establish the procedures for administering and making payments from the corrective action fund ("fund") created by the Ground Water Protection Act ("act"), Sections 74-6B-1 through 74-6B-14 NMSA 1978, including procedures for:

A. payment of the costs of a minimum site assessment in excess of ten thousand dollars ($10,000), or in excess of lesser amounts as permitted by the act;

B. payment of the costs of corrective action other than the minimum site assessment;

C. determinations of compliance with the act;

D. determinations of eligibility of costs for payment;

E. competitive bidding for corrective action work; and

F. disposition of remediation equipment acquired through the fund.

[20.5.123.6 NMAC – Rp. 20.5.123.6 NMAC, 12/27/2018]

20.5.123.7 DEFINITIONS:

A. Terms used in this part shall have the meanings given to them in the Ground Water Protection Act and 20.5.101 NMAC except as provided in Subsection B of this section.

B. As used in 20.5.123 NMAC:

(1) "cost-effectiveness" means completing tasks in a manner that is economical in terms of goods or services received for the money spent;

(2) "major remediation equipment" means any transportable unit or system which has been acquired specifically for remediation using the corrective action fund and which the department inventories pursuant to Section 12-6-10 NMSA 1978;

(3) "pay for performance" means payment of a previously approved amount based on completion or achievement of previously determined criteria including, but not limited to, a given task or set of tasks, specified reductions in contaminant levels, or achievement of other measurable milestones, as approved by the department;

(4) "payment" means payment from the fund to a person that the owner or operator has assigned the right of reimbursement, or reimbursement from the fund to an owner or operator for the costs of corrective action;

(5) "phase of

corrective action" means any one of the following activities, required by 20.5.119 or 20.5.120 NMAC:

(a) minimum site assessment ("MSA"), as defined in 20.5.101.7 NMAC;

(b) phase 1, which includes secondary investigation and report, soil-only contamination assessment, and petroleum vapor intrusion assessment;

(c) phase 2, which includes interim removal of non-aqueous phase liquid or contaminated soil;

(d) phase 3, which includes development of a conceptual and final remediation plan or a monitored natural attenuation plan;

(e) phase 4, which includes implementation of the remediation plan; or

(f) phase 5, which includes operating, monitoring, maintaining and reporting under the implemented remediation plan or monitoring and reporting under the approved monitored natural attenuation plan;

(6) "proposal" means an offer to complete work submitted in response to given specifications issued for a responsible party-lead site, or for a state-lead site;

(7) "resident business" means:

(a) a business enterprise which is authorized to do and is doing business under the laws of New Mexico and maintains its principal place of business in New Mexico, or has staffed an office and has paid applicable New Mexico taxes for two years prior to the awarding of the proposal and has five or more employees who are residents of New Mexico, or is an affiliate of a business which meets either of these two requirements; as used in this paragraph, "affiliate" means an entity that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with the qualifying business through ownership of voting securities representing a majority of the total voting power of the entity; or

(b) a business enterprise, including a sole proprietorship, partnership or corporation, that offers for sale or lease or other form of exchange, goods, commodities or services that are substantially manufactured, produced or assembled in New York state, or, in the case of construction services, has its principal place of business in New York state;

(8) "responsible party" means any owner or operator of a storage tank system from which a release has occurred;

(9) "responsible party-lead site" means a site where the owner or operator takes corrective action and applies to the fund for payment of corrective action costs, as distinct from a site where the state takes corrective action;

(10) "specifications" means a detailed written statement of particulars prescribing corrective action to be taken, conditions to be met, materials to be used, or standards of workmanship to which something is to be built, installed, or operated, which is provided to prospective contractors on responsible party-lead sites and state-lead sites;

(11) "state-lead site" means a site where the department takes corrective action using the fund because the owner and operator are unknown, unable or unwilling to take corrective action as described in 20.5.121.2102 NMAC or because the department determines that a single entity is necessary to lead the corrective action;

(12) "technical merit" means those characteristics of a proposal including but not limited to strategies, expertise, methods, materials and procedures meeting the specifications included in a request for proposals.

[20.5.123.7 NMAC – Rp. 20.5.123.7 NMAC, 12/27/2018]

20.5.123.8 to 20.5.123.2299 [RESERVED]

20.5.123.2300 CONSTRUCTION: This part shall be liberally construed to effectuate the purposes of the Ground Water Protection Act and shall be construed, to the extent possible, so as not to conflict with the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978, or 20.5.101 through 20.5.125 NMAC.

[20.5.123.2300 NMAC – Rp. 20.5.123.2300 NMAC, 12/27/2018]

20.5.123.2301 SEVERABILITY: If any section or application of this part (20.5.123 NMAC) is held invalid, the remainder of this part (20.5.123 NMAC) or its application to other persons or situations shall not be affected.

[20.5.123.2301 NMAC – Rp. 20.5.123.2301 NMAC, 12/27/2018]

20.5.123.2302 EFFECT ON OTHER REGULATIONS: This part does not relieve any owner or operator of the obligation to comply with any federal or state laws or regulations, including 20.5 NMAC.

[20.5.123.2302 NMAC – Rp. 20.5.123.2302, 12/27/2018]

20.5.123.2303 COMPLIANCE DETERMINATIONS:

A. The department shall make compliance determinations in the following circumstances:

(1) Corrective action by owner or operator. Pursuant to Section 74-6B-13 NMSA 1978, in order to be eligible for payment of corrective action costs other than those costs associated with a minimum site assessment, the owner or operator shall be in compliance with the requirements of Subsection B of Section 74-6B-8 NMSA 1978, as outlined in 20.5.123.2304 NMAC, during the owner or operator's term of ownership or operation for all storage tanks owned or operated at the site where the corrective action was or is being taken. Compliance for underground storage tanks ("USTs") shall be determined for the period from March 7, 1990 to the date the department determines that corrective action is complete. Compliance for

above-ground storage tanks ("ASTs") shall be determined for the period from July 1, 2001 to the date the department determines that corrective action is complete.

(2) Corrective action by the department. Before bringing an action in district court against an owner or operator to recover expenditures from the fund incurred by the department to take corrective action at a site, the department shall determine, in accordance with 20.5.123.2304 NMAC, whether the owner or operator has complied with the requirements of Subsection B of Section 74-6B-8 NMSA 1978, during their term of ownership or operation for all storage tanks owned or operated at the site. Compliance for USTs shall be determined for the period from March 7, 1990 to the date the department determines that corrective action is complete. Compliance for ASTs shall be determined for the period from July 1, 2001 to the date the department determines that corrective action is complete.

B. The owner or operator shall request a compliance determination before submitting the initial request for payment of the costs of corrective action, other than the costs of an MSA. Once the department has completed an initial compliance determination at the owner or operator's request, the department may initiate and make separate compliance determinations at one or more phases of corrective action, other than an MSA, for which payment is requested. If the department determines that a tank owner or operator is not in compliance with 20.5.123.2304 NMAC, the tank owner or operator will be ineligible for payment of corrective action costs, other than an MSA.

C. No compliance determination is necessary when, pursuant to Section 74-6B-13 NMSA 1978, an owner or operator applies to the department for payment of MSA costs exceeding the deductible. However, prior to payment, the department shall determine that the work performed meets the definition of an MSA provided in 20.5.101.7 NMAC.

[20.5.123.2303 NMAC – Rp. 20.5.123.2303 NMAC, 12/27/2018]

20.5.123.2304 DETERMINATION OF COMPLIANCE UNDER SECTION 74-6B-8 NMSA 1978:

A. For sites where all USTs were removed or properly abandoned prior to March 7, 1990, and for sites where all ASTs were removed or properly abandoned prior to July 1, 2001, the determination of compliance required by Subsections B and C of 20.5.123.2303 NMAC shall include findings as to whether the owner or operator has:

(1) paid all storage tank fees required by Section 74-4-4.4 NMSA 1978, and, for all USTs removed or properly abandoned prior to March 7, 1990, and for all ASTs removed or properly abandoned prior to July 1, 2001, a two hundred ($200) fee for each site;

(2) conducted a minimum site assessment as defined in 20.5.101.7 NMAC; and

(3) cooperated in good faith with the department and granted access to the department for investigation, cleanup, and monitoring.

B. For sites where USTs were not removed or properly abandoned prior to March 7, 1990, or where ASTs were not removed or properly abandoned prior to July 1, 2001, the determination of compliance required by Subsections B and C of 20.5.123.2303 NMAC shall include findings as to whether the owner or operator has:

(1) paid all storage tank fees required by Sections 74-4-4.4 and 74-6B-9 NMSA 1978;

(2) conducted a minimum site assessment as defined in 20.5.101.7 NMAC and, if contamination is found, taken action to prevent continuing contamination;

(3) cooperated in good faith with the department and granted access to the department for investigation, cleanup, and monitoring; and

(4) substantially complied with all requirements and provisions of regulations adopted by the environment improvement board pursuant to Subsection C of Section 74-4-4 NMSA 1978 for storage tanks at the site for which payment is sought (including installation, upgrade, operation and maintenance of storage tanks in accordance with 20.5.106 NMAC, 20.5.107 NMAC, 20.5.109 NMAC, and 20.5.110 NMAC; release detection in accordance with 20.5.108 NMAC and 20.5.111 NMAC; for any storage tanks which have been abandoned or closed at the site, proper closure in accordance with 20.5.115 NMAC; reporting, investigating, confirming and remediating the release in accordance with 20.5.118 NMAC, 20.5.119 NMAC and 20.5.120 NMAC; proof of financial responsibility in accordance with 20.5.117 NMAC; and record keeping in accordance with the record keeping provisions of 20.5.101 through 20.5.103 NMAC, 20.5.106 through 20.5.115 NMAC, 20.5.117 through 20.5.120 NMAC, 20.5.124 NMAC and 20.5.125 NMAC).

C. In determining whether the owner or operator has substantially complied with the regulations referenced in Paragraph (4) of Subsection B of this section, the department may consider, among other things, the severity of the non-compliance, the period of non-compliance, the actions taken by the owner or operator to come into compliance, and the timeliness of the owner or operator's actions in coming into compliance.

[20.5.123.2304 NMAC – Rp. 20.5.123.2304 NMAC, 12/27/2018]

20.5.123.2305 PROCEDURES FOR DETERMINING COMPLIANCE:

A. When the owner or operator submits a written request for a compliance determination to the department, the request shall provide the following information for all storage tanks located at the site where

the owner or operator is performing corrective action:

(1) the applicant's name, address, telephone number, and email address;

(2) a description of the applicant's interest in the site (for example, landowner, tank owner, lending institution, operator);

(3) the name, address, email address, and telephone number of the tank facility at the release site;

(4) the facility ID, owner ID, and release ID numbers for the tank facility at the release site;

(5) information on all systems that exist or that have existed at the release site during the owner or operator's term of ownership or operation, including:

(a) tank type (UST or AST), tank number, installation dates, tank capacity, product contained and removal date, if applicable;

(b) information on installation, upgrade, operation and maintenance standards, including type of tank construction, piping system, corrosion protection, spill and overfill protection, release detection for tanks and piping, operation and maintenance plans, compatibility, and secondary containment, if applicable;

(c) type of regulated substance(s) in each tank; and

(d) date(s) of permanent closure, if applicable;

(6) proof of financial responsibility that includes:

(a) name and address of the facility that is the subject of the compliance determination;

(b) type of financial responsibility;

(c) name of insurance provider, policy number, and period of coverage; and

(d) information about insurance coverage, including: type or types of coverage for corrective action or third-party liability, amount of coverage per occurrence, and amount of annual aggregate coverage for sudden accidental releases, non-sudden accidental releases, and accidental releases;

(7) corrective action information for each release that includes:

(a) date(s) the release was reported to the department;

(b) methods of preventing further release; and

(c) completion of the MSA report;

(8) certification on oath or affirmation of the truthfulness of all matters and facts contained in the request.

B. When the department initiates a compliance determination pursuant to Subsection B of 20.5.123.2303 NMAC:

(1) the department shall, in writing, notify the owner or operator of the reason(s) for the compliance determination and explain that if the department determines that the owner or operator is not in compliance with 20.5.123.2304 NMAC, the owner or operator will be ineligible for payment of corrective action costs other than for an MSA; and

(2) the owner or operator shall submit in writing all information requested by the department by a date specified by the department; the department may request any of the information required for an MSA pursuant to subsection A of this section and shall establish a deadline for submission of this information that is reasonable under the circumstances.

C. The department shall review all written submissions in the order received and shall, within 30 days of receipt, notify the owner or operator in writing of any inadequacies in the submittal. The owner or operator may then correct any inadequacies and resubmit the application. Submissions shall be determined "complete" by the department when the submissions are adequately documented or inadequacies identified by the department have been corrected.

D. The owner or operator has the burden of establishing each point of fact relevant to such a determination. For such purpose, the submissions shall state specific facts which demonstrate compliance with Subsection B of 20.5.123.2304 NMAC.

E. The department shall make a compliance determination within 45 days following the department's determination that a submission is complete and shall promptly notify the owner or operator of its determination. For good cause, the director may permit additional time in which to make a compliance determination. If the department finds an owner or operator to be out of compliance, the department shall also notify the owner or operator in writing of the manner in which the owner or operator has failed to comply with 20.5.123.2304 NMAC and inform the owner or operator that he or she is ineligible for payment of corrective action costs, other than the costs of an MSA.

[20.5.123.2305 NMAC – Rp. 20.5.123.2305 NMAC, 12/27/2018]

[The department provides a form that may be used to request a compliance determination. The form is available on the petroleum storage tank bureau's pages on the department website or by contacting the petroleum storage tank bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

20.5.123.2306 COMPETITIVE CONTRACTOR SELECTION FOR REMEDIATION AT RESPONSIBLE PARTY-LEAD SITES:

A. Payments made from the fund shall be made in accordance with 20.5.123.2309 NMAC and only for work performed by contractors that were selected using a competitive procedure based upon technical merit and cost-effectiveness, as defined in this part

except as provided in Subsections C and D of this section. The solicitation and evaluation of proposals are required prior to workplan approval.

B. At a minimum, the department and the owner or operator shall obtain proposals and select contractors competitively for remediation activities under 20.5.119.1922 through 20.5.119.1928 NMAC and under 20.5.120.2019 through 20.5.120.2025 NMAC, including conceptual and final remediation plans, design, construction, installation, operation and maintenance, and monitoring.

C. Competitive contractor selection is not required for the following activities:

(1) initial abatement or emergency response under 20.5.119.1902 NMAC or 20.5.120.2002 NMAC;

(2) 72 hour and 14 day reports under 20.5.119.1903 NMAC or 20.5.120.2003 NMAC;

(3) interim removal of non-aqueous phase liquid ("NAPL"), directed or approved by the department under 20.5.119.1905 or 12.5.120.2005 NMAC;

(4) interim removal of contaminated soil, directed or approved by the department under 20.5.119.1906 NMAC or 12.5.120.2006 NMAC;

(5) investigation activities under 20.5.118.1801 NMAC and 20.5.119.1907 through 20.5.119.1913 NMAC or 20.5.120.2007 through 20.5.120.2011 NMAC;

(6) development of and monitoring and reporting under a monitored natural attenuation plan under 20.5.119.1915 through 20.5.119.1921 NMAC or 20.5.120.2012 through 20.5.120.2018 NMAC;

(7) work at sites for which the owner or operator is not seeking payment, including but not limited to federal facilities and sites determined to be out of compliance pursuant to 20.5.123.2304 NMAC; or

(8) work at sites under contract as described in subsection D of this section.

D. Work at sites with releases from USTs where the owner or operator and a contractor entered into a contract approved by the department and initiated remediation prior to October 1, 1995, shall be exempt from competitive contractor selection requirements. Work at sites with releases from ASTs at which the owner or operator and a contractor entered into a contract for and initiated remediation prior to June 14, 2002, shall be exempt from competitive contractor selection requirements. The owner or operator shall obtain a contractor for any subsequent site through the competitive contractor selection process in accordance with the requirements of 20.5.123.2306 through 20.5.123.2307 NMAC. [20.5.123.2306 NMAC – Rp. 20.5.123.2306 NMAC, 12/27/2018]

20.5.123.2307 PROCEDURES AND REQUIREMENTS FOR SELECTION OF REMEDIATION CONTRACTORS AT RESPONSIBLE PARTY-LEAD SITES:

A. Within 15 days of written notification from the department that remediation is required, the owner or operator shall provide to the department either a written list with a minimum of five names of consultants from which the department and the owner or operator shall solicit proposals for remediation or a written request that the department solicit proposals for remediation on its website. The department and the owner or operator shall follow the procedures outlined in subsections B through E of this section where site evaluation, remediation selection and justification, and design may be required. The department and the owner or operator shall follow the procedures outlined in subsection F for bids at sites where limited remediation is such that no additional infrastructure is needed, plans and specifications that require a professional engineer signature and stamp are not required, the cost is less than $80,000 (not including NM gross receipt tax), and the proposed activities can be accomplished within two years. Limited remediation includes but is not limited to the injection of contaminant-reducing agents and the use of portable units for soil vapor extraction ("SVE"). The department shall follow the procedures outlined in subsection G for proposals at sites where the owner or operator is the state of New Mexico or a subdivision thereof.

B. Specifications.

(1) The department and the owner or operator shall develop specifications for remediation, which shall state which sections of 20.5.119 NMAC or 20.5.120 NMAC the work is intended to fulfill.

(2) The department and the owner or operator may require that specifications including primary responsibility for operation or maintenance of remediation systems with electrical or mechanical components contain the requirement that winning proposals shall include pay-for-performance criteria as defined in this part.

(3) Proposals shall meet all requirements outlined in the specifications.

(4) Costs for all tasks outlined in the specifications shall be submitted by short-listed firms only and shall be submitted under separate, sealed cover from the technical portion of the proposal.

C. Solicitation of proposals.

(1) If the owner or operator provides a list of contractors, the department shall mail the specifications to those contractors. However, if the owner or operator, within 15 days of receiving written notification from the department that remediation is required, fails to provide the department with the names of five contractors, fails to respond to the department's notice that remediation is required, or chooses to allow the department to solicit proposals on behalf of the

owner or operator, the department may solicit proposals from and make specifications available to any interested contractor using the department's webpage.

(2) Any questions concerning the solicitation, including any requests for clarification of the specifications, shall be submitted in writing to the department and the owner or operator, within two weeks prior to the deadline for submission of proposals. Any response from the department and the owner or operator shall be provided promptly to all contractors through a posting on the department's webpage.

(3) Each proposal shall contain a notarized affidavit signed by the contractor certifying under oath that the contractor has participated and will continue to participate in the competitive contractor selection process as described in this section and Section 74-6B-7C NMSA 1978 without misrepresentation and without collusion with other contractors during the entire solicitation, evaluation and selection process.

D. Evaluation of proposals and contractor selection.

(1) Once the department and the owner or operator have received a proposal, they shall not discuss the solicitation or any proposal received in response to the solicitation with anyone other than department staff or the owner or operator.

(2) If fewer than three responsive proposals are obtained by the deadline in the solicitation, the department shall consult with the owner or operator and solicit additional proposals pursuant to subsection A of this section or paragraph (1) of subsection C of this section.

(3) If fewer than three responsive proposals are obtained after two attempts, the department and the owner or operator may select a proposal following the procedures in this section, provided the technical merit is acceptable for the proposed work.

(4) The department shall, and the owner or operator may, evaluate proposals based on technical merit as defined in this part. The technical merit score shall be based on an understanding of site-specific conditions and the appropriateness of proposed remediation technology.

(a) A team approved by the department shall evaluate the proposals in a timely manner. The owner or operator or their representative is encouraged to participate as a part of the evaluation team. Each team member shall independently evaluate each proposal for technical merit. After discussion, the team shall determine the preliminary technical merit score for each proposal.

(b) The team shall prepare a short list of proposals for further consideration. The short list shall consist of the names of the firms that have submitted proposals with the highest preliminary technical merit scores.

(c) The team shall present the short list of firms to a department task force for a discussion of proposals to ensure consistency among team evaluation and scoring. The department task force shall consist of senior department technical staff. After discussion with the department task force, the team shall assign the technical merit scores.

(5) The department and the owner or operator may request all firms selected for the short list to conduct an oral presentation outlining their proposals for the department task force, the team and the owner or operator. The owner or operator's attendance during the oral presentations is encouraged, but not required. During the oral presentations, members of the department task force, the team and the owner or operator may ask questions. Only the team shall assign the scores to each proposal on the short list.

(a) Any firm that is requested by the department and the owner or operator to conduct an oral presentation and chooses not to do so, shall be eliminated from the short list.

(b) All short-listed firms shall submit a sealed cost proposal to the department and the owner or operator no later than two days prior to the oral presentations. The team shall open and review the sealed cost information submitted for each proposal on the short list.

(c) Prior to or during the oral presentations, contractors on the short list may withdraw the original cost submission and substitute a best and final offer for the cost portion of the proposal.

(6) Following the oral presentations, the team may adjust the technical merit score, based on demonstrated general expertise, site-specific knowledge and application, or information clarified or provided.

(7) At any point in the evaluation process, when, in the team's opinion, a proposal does not substantially meet the technical merit or cost effectiveness standards set forth in the solicitation, the team may reject the proposal.

(8) The team shall assign a final score for each proposal on the short list, which shall be the cost effectiveness score plus the technical merit score.

(a) The technical merit score, with a maximum of 700 points, shall be assigned pursuant to the procedure described in this subsection.

(b) The cost effectiveness score is the technical weight factor times the cost weight factor times 300, where the technical weight factor is the proposal's technical merit score divided by the highest technical merit score of proposals on the short list; the cost weight factor is the lowest cost of proposals on the short list divided by the proposal's cost; 300 is the maximum cost effectiveness score.

(9) The department shall notify the owner or

operator and all submitting firms of the highest scoring proposal. The owner or operator shall enter into a contract with the selected firm not less than 10 days or more than 30 days after the notification. If, for any reason, the selected firm cannot complete the project, the department and the owner or operator shall either select the firm with the second highest scoring proposal, provided the technical merit is acceptable for the proposed work, or repeat the contractor selection process in accordance with this section. In order for the work to qualify for payment from the fund, the owner or operator shall use the firm selected in accordance with this part.

(10) After the department has notified the owner or operator of the highest scoring proposal, the department and the owner or operator shall make available to the contractors and the public all proposals submitted and the evaluation team's scores.

(11) An owner or operator aggrieved by the department's selection may request administrative review pursuant to 20.5.123.2320 NMAC within 15 days of the post mark on the notification.

(12) An offeror aggrieved by the department's selection may request administrative review pursuant to 20.5.123.2320 NMAC within 10 days of the post mark date on the notification.

(13) For purposes of owner and operator participation in the process set forth in this subsection, the owner or operator may appoint a representative who is not affiliated with any individual who submitted a proposal. Any owner or operator representative may not later work for the contractor, the owner, or the operator on any work generated by the proposal.

E. When proposals are received from nonresident businesses and resident businesses, and the proposal with the highest evaluation is from a nonresident business, the contract shall be awarded to the resident business whose technical merit is comparable and whose cost is nearest to the cost of the high-scoring nonresident business proposal if the cost of the resident proposal is made lower than the cost of the nonresident business when multiplied by a factor of 0.95.

F. The department and the owner or operator shall follow the procedures outlined in this section at sites where limited remediation is such that no additional infrastructure is needed, plans and specifications that require a professional engineer signature and stamp are not required, the cost is less than $80,000 (not including NM gross receipt tax), and the proposed activities can be accomplished within two years.

(1) Specifications.

(a) The department and the owner or operator shall develop specifications for limited remediation, which shall state which sections of 20.5.119 NMAC or 20.5.120 NMAC the work is intended to fulfill.

(b) Bids shall meet all requirements and include costs for all tasks outlined in the specifications.

(2) Request for bids.

(a) The owner or operator shall provide to the department either a written list with a minimum of three names of consultants from which the department shall request bids for the limited remediation or a written request that the department request bids on its website.

(b) Any questions concerning the request for bids, including any requests for clarification of the specifications, shall be submitted in writing to the department and the owner or operator within one week prior to the deadline for submission of bids. Any response from the department and the owner or operator shall be provided promptly to all contractors identified by the owner or operator or by posting the responses on the department's webpage consistent with the method that the bids were requested.

(3) Bid content and specifications. The request for bids shall include but not be limited to:

(a) the scope of work including a list of tasks,

(b) a request for costs associated with each task and a total project cost;

(c) a request for a description of the technical approach; and

(d) the schedule for implementing the limited remedial strategy.

(4) Evaluation of the bids and contractor selection.

(a) Once the department and the owner or operator have received a bid, they shall not discuss the request for bids or any responses to the request for bids received with anyone other than department staff and the owner or operator.

(b) Only one responsive bid is required for evaluation, provided the technical merit is acceptable for the proposed work.

(c) The department shall, and the owner or operator may, evaluate the bids based on technical responsiveness to the limited remediation strategy and cost. The responsive bids shall be evaluated by a team approved by the department, and owner or operator if requested. The team shall make a recommendation to a department task force for approval.

(d) The department shall notify the owner or operator and all submitting firms of the selected bid. The owner or operator shall enter into a contract with the selected firm not less than 10 days or more than 30 days after the notification.

(e) After the department has notified the owner or operator of the selected bid, the department and the owner or operator shall make available to the contractors and the public all bids submitted and the evaluation team's scores.

(f) An owner or operator aggrieved by the department's selection may request administrative review pursuant to 20.5.123.2320 NMAC within 15 days of the post mark on the notification.

(g) An offeror aggrieved by the department's selection may request administrative review pursuant to 20.5.123.2320 NMAC within 10 days of the post mark date on the notification.

(h) For purposes of owner and operator participation in the process set forth in this subsection, the owner or operator may appoint a representative who is not affiliated with any individual who submitted a bid. Any owner or operator representative may not later work for the contractor, the owner, or the operator on any work generated by the bid.

G. For responsible party-lead sites where the owner or operator is the state of New Mexico or any subdivision thereof, including but not limited to municipalities, counties, school districts, or other political subdivisions and their agencies, the department shall accept the use of the state procurement code, provided the department is involved in the development of the specifications and the evaluation of the submitted proposals.

[20.5.123.2307 NMAC – Rp. 20.5.123.2307 NMAC, 12/27/2018]

20.5.123.2308 PROCEDURES AND REQUIREMENTS FOR SELECTION OF REMEDIATION CONTRACTORS AT STATE-LEAD SITES: When selecting remediation contractors for state-lead sites, the department shall comply with the Procurement Code, Sections 13-1-21 through 13-1-199 NMSA 1978, 1.4.1 NMAC and the request for proposals procurement guide, which is incorporated by reference.

[20.5.123.2308 NMAC – Rp. 20.5.123.2308 NMAC, 12/27/2018]

20.5.123.2309 WORKPLAN APPROVAL, CHANGE ORDERS FOR CORRECTIVE ACTION AND APPROVAL OF DELIVERABLES:

A. Except as provided in Subsection C of 20.5.123.2310 NMAC, a written workplan and budget to complete any phase of corrective action shall be approved in writing by the department prior to any corrective action work being done in order for that work to be eligible for payment under this part.

B. For responsible party-lead sites, the owner or operator shall submit the corrective action workplan and cost in a fixed-fee format unless the department determines that a time-and-materials format is appropriate. Any fixed-fee approvals which require reallocation of approved amounts from one deliverable to another deliverable shall be approved in advance by the department in writing. If the department approves a time-and-materials format, any increase in approved amounts for specific tasks, categories or subcategories or any reallocation of an amount from one task to another task, one category to another category or within categories shall be approved in advance by the department in writing.

C. If required by Paragraph (2) of Subsection B of 20.5.123.2307 NMAC, a workplan including the operation and maintenance of a remediation system that includes mechanical or electrical installations shall list the performance criteria required for payment and amount of payment.

D. If a workplan is rejected after two attempts to receive approval by the department, the department may select the contractor who received the second highest evaluation, repeat the contractor selection process in accordance with Subsection B of 20.5.123.2307 NMAC, or, in the case of activities which do not require competitive contractor selection under Subsection D of 20.5.123.2306 NMAC, require the owner or operator to submit a workplan from a different contractor.

E. Changes to the technical approach or increases in costs beyond the approved workplan shall not be eligible for payment unless approved in writing by the department prior to implementation.

F. The department may increase or reduce payments for work based on pay-for-performance criteria because of *force majeure* or unforeseen changes in site conditions.

G. After receiving a deliverable, the department shall assess whether the deliverable is satisfactory. If the department finds that the deliverable is satisfactory, it shall issue a written notice of approval to the owner, operator or contractor. The notice of approval shall explain that any application for payment of costs associated with the approved deliverable must be received by the department within 90 days of the date the owner, operator or contractor received the certification of approval and that no extensions of this deadline shall be granted except extensions for good cause pursuant to 20.5.123.2318 NMAC. If the department finds the deliverable to be unsatisfactory, it shall, within 30 days of receiving a deliverable, provide to the owner, operator or contractor a written notice of exception explaining the defect in the deliverable and any steps the owner, operator or contractor may take to remedy the defect.

[20.5.123.2309 NMAC – Rp. 20.5.123.2309 NMAC, 12/27/2018]

20.5.123.2310 CORRECTIVE ACTION ELIGIBLE AND INELIGIBLE COSTS AND EXPENDITURES FOR STATE-LEAD AND RESPONSIBLE PARTY-LEAD SITES:

A. Payments shall be made only for corrective action conducted by firms qualified under 20.5.122 NMAC or in accordance with Subsection H of 20.5.119.1900 NMAC.

B. No expenditures from the fund shall be paid to or on behalf of owners or operators for corrective action, other than the minimum site assessment or any sampling done for purposes

of Paragraph (3) of Subsection A of 20.5.119.1921 or 20.5.119.1929 NMAC or Paragraph (2) of Subsection A of 20.5.120.2018 or 20.5.120.2026 NMAC, where the corrective action was conducted by firms or entities that are subsidiaries, parents or otherwise affiliate firms or entities of the owner or operator.

C. Payments shall be made for only those deliverables that the department has approved as satisfactory in writing, as required by 20.5.123.2309 NMAC.

D. For USTs, payment shall not be made for corrective action performed on or after September 22, 1992, if the owner or operator does not obtain department approval of workplans and costs prior to work being performed or costs incurred, exclusive of initial response or initial abatement measures performed in accordance with 20.5.119.1901 or 20.5.119.1902 NMAC or 20.5.120.2001 or 20.5.120.2002 NMAC. For ASTs, payment shall not be made for corrective action performed on or after June 14, 2002, if the owner or operator does not obtain department approval of workplans and costs prior to work being performed or costs incurred, exclusive of initial response or initial abatement measures performed in accordance with 20.5.119.1901 or 20.5.119.1902 NMAC.

E. Costs eligible for payment from the fund are all costs, except those excluded by Subsections H and I of this section, that are reasonable and necessary to confirm releases in accordance with 20.5.118 NMAC, to complete the minimum site assessment in excess of the deductible, and to complete corrective action beyond the minimum site assessment, in accordance with 20.5.119 NMAC or 20.5.120 NMAC, the department's fee schedule, and any workplan required by 20.5.123.2309 NMAC and approved by the department.

F. Before making payments, the department shall determine that the owner or operator has reimbursed the department for all federal leaking underground storage tank (LUST) trust funds expended for contractual services at the site.

G. Unpaid invoices are eligible for payment on an assignment basis from the applicant to the party who rendered the invoiced services or goods, or the party who made payment. Invoices resulting from assignments as described in this subsection are not contractual between the department and the party who rendered the service or the party who made payment. Payments of such invoices are made pursuant to provisions of Section 74-6B-13 NMSA 1978, including being subject to the availability of funds in the corrective action fund.

H. For USTs, costs ineligible for payment include, but are not limited to, the following:

(1) costs incurred prior to March 7, 1990;

(2) costs incurred on or after September 22, 1992, that exceed those in the department fee schedule in effect at the time the work was performed;

(3) costs paid or reimbursed by insurance companies or any other third party as described in 20.5.123.2319 NMAC;

(4) unpaid invoices, unless allowed under Subsection F of this section;

(5) costs of removing, repairing, retrofitting or replacing any USTs;

(6) costs of destroying, repairing, relocating or constructing any utility line unless required for cost-effective remediation or in response to a threat to public health, safety or welfare, or the environment, as determined by the department;

(7) costs of destroying any structure unless required for cost-effective remediation or in response to a threat to public health, safety or welfare, or the environment, as determined by the department;

(8) costs of repairing or replacing any remediation equipment or groundwater monitoring wells negligently or intentionally damaged or destroyed by the owner or operator;

(9) insurance premiums, the loss of interest on funds used to pay for a minimum site assessment, or loss of business;

(10) attorneys' fees or other legal costs;

(11) costs of monitoring a contractor and the owner's, operator's and designated representative's participation in the contractor selection process;

(12) costs associated with real estate transactions;

(13) rush charges for laboratory or other services, unless required by the department;

(14) payment made to property owners for property access to install or place monitoring wells or other investigation-related or remediation-related equipment;

(15) economic losses and liability to third parties;

(16) any markup on costs, to include subcontractor costs;

(17) costs associated with corrective action that fails to conform with the preapproved workplan or with the requirements of 20.5.119 NMAC or 20.5.120 NMAC;

(18) costs associated with releases from ASTs with capacities 55,000 gallons and greater that are part of airport hydrant fuel distribution systems, USTs with field constructed tanks, or hybrid storage tank systems;

(19) costs associated with releases from piping attached to an AST with a capacity of 55,000 gallons or greater;

(20) costs associated with releases from piping attached to a hybrid storage tank system; and

(21) costs associated with releases from piping attached to unregulated storage tank systems.

I. For ASTs, costs ineligible for payment include but are not limited to the following:

(1) costs incurred prior to July 1, 2001;

(2) costs incurred that exceed those in the department fee schedule in effect at the time the work was performed;

(3) costs paid or reimbursed by insurance companies or any other third party described in 20.5.123.2319 NMAC;

(4) unpaid invoices, unless allowed under subsection F of this section;

(5) costs of removing, repairing, retrofitting or replacing any ASTs;

(6) costs of destroying, repairing, relocating or constructing any utility line unless required for cost-effective remediation or in response to a threat to public health, safety or welfare, or the environment, as determined by the department;

(7) costs of destroying any structure unless required for cost-effective remediation or in response to a threat to public health, safety or welfare, or the environment, as determined by the department;

(8) costs of repairing or replacing any remediation equipment or groundwater monitoring wells negligently or intentionally damaged or destroyed by the owner or operator;

(9) insurance premiums, the loss of interest on funds used to pay for a minimum site assessment, or loss of business;

(10) attorneys' fees or other legal costs;

(11) costs of monitoring a contractor and the owner's, operator's and designated representative's participation in the contractor selection process;

(12) costs associated with real estate transactions;

(13) rush charges for laboratory or other services, unless required by the department;

(14) payment made to property owners for property access to install or place monitoring wells or other investigation-related or remediation-related equipment;

(15) economic losses and liability to third parties;

(16) any markup on costs, to include subcontractor costs;

(17) costs associated with corrective action that fails to conform with the preapproved workplan or with the requirements of 20.5.119 NMAC or 20.5.120 NMAC;

(18) costs associated with releases from ASTs with capacities 55,000 gallons and greater that are part of airport hydrant fuel distribution systems, USTs with field constructed tanks, or hybrid storage tank systems;

(19) costs associated with releases from piping attached to an AST with a capacity of 55,000 gallons or greater;

(20) costs associated with releases from piping attached to a hybrid storage tank system; and

(21) costs associated with releases from piping attached to unregulated storage tank systems.

[20.5.123.2310 NMAC – Rp. 20.5.123.2310 NMAC, 12/27/2018]

20.5.123.2311 DESIGNATED REPRESENTATIVES:

A. Subject to approval by the department, an owner or operator may designate a representative to facilitate compliance with 20.5.118 NMAC, 20.5.119 NMAC, 20.5.120 NMAC, 20.5.120 NMAC, 20.5.121 NMAC, 20.5.122 NMAC, and 20.5.123 NMAC. Designation of a representative shall include assignment to the designated representative of any rights the owner or operator may have to payment from the corrective action fund.

B. In the event an owner or operator is incapable of both directing required corrective action and assigning rights to a designated representative, a person may request in writing to be designated as a representative by the department and to be assigned any rights the owner or operator may have had to payment from the corrective action fund.

C. Anyone requesting to designate or be designated as a representative pursuant to this section shall submit a written request to the department that includes the:

(1) owner ID number;

(2) facility ID number;

(3) release ID;

(4) reason for the requested designation (for example: sale of property or change of ownership, out-of-state move, operator illness, age, or death); and

(5) proposed representative's name, mailing address, email address, and telephone number.

D. When determining whether to approve or designate a person as a representative pursuant to subsection A or B of this section, the department shall consider: the reason or reasons a designated representative may be necessary; the nature of the proposed representative's relationship to the owner or operator, if any; the proposed representative's interest in the facility or real property where corrective action is being or shall be performed; and the proposed representative's ability to direct corrective action activities. The department shall approve or deny the request for designation of a representative in writing, which explains the department's decision, to the requesting party and the owner or operator.

E. Requests for payment from the fund resulting from assignments described in subsection A or B of this section are not contractual between the department and the designated representative. Payments of such requests are made pursuant to the provisions of Section 74-6B-13 NMSA 1978, and are subject to the availability of funds in the corrective action fund.

F. Designation of a representative does not waive owner or operator responsibility or liability. Regardless of appointment of a designated representative, or assignment to the designated representative of rights to the

corrective action fund, owners and operators remain responsible for compliance with the provisions of this chapter. The designation of a representative shall not affect the department's right to seek compliance at any time from the owner or operator or both. The designation of a representative is intended to facilitate compliance with corrective action requirements only and shall not relieve the owner and operator of their legal responsibilities or liabilities under this chapter.
[20.5.123.2311 NMAC – Rp. 20.5.123.2311 NMAC, 12/27/2018]

20.5.123.2312 MEANS TEST TO DETERMINE DEDUCTIBLE:

A. An owner or operator otherwise responsible for paying the first ten thousand dollars ($10,000) of minimum site assessment costs under Section 74-6B-13 NMSA 1978 may request that the first ten thousand dollars ($10,000) be paid from the Fund (a "zero deductible") if the owner or operator proves to the department an inability to pay the deductible.

B. An owner or operator otherwise responsible for a ten thousand dollar ($10,000) deductible is allowed a five thousand dollar ($5,000) deductible if the owner or operator proves to the department an inability to pay the full deductible.

C. The owner or operator shall submit an application for a zero or reduced deductible before or with submission of the MSA workplan, pursuant to 20.5.119 NMAC or 20.5.120 NMAC. The application shall include the following:

(1) a letter explaining why the owner or operator is unable to afford to pay all or a portion of the initial ten thousand dollar ($10,000) cost of an MSA;

(2) copies of the owner's or operator's federal tax returns for the immediately preceding two years; and

(3) any additional financial documentation (for example, copies of bankruptcy filings or medical bills) that will assist the department in determining the owner or operator's inability to pay.

D. The department shall determine inability or reduced ability to pay by using one of the environmental protection agency's published computer analysis programs, and by considering the owner's or operator's ability to maintain basic business operations if required to pay the full or reduced deductible, including consideration of the overall financial condition of the owner or operator and demonstrable constraints on the ability of the owner or operator to raise revenues.

E. Notwithstanding the provisions of subsections A and B of this section, an owner or operator otherwise responsible for paying a deductible shall be allowed a zero deductible if the owner or operator has proven to the department that the owner or operator is a municipality or county.
[20.5.123.2312 NMAC – Rp. 20.5.123.2312 NMAC, 12/27/2018]

20.5.123.2313 OWNERSHIP AND DISPOSITION OF MAJOR REMEDIATION EQUIPMENT:

A. The department shall be the owner of all major remediation equipment paid for by the fund, unless the equipment is leased as a more cost-effective approach, and shall be responsible for disposition of all major remediation equipment. No owner or operator shall dispose of any major remediation equipment without the written permission of the department. Disposition by the department shall be in accordance with all applicable laws and regulations, and by any of the following means:

(1) relocation to another fund remediation site, as provided in subsections C through E of this section;

(2) interim rental to a non-fund remediation site, subject to subsection F of this section;

(3) sale or salvage, subject to subsection G of this section; or

(4) when options in paragraphs (1) through (3) of this subsection are not available, any other form of disposal consistent with federal and state law.

B. Any major remediation equipment shall be installed, maintained and disposed of in accordance with subsections A through G of this section.

C. An owner or operator requiring the use of major remediation equipment for corrective action paid for with fund money shall use equipment on the department's reuse list, if available, and provided such equipment can be refurbished to the manufacturer's operating specifications for a cost not to exceed one-half of the replacement cost of the equipment.

D. For all major remediation equipment, new or used, the owner or operator shall enter into a written installation and maintenance agreement with a company qualified to install and maintain the equipment, and shall furnish a copy of the agreement, executed by the company, to the department. Installation and maintenance shall be performed by factory-authorized personnel or a contractor specified by the manufacturer, or as otherwise approved by the department. Complete and proper installation shall be verified by both the manufacturer or its designated representative, and the installation personnel or company. Installation and maintenance contract costs shall be stated together with the purchase price of the equipment quoted to the department in proposals, workplans and applications for payment from the fund.

E. For all new major remediation equipment and for all used major remediation equipment under warranty when acquired, the owner or operator shall also furnish a copy of the manufacturer's warranty to the department.

F. If major remediation equipment is rented to a non-fund remediation site, a reasonable rental fee shall be paid into the fund. The department shall determine the reasonable rental fee based on the lowest price quote from three equipment renters.

G. Major remediation equipment shall be depreciated over its useful life and have a salvage value, method and schedule as approved by the department. If the equipment is sold or salvaged, the proceeds from the sale or salvage value shall be paid into the fund. Gain or loss shall be calculated based on the net book value or salvage value in accordance with generally accepted accounting principles.

H. The department shall remove all major remediation equipment from a site within 90 days after issuing a "no further action" letter for that site.

[20.5.123.2313 NMAC – Rp. 20.5.123.2313 NMAC, 12/27/2018]

20.5.123.2314 FUND APPLICATION, PAYMENT AND SUBROGATION:

A. Nothing in 20.5.123 NMAC establishes or creates any liability or responsibility on the part of the department or the state to pay corrective action costs from any source other than the fund, nor shall the department or the state have any liability or responsibility to make any payments of corrective action costs if the balance in the fund is insufficient to cover those costs.

B. Payment shall be made only for work that has been performed in accordance with 20.5.118 NMAC, 20.5.119 NMAC or 20.5.120 NMAC and 20.5.123 NMAC, subject to the provisions of 20.5.121.2105 NMAC.

[20.5.123.2314 NMAC – Rp. 20.5.123.2314 NMAC, 12/27/2018]

20.5.123.2315 OBTAINING FACILITY AND OWNER ID NUMBERS FOR PURPOSES OF CORRECTIVE ACTION:

A. An owner or operator who is exempt from registration and tank fee requirements pursuant to 20.5.101.7 NMAC (because the owner had a UST taken out of operation on or before January 1, 1974, had a UST taken out of operation after January 1, 1974 and removed from the ground prior to November 8, 1984, or had an AST taken out of operation on or before July 1, 2001) remains responsible for all corrective action requirements otherwise imposed on all owners and operators.

B. To access the fund, an owner or operator shall apply for and receive from the department a facility ID number and owner ID number upon submitting the following information:

(1) the owner's or operator's name, mailing address, email address, and telephone number; and

(2) the physical address of the UST, AST or site that requires corrective action but that is exempt from registration and tank fee requirements pursuant to 20.5.101.7 NMAC.

[20.5.123.2315 NMAC – Rp. 20.5.123.2315 NMAC, 12/27/2018]

20.5.123.2316 CONTENTS OF APPLICATION FOR PAYMENT AT RESPONSIBLE PARTY-LEAD SITES:

A. When a deliverable is completed and the department has determined in writing that the work for which payment is sought is satisfactory, the owner or operator shall submit one original and one copy of the application for payment to the department. The application shall include:

(1) information about the applicant, including: the owner's or operator's name, mailing address, email address, telephone number, owner ID number and the name of an individual to contact regarding the claim;

(2) the name of the owner at the time of the release;

(3) the name of the operator at the time of the release;

(4) the name of the responsible party at the time of the release;

(5) information about the facility, including: the name, address, release ID, and facility ID number for which payment is sought; the phase of corrective action being claimed; the type of tank (UST or AST); the workplan approval date and workplan identification number; the amount approved for the deliverable and the amount of the claim; the invoice number; the deliverable identification; and the exact name and date of the deliverable;

(6) references to all work products or deliverables for which payment is sought;

(7) the date or dates of the department's compliance determination or determinations under 20.5.123.2303 NMAC;

(8) information about the payee if the owner or operator has assigned payment to another person, including: name, mailing address, telephone number, email address, and the nature of the payee's interest in the site;

(9) a copy of any claim or claims the owner or operator has filed against any third party who caused or contributed to the release;

(10) copies of invoices showing the work performed for the minimum site assessment or other required corrective action for which payment is sought;

(11) a copy of the letter from the department determining the owner's or operator's eligibility for a zero or reduced deductible, if applicable, as determined in accordance with 20.5.123.2312 NMAC;

(12) a statement that requirements to use a qualified firm in accordance with 20.5.122 NMAC have been met;

(13) a signed and notarized statement of an officer or agent of the qualified firm performing the corrective action:

(a) consenting to an audit of time sheets, payroll and bank records, tax records, purchase orders, manifests and bills of lading, internal expense records and any other documents required to verify the costs claimed in the application; and

(b) agreeing to return to the department, upon demand, any and all amounts

paid from the fund if the department determines that the owner or operator misrepresented or omitted any relevant facts;

(14) copies of the workplan approval letter and any subsequent amendments to the workplan covering work for which payment is requested;

(15) a copy of any and all notices from the department approving as satisfactory the deliverable for which payment is requested;

(16) information about the contractor, including: the contractor's name, address and telephone number; and the name of the contractor's project manager for the site; and

(17) if payment has been assigned by the owner or operator to a contractor, proof that the contractor has paid all subcontractor invoices.

B. When work is performed on a fixed fee basis, the owner or operator shall also submit the following as part of the application:

(1) a description of the deliverable and the date delivered;

(2) verification that any performance criteria required for payment were achieved; and

(3) any other requirements of the workplan approval.

C. When work is performed on a time-and-materials basis, the owner or operator shall also submit the following as part of the application:

(1) detailed billings of labor and equipment for each task performed; contractor staff shall be identified by name and hourly rate; equipment shall be identified as owned or rented, with the hourly or daily rate; laboratory and subcontractor charges shall be clearly explained;

(2) timesheets, invoices, or statements with staff name, labor category, and description and date of work performed;

(3) copies of receipts for all equipment and supplies;

(4) travel and expense logs;

(5) if work is billed on an hourly basis, timesheets, invoices or statements which include the hourly rate and number of hours billed to the nearest one-quarter hour; and

(6) any other requirements of the workplan approval.

D. Upon the department's request, the owner or operator shall submit copies of all subcontractor invoices and an accounting of the amount paid and any remaining balance on each invoice.

E. In the first application for payment of corrective action costs for each workplan, the owner or operator shall submit one original and one copy of:

(1) an original, signed oath or affirmation in accordance with Sections 14-13-1 and 14-13-2 NMSA 1978:

(a) certifying that the owner or operator has read the approved workplan and understands that the corrective action described in the workplan shall be completed at the identified facility;

(b) certifying that all matters and facts contained in that application, and in any subsequent applications for payment for the same workplan, are and will be truthful and that all invoices reflect actual costs paid or otherwise incurred;

(c) consenting to an audit of financial records pertaining to the current and any future claims for the same workplan; and

(d) agreeing to return to the department, upon demand, any and all amounts paid from the fund if the department determines that the owner or operator misrepresented or omitted any relevant facts in this or any future application for payment for the same workplan;

(2) a signed, dated, and notarized disclosure statement indicating the site name and number where the release occurred; the type of tank (UST or AST); the facility ID number; the name, address, and telephone number of the entity that performed the work for which payment is claimed; the full name of all owners and operators of the tank for which payment is claimed; the name of each individual and business entity that owns or controls the entity that performed the work for which payment is claimed; and the name of every business concern that is a partner or subsidiary of the entity that performed the work for which payment is claimed;

(3) a completed internal revenue service W-9 form (request for taxpayer identification number and certification form);

(4) information about insurance coverage, including: whether the owner or operator has insurance for releases of regulated substances at the site of the release for which a claim is being made; the name, address, and telephone number of the insurance company; the name, address, and telephone number of a contact person within the insurance company; the amount of coverage; whether the applicant has filed an insurance claim for this release, and if so, the amount sought; and the amount the insurance company has paid; and

(5) copies of any insurance policies in effect on the date of the report or at the time of the release that may insure the owner or operator against all or part of the costs of corrective action.

F. After the first application for payment of corrective action costs for each workplan, an owner or operator who has properly submitted the documents required by subsection E of this section and received a payment need not submit these documents with future applications for payment unless any information provided in the first application has changed or the department has modified the scope

of the work or the budget of the workplan.

G. The owner or operator shall not submit costs of any portion of a minimum site assessment in the same application for payment of costs of other required corrective action.

H. Documents submitted as part of an application for payment of corrective action costs shall not contain alterations, corrections, or erasures.

[20.5.123.2316 NMAC – Rp. 20.5.123.2316 NMAC, 12/27/2018]

[The department provides forms that may be used to comply with this section. The forms are available on the petroleum storage tank bureau's pages on the department website or by contacting the petroleum storage tank bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

20.5.123.2317 CONTENTS OF APPLICATION FOR PAYMENT AT STATE-LEAD SITES: When a deliverable is completed and the department has determined in writing that the work for which payment is sought is satisfactory, the contractor shall submit one original and one copy of the application for payment to the department. All applications shall include:

A. the payee's name, mailing address, email address and telephone number;

B. the contractor's name, mailing address, email address and telephone number;

C. information about the workplan, including: the date the workplan was approved, the workplan identification number, the deliverable identification numbers and the date or dates each deliverable was delivered;

D. information about the facility, including: the name, physical address, release ID, and facility ID number of the facility for which payment is sought; the phase of corrective action being claimed; the contract number; and the expiration date of the contract;

E. the invoice number or numbers and the amount of each invoice for which payment is sought;

F. copies of each invoice for which payment is sought; and

G. copies of the workplan approval letter and any subsequent amendments to the workplan.

[20.5.123.2317 NMAC – Rp. 20.5.123.2317 NMAC, 12/27/2018]

[The department provides a form on the petroleum storage tank bureau's pages on the department website that may be used to comply with this section. The form may also be obtained by contacting the bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

20.5.123.2318 APPLICATION AND PAYMENT PROCESS:

A. All applications for payment shall be received by the department within 90 days of the date upon which the owner, operator or contractor received a notice of approval of the deliverable from the department, pursuant to 20.5.123.2309 NMAC. The department shall not grant extensions of the deadline for applications for payment except for good cause shown, in which case the department shall grant a 30-day extension. For purposes of this section, "good cause" means unavoidable circumstances beyond the owner's, operator's, or contractor's control. All requests for an extension shall describe the reason or reasons an extension is necessary and shall be submitted to the department in writing within the 90-day period for submitting an application for payment.

B. Applications for payment shall be sent to the New Mexico environment department, petroleum storage tank bureau, reimbursement section.

C. The department shall review all applications for payment in the order received and shall, within 60 days of receipt, either:

(1) pay the owner, operator or contractor for all eligible costs or as required by 20.5.121.2105 NMAC; or

(2) reject the application and notify the owner, operator or contractor in writing of the inadequacies in the application that caused the rejection.

D. The department may reject an application for payment:

(1) of the cost of any deliverable if:

(a) the application is received after the deadlines imposed by this section;

(b) the application does not contain all of the information or documents required by 20.5.123.2316 or 20.5.123.2317 NMAC (including but not limited to, all required disclosures, affirmations, timesheets, receipts, logs, and invoices);

(c) the application itself or the attached documents are incomplete, inaccurate or unclear;

(d) the application contains information that is intentionally misleading or false;

(e) the application seeks payment for work that was not pre-approved by the department;

(f) the application seeks payment for work that was not approved by the department as satisfactory; or

(g) the application seeks payment of costs that exceed the amount approved in the workplan; and

(2) of the cost of any deliverable other than an MSA if:

(a) the department has not made a compliance determination; or

(b) tank fees are past due.

E. The owner, operator or contractor may correct any inadequacies in the application and resubmit one completed original application and one copy within 30 days of the date of the notice of inadequacies.

F. Upon receiving a resubmitted application, the

department shall follow the procedures in subsections C, D and H of this section for reviewing and accepting or rejecting applications for payment.

G. The owner, operator or contractor may submit a total of three applications (an initial application and two resubmitted applications) for any deliverable. After the owner, operator or contractor submits a total of three inadequate applications, the department may decline to review additional applications for the same deliverable.

H. Payment for eligible costs shall occur no later than 60 days, or in accordance with 20.5.121.2105 NMAC, after the department determines the application is complete and approves the technical adequacy of the application. The department shall mail the check for payment to the person designated as payee in the application.

I. Payment under this section shall not foreclose the department's right to recover excessive or illegal payments. [20.5.123.2318 NMAC – Rp. 20.5.123.2318 NMAC, 12/27/2018] [The address of the department's petroleum storage tank bureau, reimbursement section, is: 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

20.5.123.2319 SUBROGATION:

A. The department has a right of subrogation to any insurance policies in existence at the time of the release to the extent of any rights the owner or operator of a site may have had under that policy, pursuant to Subsection D of Section 74-6B-8 NMSA 1978. The department's subrogation rights are limited to the extent of the department's expenditures from the corrective action fund or other sources. The owner or operator shall include in the first application for payment a copy of any insurance policies which were in effect on the date of the report, as well as any policies which were in existence at the time the release may have occurred and which may insure the owner or operator against all or part of the costs of taking corrective action. The owner or operator shall also report to the department any claims filed against any policy identified in accordance with this section or Subsection G of 20.5.123.2310 NMAC.

B. The department has a right of subrogation against any third party who caused or also contributed to the release, pursuant to Subsection D of Section 74-6B-8 NMSA 1978. This right of subrogation shall apply regardless of any applications for payment the owner or operator may have made or intends to make for payment from the fund. The owner or operator shall report to the department the identity of any third party against whom a claim is filed and provide a copy of any claim filed against that party. [20.5.123.2319 NMAC – Rp. 20.5.123.2319 NMAC, 12/27/2018]

20.5.123.2320 ADMINISTRATIVE REVIEW:

A. With the exception of compliance determinations under 20.5.123.2303 through 20.5.123.2305 NMAC, an owner, operator or contractor aggrieved by a decision made by the department under 20.5 NMAC may obtain review of the decision using the procedures and subject to the limitations set forth in 20.5.125 NMAC.

B. An offeror aggrieved by a selection decision made by the department and the owner or operator pursuant to 20.5.123.2306 through 20.5.123.2307 NMAC may obtain review of the decision from the secretary by submitting a written request for hearing.

(1) Timelines. The request must be made in writing to the secretary by the offeror within 10 days after the department has notified the owner or operator and all submitting firms of the highest scoring proposal. If an appeal is received within the 10-day time limit, the secretary shall hold a hearing within 15 days after receipt of the request, unless the parties agree to an alternate timeframe. The secretary shall notify the person who requested the hearing of the date, time and place of the hearing by certified mail.

(2) Burden of proof. In the appeal hearing, the burden of proof is on the person who requested the hearing.

(3) Procedures.

(a) Appeal hearings shall be held at a place designated by the secretary, unless other mutually agreed upon arrangements are made. The secretary may designate a person to conduct the hearing and make a final decision or make recommendations for a final decision. The secretary's hearing notice shall indicate who will conduct the hearing and make the final decision.

(b) The department shall make an audio recording of the hearing. If either party wants the hearing transcribed, that party shall bear the costs of transcription.

(c) In appeal hearings, the rules governing civil procedure and evidence in district court shall not apply. Hearings shall be conducted so that all relevant views, arguments, and testimony are amply and fairly presented without undue repetition. The secretary shall allow department staff and the hearing requestor to call and examine witnesses, to submit written and oral evidence and arguments, to introduce exhibits, and to cross-examine persons who testify. All testimony shall be taken under oath. At the end of the hearing, the secretary shall decide and announce if the hearing record will remain open, for how long, and for what reason(s) it will be left open.

(4) Secretary's decision. Based upon the evidence presented at the hearing, the secretary or designee shall sustain, modify, or reverse the action of the department. The secretary or designee's decision shall be by written final order within five business days following the close of the hearing record. The order shall include the reason(s) on which the

decision is based, and shall be sent by certified mail to the hearing requestor and any other affected person who requests notice.

(5) Stay of action. The filing of an administrative appeal shall stay execution of the contract by the owner or operator until the secretary or designee issues a final order on the appeal.

(6) Judicial review. Judicial review of the secretary or designee's final order shall be as provided by law. The filing of a judicial appeal shall not stay the execution of the contract, corrective action, compliance with the regulations, or any other action required by the secretary.

C. An individual denied designation by the department as a representative pursuant to 20.5.123.2311 NMAC may obtain review of the department's decision using the procedures and subject to the limitations set forth in 20.5.125 NMAC.

D. Compliance determinations shall be appealed as provided in 20.5.123.2321 and 20.5.123.2322 NMAC.

[20.5.123.2320 NMAC – Rp. 20.5.123.2320 NMAC, 12/27/2018]

20.5.123.2321 REVIEW OF DETERMINATIONS OF COMPLIANCE:

A. Any owner or operator aggrieved by a decision made by the department regarding determinations of compliance in accordance with 20.5.123.2303 through 20.5.123.2305 NMAC may appeal the decision by submitting a request for reconsideration of the decision to the director. Any owner or operator aggrieved by a decision made under these regulations by the director may appeal the decision by submitting a request for reconsideration to the director. The reconsideration will be based on written submittals. Any such request for reconsideration shall be in writing and shall specify the grounds upon which the petitioner objects to the decision. The request shall be accompanied by any and all written material and argument which the owner or operator wishes the director to consider upon reconsideration. The request for reconsideration shall be postmarked within 15 days of the date of the determination.

B. Department staff shall respond to the request for reconsideration within 15 days of receipt of the complete submittal of the owner or operator's request for reconsideration. The response of the department staff shall be sent to both the director and the owner or operator and shall be accompanied by any and all written materials and argument in support of the position of the staff on the issues raised by the owner or operator.

C. For good cause shown, the director may permit either party additional time in which to submit the supporting written materials or argument pursuant to subsections A and B of this section. Any request for additional time and all evidence for good cause shall be submitted in writing prior to the end of the 15-day period described in subsection A of this section. The department shall act on the request for additional time within a reasonable period of time.

D. The director's action on the request for reconsideration shall be based on the written materials and argument submitted pursuant to this section unless the director, in the director's discretion, schedules a conference on the request for reconsideration.

E. The director's action on the request for reconsideration shall be by written decision and shall state the reason therefor. The director shall send a copy of the decision to the owner or operator and furnish a copy to department staff promptly after the decision is rendered.

F. The owner or operator may appeal the decision of the director made under subsection E of this section by requesting a hearing in accordance with 20.5.123.2322 NMAC.

[20.5.123.2321 NMAC – Rp. 20.5.123.2321 NMAC, 12/27/2018]

20.5.123.2322 REQUEST FOR HEARING ON DETERMINATIONS OF COMPLIANCE:

A. An owner or operator may obtain review by the secretary of a decision by the director made pursuant to subsection E of 20.5.123.2321 NMAC by filing a written request for a hearing as provided in the environment department adjudicatory procedures, 20.1.5 NMAC, within 30 days after the date the owner or operator receives the director's decision pursuant to Subsection E of 20.5.123.2321 NMAC. The procedures set forth in the environment department adjudicatory procedures, 20.1.5 NMAC, shall govern the proceeding.

B. The complainant shall attach to the request for hearing a copy of the determination for which review is sought.

C. With the request for hearing, the complainant shall file a reply to the determination. The reply shall address each of the findings in the determination, including any facts which support the complainant's position that the complainant has complied with the requirements of subsection B of Section 74-6B-8 NMSA 1978.

D. The secretary shall schedule the hearing for no later than 90 days after service of the notice of docketing.

[20.5.123.2322 NMAC – Rp. 20.5.123.2322 NMAC, 12/27/2018]

20.5.123.2323 EFFECT OF APPEAL ON PAYMENT, ENFORCEMENT: A request for hearing or other administrative review shall not delay payment for any phase of corrective action, other than that which is being contested. A request for hearing shall not affect the secretary's authority to issue compliance orders or otherwise seek enforcement of 20.5 NMAC under the provisions of the Hazardous Waste Act or relieve an owner or operator of any responsibility under 20.5 NMAC.

[20.5.123.2323 NMAC – Rp. 20.5.123.2323 NMAC, 12/27/2018]

20.5.123.2324 CONTRACTOR FEE SCHEDULE:

A. Hourly billing rates listed in subsection C below shall conform to the Professional Services categories defined in subsection B of this section. Payment will be based on task(s) performed. Professional services not explicitly listed in this fee schedule may not be billed without prior negotiation and pre-approval by the department. The department may require justification.

B. The professional services categories are defined as follows:

(1) Principal scientist – Administrative or professional head of organization. Directs professional staff. Charges a very limited number of hours per site, as in review of project documents.

(2) Senior scientist – Senior technical leader. Develops technical and budgetary approach to work orders. Duties include aquifer characterization, review of technical reports and remedial action plans. Supervises work activities of lower level professional staff. Coordinates and communicates with agency personnel and client regarding contracts, general direction and problems at work site. Generally, performs limited field work. Performs design and investigation work in technically complex situations often requiring innovative applications.

(3) Project scientist/engineer-manager – Identifies problems and develops investigative and remedial solutions to work site situations. Consults with higher-level professional staff. Prepares workplans, cost estimates and reports. Performs modeling. Analyzes and interprets field data. Supervises lower level technical personnel during on-site drilling, sampling, or remediation activities. Frequently communicates with agency personnel and client.

(4) Staff scientist/engineer – Implements field work for on-site investigation and remediation activities including site characterization, drilling supervision, and monitoring well installation and sampling activities. Assists in modeling, hydrogeologic data analysis, and report preparation. Consults with higher level professional staff.

(5) Field technician – Supervises installation, maintenance, and repair of investigative and remediation machinery and equipment. Conducts sampling and monitoring. Maintains machinery and equipment. Assists with field supervision of subcontractors.

(6) Draftsperson – Technically familiar with basic engineering principles and construction methodologies. Works independently; work product reviewed by Professional Engineer. Proficient with computer aided design drafting.

(7) Administrator – Tracks workplan costs, prepares and processes invoices, administers leasing and ordering of equipment, and performs general administrative work for report and workplan preparation.

(8) Secretary – Performs word processing and spreadsheet entry. Assists technical and senior personnel with report production, correspondence preparation and data entry.

(9) Clerk – Performs general office work, typing, filing, and document reproduction.

C. Professional Service Rates:

Professional services	Hourly rate
Principal scientist	$175.00
Senior scientist	$145.00
Project scientist/engineer-manager	$115.00
Staff scientist/engineer	$95.00
Field technician	$85.00
Draftsperson	$85.00
Administrator	$80.00
Secretary	$50.00
Clerk	$45.00

D. Field Equipment Costs:

Field equipment	Cost per day
Carbon monoxide, sulphur dioxide oxide and oxygen meters	$50.00
Water quality meter	$50.00
Dissolved oxygen meter (water)	$37.50
Electroconductivity meter	$47.50
Explosimeter	$42.50
Fluid field detector	$30.00
Interface probe	$65.00
Organic vapor meter	$70.00
Photoionization detector	$70.00
Flame ionization detector	$75.00
pH Meter	$22.50
Other. Costs shall be pre-approved by the department. The department may require justification.	

E. Per diem and mileage will be paid in accordance with 2.42.2 NMAC, Regulations Governing the Per Diem and Mileage Act. The department shall only approve mileage reimbursement for travel within New Mexico.

F. Earth-moving equipment. Costs shall be pre-approved by the department. The department may require justification:

(1) backhoe, light duty (12 feet-19 feet);

(2) backhoe, medium duty (14 feet-19 feet);

(3) trackhoe, light duty;

(4) trackhoe, medium duty;

(5) trackhoe, heavy duty; and

(6) Other. Costs shall be pre-approved by the department. The department may require justification.

G. Well Supplies. Costs shall be pre-approved by the department. The department may require justification:

(1) two-inch blank;

(2) four-inch blank;

(3) two- inch screen PVC 10 feet;

(4) four-inch screen PVC 10 feet;

(5) filter pack, per 100 pounds;

(6) bentonite pellets, per 50 pounds;

(7) bentonite chips, per 50 pounds;

(8) bentonite gel, per 100 pounds;

(9) grout, per 50 pounds.;

(10) eight-inch manhole;

(11) 12-inch manhole; and

(12) Other. Costs shall be pre-approved by the department. The department may require justification.

H. Drilling. Costs shall be pre-approved by the department. The department may require justification:

(1) mobilization/demobilization;

(2) hollow stem auger;

(3) air rotary;

(4) Sonic drilling;

(5) other drilling methods;

(6) plug and abandon; and

(7) Other. Costs shall be pre-approved by the department. The department may require justification.

I. Lab services. Costs shall be pre-approved by the department. The department may require justification:

(1) EPA methods.

(a) 8310;

(b) 601/8010, 602/8020;

(c) Modified 8015;

(d) 418.1;

(e) 610/8100;

(f) 624/8240;

(g) 625/8270;

(h) 8260; and

(i) RCRA 8 metals.

(2) benzene, toluene, ethyl benzene, and xylenes; methyl tertiary-butyl ether;

(3) pH;

(4) total organic carbon;

(5) Geotechnical soil analyses:

(a) sieve analysis;

(b) soil moisture;

(c) density;

(d) porosity;

(e) fraction organic carbon; and

(6) Other. Costs shall be pre-approved by the department. The department may require justification.

J. The contractor shall provide justification or documentation upon request of the department for proposed costs subject to this part.

K. Subcontractor costs shall be billed at cost. The department may require three bids for subcontracted services.

[20.5.123.2324 NMAC – Rp. 20.5.123.2324 NMAC, 12/27/2018]

HISTORY OF 20.5.123 NMAC:

History of Repealed Material:
20.5.123 NMAC, Corrective Action Fund Administration (filed 7/31/2018) emergency rule, effective 12/27/18.

Other History:
20.5.17 NMAC, Corrective Action Fund Administration was renumbered, reformatted, and replaced by 20.5.123 NMAC, Corrective Action Fund Administration (filed 7/31/2018) emergency rule, effective 7/24/18.

GAME AND FISH DEPARTMENT

The New Mexico State Game Commission (Department of Game and Fish) approved, at its 11/30/2018 hearing, to repeal its rule 19.30.5 NMAC, Private Land Elk License Allocation, filed 10/3/2005, and to replace it with a new rule 19.30.5 NMAC, of the same name. On November 30, 2018, the Chairman of the State Game Commission adopted the new 19.30.5 NMAC, effective April 1, 2019.

The New Mexico State Game Commission (Department of Game and Fish) approved, at its 11/30/2018 hearing, to repeal its rule 19.31.2 NMAC, Hunting and Fishing License Revocation, filed 11/30/2017, and to replace it with a new rule 19.31.2 NMAC, Hunting and Fishing License Revocation of the same name. On November 30, 2018, the Secretary of the Game and Fish Department adopted the new 19.31.2 NMAC, effective April 1, 2019.

The New Mexico State Game Commission (Department of Game and Fish) approved, at its 11/30/2018 hearing, to repeal its rule 19.31.3 NMAC, Licenses and Application, filed 10/31/2017, and to replace it with a new rule 19.31.3 NMAC, Licenses and Application of the same name. On November 30, 2018, the New Mexico State Game Commission adopted the new 19.31.3 NMAC, effective January 1, 2019.

The New Mexico State Game Commission (Department of Game and Fish) approved, at its 11/30/2018 hearing, to repeal its rule 19.31.10 NMAC, Hunting and Fishing – Manner and Method of Taking, filed

11/21/2016, and to replace it with a new rule 19.31.10 NMAC, Hunting and Fishing – Manner and Method of Taking, of the same name. On November 30, 2018, the Secretary of the Game and Fish Department adopted the new 19.31.10 NMAC, effective April 1, 2019.

GAME AND FISH DEPARTMENT

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 30 WILDLIFE ADMINISTRATION
PART 5
PRIVATE LAND ELK LICENSE ALLOCATION

19.30.5.1 ISSUING AGENCY: New Mexico department of game and fish.
[19.30.5.1 NMAC - Rp, 19.30.5.1 NMAC, 4-1-2019]

19.30.5.2 SCOPE: To acknowledge landowners who provide meaningful benefit to elk and accept elk on their properties and to provide hunting opportunities on private and public land to all elk hunters who wish to recreate within New Mexico's exterior boundaries. Additional requirements may be found in Chapter 17 NMSA 1978 and Chapters 30, 31, 32 and 33 of Title 19 NMAC.
[19.30.5.2 NMAC - Rp, 19.30.5.2 NMAC, 4-1-2019]

19.30.5.3 STATUTORY AUTHORITY: Section 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds and fish. Statute 17-3-14.1 NMSA 1978 authorizes the director to issue landowner permits for the lawful taking of elk.
[19.30.5.3 NMAC - Rp, 19.30.5.3 NMAC, 4-1-2019]

19.30.5.4 DURATION: Permanent.
[19.30.5.4 NMAC - Rp, 19.30.5.4 NMAC, 4-1-2019]

19.30.5.5 EFFECTIVE DATE: April 1, 2019, unless a later date is cited at the end of a section.
[19.30.5.5 NMAC - Rp, 19.30.5.5 NMAC, 4-1-2019]

19.30.5.6 OBJECTIVE: Establish an equitable and flexible system that recognizes the contributions of private lands and landowners to the management of elk and their habitats, while providing hunting opportunities on private lands, and to support appropriate, biologically sound, and effective harvest goals set by the department for elk.
[19.30.5.6 NMAC - Rp, 19.30.5.6 NMAC, 4-1-2019]

19.30.5.7 DEFINITIONS:

A. "Annual agreement" or "Agreement" shall mean the document that contains the specific ranch information, sets forth the terms and conditions of the agreement, special instructions, requirements and regulations concerning participation in this program and affirms a signatory understanding of such.

B. "Authorization number" or "Authorization" shall mean a multi-digit number which allows the holder to purchase a private land elk license specifying sex and sporting arm type. May also collectively refer to types and numbers of private land elk hunting opportunities available in a game management unit or assigned to a recipient pool of elk hunting opportunities.

C. "Authorization statement" shall mean the document generated by the department and issued to an authorized ranch contact that contains the authorization numbers, which allows the holder to purchase a specified license to hunt elk.

D. "Authorized Ranch Contact" or "ARC" shall mean the person designated in writing by the landowner(s) to act as the liaison between the ranch and the department. ARC is responsible for acting in the landowner(s) best interest and has the authority to sign an elk private lands use system agreement and receive authorization statements. All persons listed on the recorded deed(s) must sign and notarize an authorization of ranch contact form provided by the department authorizing the same individual as the authorized ranch contact.

E. "Base allocation" shall mean the number and authorization types issued to base ranches through the allocation formula.

F. "Base ranch" shall mean a ranch in the primary management zone able to receive at least one whole authorization through the allocation formula based on weighted acreage and ranch score.

G. "Bonus allocation" shall mean the number and authorization types represented by private lands not participating in the elk private lands use system in the primary management zone, through the allocation formula.

H. "Co-op" shall mean more than one ranch enrolled by separate landowners and combined together to form a single ranch and naming a single ARC.

I. "Deeded acres" shall mean privately owned acres that can be verified by the department.

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

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

L. "Elk Contribution Rating" or "ECR" shall mean the rating assigned to a ranch by appropriate department staff based on the following: occasional elk presence shall receive an ECR of 1, frequent elk presence shall receive an ECR of 1.25, continuous elk presence shall receive an ECR of 1.5.

M. "EPLUS" shall mean the elk private lands use system.

N. "Game Management Unit" or "GMU" shall mean those areas as described in 19.30.4 NMAC Boundary Descriptions for Game Management Units.

O. "Inactivation" shall mean the procedure that immediately stops all issuance of authorizations and suspends participation in the program.

P. "In review" shall mean a period of time during which an active ranch may be placed into temporary suspension, stopping agreements and authorization statements from being issued to the ARC, until the department review concludes that all participation requirements have been met.

Q. "Landowner" shall mean the person(s) listed on the most current recorded deed(s) being considered as a ranch for participation, is responsible for signing the initial application, and is responsible for assigning a single authorized ranch contact.

R. "Meaningful benefit" shall mean a variety of elk habitat components that are known to be beneficial to elk throughout at least one season and further determined by state game commission adopted participation guidelines.

S. "Participation guidelines" shall mean the written requirements for enrollment and participation in the program that department staff use to evaluate ranches and approved by the state game commission.

T. "Percent weighted acres" shall mean the quotient of a ranch's weighted acres divided by the total private acres in the primary management zone within a GMU.

U. "Primary management zone" shall mean areas of the state designated by the department upon which elk management goals and subsequent harvest objectives are based.

V. "Public land" shall mean those lands held by state, federal, or public land use agencies.

W. "Ranch" shall mean any deeded acres included in an agreement and treated as a single property.

X. "Ranch-only" shall mean a ranch whose ARC has selected the ranch-only hunting option as defined on their agreement or whose ranch is located in a GMU designated as ranch-only.

Y. "Ranch-only authorization number" shall mean a private land authorization that allows a person to purchase an elk license only valid on the designated ranch except as otherwise allowed by rule.

Z. "Ranch score" shall mean the score resulting from the ranches evaluation as defined in participation guidelines.

AA. "Secondary management zone" shall mean areas of the state that are not part of the primary management zone or special management zone.

AB. "Small Contributing Ranch" or "SCR" shall mean those ranches that meet the minimum qualifications to participate, but are unable to receive at least one whole authorization pursuant to the allocation formula based on weighted acreage alone.

AC. "SCR pool" shall mean the number and authorization types that result from the fractional consolidation of authorizations awarded to small contributing ranches through the allocation formula.

AD. "Special management zone" shall mean areas of the state not within the primary management zone or secondary management zone and where private land authorization issuance includes eligibility requirements or restrictions.

AE. "Two year unconverted" shall mean the number and authorization types initially allocated to participating properties but not converted to licenses averaged over the previous two license years.

AF. "Unit-wide" shall mean a ranch whose ARC has selected the unit-wide hunting option as defined on their agreement and received a unit-wide authorization(s) for the current license year. The unit-wide selection allows hunters who have a unit-wide license from the ranch to hunt any legally accessible public lands, other unit-wide ranches, and other private land with written permission within the GMU as well as allows any other licensed elk hunter with either a public draw license or a unit-wide elk license access to the unit-wide ranch.

AG. "Unit-wide authorization number" shall mean an authorization that allows a person to purchase an elk license valid on any legally accessible public lands, other unit-wide ranches, and other private land with written permission within the GMU.

AH. "Weighted acres" shall mean the product of a ranch's deeded acres multiplied by the elk contribution rating assigned to that ranch.

[19.30.5.7 NMAC - Rp, 19.30.5.7 NMAC, 4-1-2019]

19.30.5.8 PARTICIPATION REQUIREMENTS AND AUTHORIZATION DISTRIBUTION IN THE PRIMARY MANAGEMENT ZONE:

A. Minimum requirements:

(1) Private lands that lie within the primary management zone.

(2) Private lands that demonstrate regular elk use and provide meaningful benefits to elk as determined by appropriate department staff and in accordance with commission approved guidelines.

(3) Only landowners and ARCs who agree in writing to accept elk on their property will be considered for participation in EPLUS.

(4) Landowner and ARC must agree that participation is voluntary. Number of authorizations may vary annually and are based on GMU harvest objectives found in 19.31.14 NMAC. There is no guarantee of a specific number of authorizations issued each year.

(5) Any property which is part of a subdivision, village or town that does not allow hunting or restricts the

discharge of all sporting arm types will be disqualified from participation in EPLUS. All other properties within a subdivision, village or town will be considered on a case-by-case basis.

(6) The department encourages landowners whose properties do not qualify to cooperate with other landowners to create co-ops to meet minimum participation requirements.

B. Enrollment and initial application:

(1) Landowners who wish to participate in EPLUS must submit a completed application provided by the department. Applications must include all required documentation as determined by the department and name a single ARC. Only the property owner(s) listed on the recorded deed(s) may submit an initial EPLUS application and assign an ARC. If there are multiple owners listed on the property deed(s), all co-owners must sign an affidavit authorizing one of the owners to be responsible for the initial application.

(2) The application must include the most recent recorded property ownership records including property legal descriptions and maps or surveys sufficient to establish the legal landowner(s) and property boundaries.

(3) Application must be submitted to the department, hand delivered or post marked, no later than January 5 of each year. Applications received without all required documentation or hand delivered or postmarked after January 5 shall be rejected. Applications rejected as a result of missing documents may be corrected and resubmitted through February 1 to be included that year if the original application was submitted by the January 5 deadline. Exceptions may be made for extenuating circumstances on a case-by-case basis.

(4) Applications will be reviewed by appropriate department staff so a determination can be made as to the application satisfying the requirements set forth in Subsection A of 19.30.5.8 NMAC.

(5) Ranches meeting the requirements set forth in Subsection A of 19.30.5.8 NMAC will be assigned an elk contribution rating and must meet a minimum ranch score to be eligible for authorizations pursuant to the processes set forth in Subsection D of 19.30.5.8 NMAC.

(6) ARCs with ranches that do not meet the requirements set forth in Subsection A of 19.30.5.8 NMAC will be advised and provided options including the right to request a review of the department's decision as outlined in 19.30.5.12 NMAC.

C. Participating ranches:

(1) All ARCs for participating ranches will receive an agreement annually.

(2) The annual agreement will list the name, address, and phone number of the authorized ranch contact, the number of deeded acres considered, the ranch score and the elk contribution rating assigned. It will provide the opportunity to request a review of the listed acreage, the ranch score and the assigned elk contribution rating. The agreement will set out the terms for participation and provide the ability to elect the ranch-only option. The annual agreement will require the ARC to notify the department of any changes affecting the ranch's enrollment or participation eligibility. The annual agreement must be signed and initialed by the ARC where designated and returned to the department via hand delivery or post marked no later than January 5 each year. Failure to meet these requirements will result in the agreement not being activated for the current license year. Exceptions may be made for extenuating circumstances on a case-by-case basis.

(3) Any ranch for which rightful ownership or legal representation cannot be determined shall be placed in review until such time as rightful ownership or legal representation is verified. If after one year, adequate documentation of ownership is not provided, the ranch will be inactivated.

(4) Landowners requesting to split their separately deeded properties currently under one ranch into separate ranches shall be required to submit a new application for each property. Ranches whose property is entirely contained on one deed may not be split.

(5) Upon the second consecutive year of non-receipt of the annual agreement, the department will inactivate the respective ranch until a new initial application has been submitted.

(6) Ranches that are sold or transferred to new ownership must apply as required for initial participation. The department may make reasonable accommodations in circumstances where transfer of ownership occurs after the January 5 deadline.

(7) Participating ranches that the department determines no longer qualify for participation shall be sent written notice of inactivation for the following license year.

(8) Appropriate department staff may adjust the elk contribution rating or ranch score for any participating ranch annually. In the case an adjustment is warranted, the ARC will be contacted and notified of the rating change.

(9) Any landowner who requests interventions to eliminate the presence of elk on their participating acreage in accordance with 19.30.2 NMAC shall be placed in review. If the depredation only applies to a portion of the ranch and the remaining acreage continues to provide meaningful benefit to elk, only the acreage where depredation response actions are to occur will be inactivated. Exceptions to this may be considered by appropriate department staff on a case-by-case basis.

(10) Should any landowner or ARC take action pursuant to Section 17-2-7.2 NMSA

1978 the ranch upon which the action occurred shall immediately be inactivated from EPLUS for a period of three years and all unconverted authorizations may be voided.

(11) All participating ranches will be subject to the requirements found in this section on an annual basis. Any change affecting a ranches qualifications for this program will result in that ranch being re-evaluated to determine if the ranch meets the minimum requirements.

D. Determination of authorizations:

(1) In each GMU, the pool of private land elk authorizations shall be comprised of the base allocation, bonus allocation, two year unconverted and SCR pool.

(2) A portion of the bonus allocations or two year unconverted, should they be available, may be distributed to specific ranches in the form of incentive authorizations issued in recognition of significant contributions to elk management.

(3) The base allocation per ranch will be set as follows:

(a) A ranch's deeded acres multiplied by that ranch's elk contribution rating equals ranch weighted acres.

(b) A ranch's weighted acres divided by the total private deeded acres in the GMUs primary management zone equals that ranches percent ranch weighted acres.

(c) Percent ranch weighted acres multiplied by the number of available private land elk authorizations for the GMU equals the number of authorizations per ranch.

(d) All ranches receiving at least one whole authorization through the allocation formula will be considered a base ranch and will receive a base allocation.

(e) When a ranch is unable to receive at least one whole authorization through the allocation formula, the ranch will become a SCR.

(f) The combined fractional authorizations from SCRs will comprise the allocations available in the SCR pool.

(4) Distribution of the SCR pool will be as follows:

(a) SCRs will compete in a yearly, random, drawing weighted on the ranches ranch score for authorizations.

(b) SCRs may receive not more than one authorization through the yearly, random drawing.

(c) Bonus allocations and two year unconverted authorizations remaining after the issuance of incentive authorizations will be added into the pool for the SCR drawing.

(5) Authorizations not distributed in the SCR draw will be redistributed to base ranches pursuant to the allocation formula.

(6) All authorizations issued to a ranch pursuant to this section will be:

(a) Considered unit-wide unless otherwise requested by the ARC, or

(b) In GMUs 4 and 5A, authorizations will be ranch-only but transferrable to other private lands within the specific GMU with written landowner permission.

E. Inactivation:

(1) A landowner or ARC, along with the ranch shall be inactivated for:

(a) providing or permitting misrepresentation of the ranch's participating deeded acreage, ranch ownership or designated ARC;

(b) prohibiting access to other unit-wide license holders or public draw hunting license holders; or

(c) the landowner or ARC violating Chapter 17 NMSA 1978 or state game commission rules involving licenses converted with the ranches' authorization(s), or being an accessory to the same, regardless of whether the violation occurred on or off the ranch, resulting in a violation(s) that accumulates 20 or more revocation points pursuant to 19.31.2 NMAC on any single individual.

(2) A landowner or ARC, along with the ranch may be inactivated for breaching or violating any other condition of the EPLUS agreement.

(3) Upon determination that a violation or breach of Paragraph 1 or Paragraph 2 of this Subsection or any other inactivation provision in 19.30.5.8 NMAC has occurred, the landowner and ARC shall be notified explaining the determination for the inactivation.

(4) Should the landowner or ARC have multiple properties in EPLUS, all properties may be inactivated from EPLUS and disqualified from participation in department sponsored programs.

(5) If a ranch is signed up in a co-op, inactivation action(s) may be taken against the co-op in its entirety or individual properties participating that form the co-op and will be considered on a case-by-case basis.

(6) If the inactivated ranch(s) changes ownership during the disqualification period, the department may consider the ranch for future participation.

(7) Inactivation from EPLUS and disqualification from department sponsored programs may be for a period up to three years.

(8) The landowner may request a review that shall be held in accordance with the processes set forth in 19.30.5.12 NMAC. The standard of proof in cases where no conviction is involved shall be the preponderance of evidence. If a conviction has been rendered, a certified copy or a filed copy of the conviction from any court of competent jurisdiction shall be conclusive evidence of a violation.

[19.30.5.8 NMAC - Rp, 19.30.5.8 NMAC, 4-1-2019]

19.30.5.9 PARTICIPATION REQUIREMENTS AND AUTHORIZATION DISTRIBUTION IN THE SPECIAL MANAGEMENT ZONE:

A. Minimum requirements:

(1) Private lands that lie within the special management zone.

(2) Private lands must provide demonstrated occasional elk use to be eligible.

(3) Only landowners and ARCs who agree in writing to accept elk on their property will be considered for participation in EPLUS.

(4) Landowner and ARC must agree that participation is voluntary. Number of authorizations may vary annually and are based on elk management objectives found in 19.31.14 NMAC. There is no guarantee of a specific number of authorizations issued each year.

(5) Any property which is part of a subdivision, village or town that does not allow hunting or restricts the discharge of all sporting arm types will be disqualified from participation in EPLUS. All other properties within a subdivision, village or town will be considered on a case-by-case basis.

B. Enrollment and initial application:

(1) Landowners who wish to participate in EPLUS must submit a completed application provided by the department. Applications must include all required documentation as determined by the department and name a single ARC. Only the property owner(s) listed on the recorded deed(s) may submit an initial EPLUS application and assign an ARC. If there are multiple owners listed on the property deed(s), all co-owners must sign an affidavit authorizing one of the owners to be responsible for the initial application.

(2) The application must include the most recent recorded property ownership records including property legal descriptions and maps or surveys sufficient to establish the legal landowner(s) and property boundaries.

(3) Applications may be submitted at any time.

(4) Applications will be reviewed by appropriate department staff so a determination can be made as to the application satisfying the requirements set forth in Subsection A of 19.30.5.9 NMAC. Applications received without all required documentation shall be rejected. Rejected applications may be corrected and resubmitted.

C. Participating ranches:

(1) All ARCs for participating ranches will receive an agreement annually.

(2) The annual agreement will list the name, address and phone number of the ARC and the number of deeded acres considered. It will provide the opportunity to request a review of the listed acreage. The agreement will set out the terms for participation. The annual agreement will require the ARC to notify the department of any changes affecting the ranch's enrollment or participation eligibility. The annual agreement must be signed and initialed by the ARC where designated and returned to the department each year. Failure to return the agreement will result in the agreement not being activated for the current license year.

(3) Any ranch for which rightful ownership or legal representation cannot be determined shall be placed in review until such time as rightful ownership or legal representation is verified. If after one year, adequate documentation of ownership is not provided the ranch will be inactivated.

(4) Ranches that are sold or transferred to new ownership must apply as required for initial participation.

(5) Any landowner who requests interventions to eliminate the presence of elk on their participating acreage in accordance with 19.30.2 NMAC shall be placed in review. Should the landowner enter into a depredation agreement with the department, the acreage where depredation response actions are to occur will be inactivated from EPLUS. Exceptions to this may be considered by appropriate department staff on a case-by-case basis.

(6) Should any landowner or ARC take action pursuant to Section 17-2-7.2 NMSA 1978 the ranch upon which the action occurred shall immediately be inactivated from EPLUS for a period of three years and all unconverted authorizations may be voided.

(7) All participating ranches will be subject to the requirements found in this section on an annual basis. Any change affecting a ranches qualifications for this program will result in that ranch being re-evaluated to determine if the ranch meets the minimum requirements.

D. Determination of authorizations:

(1) Authorizations within the special management zone will be determined on a ranch-by-ranch basis and negotiated between the department and the ARC.

(2) Bag limits, sporting arm type, and season dates will follow the provisions found in 19.31.14 NMAC in the special management zone. Season dates requested outside those found in 19.31.14 NMAC shall be considered on a ranch-by-ranch basis and not conflict with department management goals.

(3) All authorizations shall be ranch-only and transferrable to other private lands within the specified GMU with written landowner permission. Written permission requirements for access on private property will follow the provisions found in 19.31.10 NMAC.

E. Inactivation:

(1) A landowner or ARC, along with the ranch shall be inactivated for:

(a) providing or permitting misrepresentation of the ranch's participating deeded acreage, ranch ownership or designated ARC; or

(b) the landowner or ARC violating Chapter 17 NMSA 1978 or state game commission rules involving licenses converted with the ranch's authorization(s), or being an accessory to the same, regardless of whether the violation occurred on or off the ranch, resulting in a violation(s) that accumulates 20 or more revocation points pursuant to 19.31.2 NMAC on any single individual.

(2) A landowner or ARC, along with the ranch may be inactivated for breaching or violating any other condition of the EPLUS agreement.

(3) Upon determination that a violation or breach of Paragraph 1 or Paragraph 2 of this Subsection or any other inactivation provision in 19.30.5.9 NMAC has occurred, the landowner and ARC shall be notified explaining the determination for the inactivation.

(4) Should the landowner or ARC have multiple properties in EPLUS, all properties may be inactivated from EPLUS and disqualified from participation in department sponsored programs.

(5) If a ranch is signed up in a co-op, inactivation action(s) may be taken against the co-op in its entirety or individual properties participating that form the co-op and will be considered on a case-by-case basis.

(6) If the inactivated ranch(s) changes ownership during the disqualification period, the department may consider the ranch for future participation.

(7) Inactivation from EPLUS and disqualification from department sponsored programs may be for a period up to three years.

(8) The landowner may request a review that shall be held in accordance with the processes set forth in 19.30.5.12 NMAC. The standard of proof in cases where no conviction is involved shall be the preponderance of the evidence. If a conviction has been rendered, a certified copy or a filed copy of the conviction from any court of competent jurisdiction shall be conclusive evidence of a violation.
[19.30.5.11 NMAC - Rp, 19.30.5.9 NMAC, 4-1-2019]

19.30.5.10 PARTICIPATION REQUIREMENTS IN THE SECONDARY MANAGEMENT ZONE:

A. Minimum requirements: Private lands that lie within a secondary management zone.

B. Enrollment process:

(1) Land ownership documentation will be required that will verify the ranch lies within a secondary management zone.

(2) Requests for a ranch code may be submitted to the department at any time.

(3) Ranch ownership must be affirmed on an annual basis.

C. Bag limits, sporting arm type, and season dates will follow the provisions found in 19.31.14 NMAC in the secondary management zone. Season dates requested outside those found in 19.31.14 NMAC shall be considered on a ranch-by-ranch basis.

D. Ranches within the secondary management zone will be issued a ranch code annually to identify individual ownership.

E. A ranch code will be required to purchase a private land elk license for a specific ranch.

F. All licenses require written permission and shall be valid only on the specified property and transferrable with written permission to other private lands within the specified GMU. Written permission requirements for access on private property will follow the provisions found in 19.31.10 NMAC.
[19.30.5.10 NMAC - N, 4-1-2019]

19.30.5.11 SPECIAL MANAGEMENT RANCH:

A. In the primary or special management zones, the department may identify unique ranches of any size as a special management ranch.

B. A department approved conservation plan will be required and developed in conjunction with the landowner and will include habitat improvement, population management, and harvest management goals as a minimum.

(1) Alternative season dates, bag limits, sporting arm types, and additional authorizations may be considered for these ranches.

(2) Authorizations issued pursuant to these management plans:

(a) Shall be ranch only and not transferrable to other private lands;

(b) Will be considered based on documented habitat improvements or maintenance of habitat enhancement projects or existing habitat quality;

(c) May be as a result of working directly with the department on special projects related to population management or research needs in the GMU; and

(d) Shall be allocated to assure elk management goals as stated in 19.31.14 NMAC are sustainable and appropriate within the GMU and on the participating ranch.

(3) The conservation plan must be updated and submitted by January 5 on an annual basis to be approved by the department.
[19.30.5.12 NMAC - Rp, 19.30.5.11 NMAC, 4-1-2019]

19.30.5.12 LANDOWNER RIGHT TO REVIEW:

A. Landowners or ARCs for participating ranches shall have the right to request a review of the following:

(1) The number of deeded acres.

(2) The elk contribution rating assigned to the ranch.

(3) The ranch score.

(4) A decision by the department that a ranch does not meet the minimum requirements to participate.

(5) Other inactivation provisions within 19.30.5 NMAC.

B. Requests to review deeded acres, ranch score, or the elk contribution rating shall be submitted on the annual agreement.

C. ARCs for newly applying ranches or existing ranches that the department determines do not meet the minimum requirements to participate per commission approved guidelines will be given the opportunity to request a review of the department's finding.

D. All review requests will be submitted to the EPLUS manager and handled in accordance below:

(1) All ranches that the department determines do not meet the minimum participation requirements or have been inactivated for other provisions within 19.30.5 NMAC will be sent a letter explaining the determination along with an objection form explaining documentation requirements.

(2) ARCs who wish to request a review of the department's determination must complete and return the objection form along with all requested documentation within 30 days of the date on the department's letter.

(3) Upon receipt of the requested documentation the department will assign staff to re-evaluate the ranch in question. The department shall have 45 days to complete this evaluation.

(4) If the second evaluation shows the ranch meets the minimum participation requirements or if the inactivation was not warranted the ARC will be sent a follow up letter and the ranch will be allowed to participate in the program.

(5) If, after a second evaluation, it is determined that the ranch still does not meet participation requirements the ARC will be sent a follow up letter explaining the determination.

(6) The ARC may submit a letter to the EPLUS manager requesting a division evaluation should they feel the second decision is in error. The ARC may submit any additional documents or a written statement along with the request for the evaluation. This request and any additional documents must be received by the department within 30 days of the date on the department's second evaluation letter.

(7) A division evaluation will be conducted by the division chief of the wildlife management division or his or her designee(s) and will be designed to ensure that commission approved guidelines and the intent of this rule have been appropriately applied to the ranch in question. A recommendation as to ranch's participation eligibility will be sent to the director.

(8) The ARC will be notified in writing of the determination made by the director within 45 days of the submission of the ARC letter.

(9) The ARC may submit a letter within 30 days of the date on the department's letter regarding the directors decision to the EPLUS manager requesting a commission evaluation should they feel the director's decision is in error.

(10) The commission shall review the director's determination during a scheduled commission meeting. Within 20 days after the commission's decision is rendered and signed by the chairperson of the commission, the department shall provide the ARC with the written determination which will stand as the final decision of the department.

[19.30.5.13 NMAC - Rp, 19.30.5.12 NMAC, 4-1-2019]

19.30.5.13 DEPARTMENT RIGHT TO REQUEST UPDATED DOCUMENTATION AND CONDUCT AUDITS:

A. The department reserves the right to request the submission of complete ownership documentation at any time during the year should an audit determine that documents are missing or participation requirements are in question.

(1) Should necessary documentation be found missing resulting from any audit, the ranch will be placed in review and documents will be requested.

(2) The department request for updated documents may include but is not limited to the most recent recorded property ownership records showing clear ownership and include property legal descriptions and maps or surveys that will establish the legal landowner(s) and property boundaries.

B. Failure to respond to the initial document request shall result in the ranch remaining in review until:

(1) The requested documents are received and verified; and

(2) Authorizations can be issued without affecting the allocation of other participating ranches.

C. If after one year, adequate documentation of ownership is not provided, the ranch will be inactivated.

[19.30.5.14 NMAC - Rp, 19.30.5.13 NMAC, 4-1-2019]

HISTORY OF 19.30.5 NMAC:

Pre-NMAC History:

Regulation No. 658, Establishing A System For Allocating Elk Licenses On Private And Public Lands Within Game Management Units, 6-1-88.

Regulation No. 667, Establishing A System For Allocating Elk Licenses On Private And Public Lands Within Game Management Units, 9-1-89.

NMAC History:

19.30.5 NMAC, Elk Private Land Use System - Replaced 4-1-2019

History of Repealed Material:

19.30.5 NMAC, Private Land Elk License Allocation, filed January 4, 2001 is hereby repealed and replaced by 19.30.5 NMAC, Private Land Elk License Allocation, effective 10-17-2005.
19.30.5 NMAC, Private Land Elk License Allocation - Repealed 4-1-2019

GAME AND FISH DEPARTMENT

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 31 HUNTING AND FISHING
PART 2 HUNTING AND FISHING
LICENSE REVOCATION

19.31.2.1 ISSUING AGENCY: New Mexico department of game and fish.
[19.31.2.1 NMAC - Rp, 19.31.2.1 NMAC, 04-01-2019]

19.31.2.2 SCOPE: Person or persons who violate the provisions of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978, the Interstate Wildlife Violator Compact (Chapter 11 NMSA 1978) and the Parental Responsibility Act (Chapter 40 NMSA 1978).
[19.31.2.2 NMAC - Rp, 19.31.2.2 NMAC, 04-01-2019]

19.31.2.3 STATUTORY AUTHORITY: Sections 11-16-5, 11-16-6, 17-1-14, 17-2-10.3, 17-3-34, 30-14-1, 40-5A-3, and 40-5A-6 NMSA 1978.
[19.31.2.3 NMAC - Rp, 19.31.2.3 NMAC, 04-01-2019]

19.31.2.4 DURATION: Permanent.
[19.31.2.4 NMAC - Rp, 19.31.2.4 NMAC, 04-01-2019]

19.31.2.5 EFFECTIVE DATE: April 1, 2019 unless a later date is cited at the end of a section or paragraph.
[19.31.2.5 NMAC - Rp, 19.31.2.5 NMAC, 04-01-2019]

19.31.2.6 OBJECTIVE: To revoke, suspend or deny the privileges of any person: who persistently, flagrantly or knowingly violates or countenances the violation of any of the provisions of Chapter 17 NMSA 1978, any rule adopted by the state game commission, the conditions of their agreement, license, permit or privileges, or Section 30-14-1 NMSA 1978; whose name appears on a HSD certified list of obligors not in compliance with the Parental Responsibility Act, Section 40-5A-1 NMSA 1978; who fails to pay a penalty assessment levied pursuant to Section 17-2-10.1 NMSA 1978; who fails to appear, after proper notice, for hearings as required by law or regulation pursuant to Section 17-2-10.3 NMSA 1978; who has a civil judgment assessed against them pursuant to Section 17-2-26 NMSA 1978 until those damages have been paid in full; whose privileges have been revoked by a wildlife violator compact member state or of any resident that fails to meet the terms of a citation issued from a compact member state pursuant to the Interstate Wildlife Violator Compact, Section 11-16-1 NMSA 1978; or, who does not comply with a department sponsored private lands agreement.
[19.31.2.6 NMAC - Rp, 19.31.2.6 NMAC, 04-01-2019]

19.31.2.7 DEFINITIONS:

A. "Commission" means the New Mexico state game commission.

B. "Conviction" means any adjudication of guilt; plea of guilty or nolo contendere accepted by the court; or payment of a fine, court cost, court order or penalty assessment; or forfeiture of collateral; regardless of whether sentencing or imposition of sentencing has been deferred or suspended.

C. "Certificate of Compliance" means a certified statement from HSD stating that an obligor is in compliance with a judgement and order for support or in compliance with a subpoena or warrant relating to paternity or child support proceedings.

D. "Department" means New Mexico department of game and fish.

E. "Director" means the director of the department of game and fish.

F. "HSD" means the New Mexico human services department.

G. "Notice of contemplated action" or "NCA" means a written notice that the commission is considering taking action against a respondent's privileges, the basis for the action and the manner in which they can request a hearing.

H. "Notice of intent" or "NOI" means a written notice that the department intends to take action against a respondent's privileges, the basis for the action and the manner in which they can request a hearing.

I. "Obligor" means a person who has been ordered to pay child or spousal support pursuant to a judgment and order for support.

J. "Privilege(s)" means the ability to lawfully obtain or hold any license, permit, certificate, registration, authorization or agreement issued by the department, including but not limited to, hunting, fishing, trapping, guiding and outfitting.

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

(1) all animals defined as protected wildlife species and game fish under Section 17-2-3 NMSA 1978;

(2) all animals defined as furbearing animals under Section 17-5-2 NMSA 1978;

(3) all animals listed as endangered or threatened species or subspecies as stated in 19.33.6 NMAC; and

(4) all animals listed under Sections 17-2-13, 17-2-14 or 17-2-4.2 NMSA 1978.

L. "Respondent" means any person who is served a notice of contemplated action or a notice of intent.

M. "Revocation"

means when a person's privileges are taken away by the commission or department, after notice and opportunity for a hearing.

N. "Suspension" means when a person's privileges are taken away by the commission or department, after notice and opportunity for a hearing, until the person comes into compliance. [19.31.2.7 NMAC - Rp, 19.31.2.7 NMAC, 04-01-2019]

19.31.2.8 CRIMINAL REVOCATION CATEGORIES AND POINTS: Each conviction or penalty assessment for a violation of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or state game commission rule will result in the assessment of points. Any person with 20 or more points accumulated within any consecutive three-year period shall have all of his or her privileges subject to revocation or suspension. The tolling of time for the three consecutive years shall begin from the date of conviction or the date a penalty assessment was accepted.

A. 20-point criminal violations:

(1) illegally taking, attempting to take, killing, capturing or possessing any big game species outside of hunting season in violation of Section 17-2-7 or 17-3-33 NMSA 1978;

(2) hunting big game without a license;

(3) criminal trespass, in violation of Section 30-14-1 NMSA 1978, when in connection with hunting, fishing or trapping activity; revocation to be for no less than three years;

(4) hunting with the aid of an artificial light or spotlight, in violation of Section 17-2-31 NMSA 1978;

(5) waste of game in violation of Section 17-2-8 NMSA 1978;

(6) selling, offering for sale, offering to purchase or purchasing any protected species or parts thereof in violation of Section 17-2-7 NMSA 1978;

(7) any violation of Section 17-3-6 NMSA 1978;

(8) any violation of Section 17-3-48 NMSA 1978, provided that any revocation under this section shall commence consecutively to any current revocation;

(9) any violation of Section 17-3-45 NMSA 1978 involving any protected species;

(10) guiding or outfitting without being registered in violation of Section 17-2A-3 NMSA 1978;

(11) using an outfitter or guide license issued to another;

(12) outfitter allowing or using an unregistered person to perform outfitting or guiding services;

(13) applying for or receiving an outfitter or guide registration while revoked;

(14) any violation of Section 17-2-29 NMSA 1978; revocation for a period of one year as prescribed by Section 17-2-30 NMSA 1978;

(15) any violation of Section 17-3-49 NMSA 1978;

(16) any violation of Section 17-2-7.1 NMSA 1978;

(17) except as otherwise provided by Sections 17-2-37 to 17-2-46, taking, possessing, transporting, exporting, processing, selling or offering for sale, or shipping any species or subspecies of wildlife listed on the state list of endangered or threatened species or the United States' list of endangered native and foreign fish and wildlife;

(18) any violation of the provisions of any special use of wildlife permit issued by the department pursuant to Chapter 17 NMSA 1978 and its implementing rules;

(19) any violation of Section 17-2-4.2 NMSA 1978;

(20) knowingly or willfully introducing an aquatic invasive species, in violation of Section 17-4-35 NMSA 1978;

(21) any person who obtains any license, permit or stamp by falsely claiming a military discount; or

(22) accessory to any of the above violations.

B. 17-point criminal violations:

(1) hunting big game outside the ranch boundaries for which a ranch only license is issued or hunting big game in the wrong game management unit, in violation of Section 17-2-7 NMSA 1978;

(2) hunting on public land (lands owned by the U.S. government, state of New Mexico, state land office or New Mexico game commission) with a license which was valid only on private land;

(3) hunting, taking or attempting to take any protected game animal, game bird, game fish or furbearer on private land without written permission, in violation of 19.31.10 NMAC; or

(4) accessory to any of the above violations.

C. 15-point criminal violations:

(1) illegally taking, attempting to take, killing or capturing of any big game species during hunting season;

(2) illegally taking, attempting to take, killing, capturing or possessing any turkey or small game outside of hunting season in violation of Section 17-2-7 or 17-3-33 NMSA 1978;

(3) exceeding the bag limit of big game;

(4) shooting at any protected species from a vehicle;

(5) shooting at any protected species from a roadway;

(6) harassing a protected species;

(7) any violation of Section 17-3-45 NMSA 1978 involving non-protected species;

(8) illegal use of an aircraft or drone to locate, harass, drive or rally a protected species;

(9) hunting

with a license obtained through the special drawing pool without being accompanied by, and contracted with, a New Mexico outfitter or their guide;

(10) applying or aiding any person in applying in the special drawing pool with an unregistered or unqualified outfitter number;

(11) importation or possession of any species listed as group II, III or IV on the director's "species importation list" in violation of Section 17-3-32 NMSA 1978 or 19.31.10 NMAC; or

(12) accessory to any of the above violations.

D. 10-point criminal violations:

(1) illegal possession of any big game species during hunting season;

(2) hunting in a closed area;

(3) illegal possession of any head, horns or antlers of a protected species found in the field;

(4) procurement, possession or use of any additional big game or turkey license or tag, except as provided by rule;

(5) fail to properly tag big game species or turkey as prescribed;

(6) using an invalid or voided tag;

(7) using a tag of any other person;

(8) illegally taking, attempting to take, killing, capturing or possessing of any turkey or small game during hunting season;

(9) hunting turkey without a license;

(10) exceeding the bag limit of small game or turkey;

(11) exceeding the bag limit of fish;

(12) unlawfully using dogs while hunting big game or turkey;

(13) retention of live protected species;

(14) refusing or failing to produce an outfitter contract or not having a signed contract prior to hunting;

(15) applying or allowing someone to apply in the special drawing pool without a contract; or

(16) accessory to any of the above violations.

E. seven-point criminal violations:

(1) fishing without a license;

(2) illegal possession of fish;

(3) hunting small game without a license;

(4) hunting or collecting non-game without a license or permit; or

(5) accessory to any of the above violations.

F. five-point criminal violations:

(1) failure to provide sufficient guides; or

(2) any provision of Chapter 17 NMSA 1978 and its implementing rules not specifically listed herein.

G. three-point criminal violations:

(1) hunting, fishing or trapping without proper stamp(s); or

(2) using any department issued permit without possessing the proper stamp(s).

[19.31.2.8 NMAC - Rp, 19.31.2.8 NMAC, 04-01-2019]

19.31.2.9 ADMINISTRATIVE REVOCATION CATEGORIES AND POINTS: Any person may be assessed administrative revocation points for violations as provided below. Any person with 20 or more points accumulated within any consecutive three-year period shall have all of his or her privileges subject to revocation or suspension. An outfitter, guide or applicant's administrative revocation points shall only be against their outfitting or guiding registration unless they have accumulated 20 or more criminal revocation points. Administrative revocation points for landowners or their authorized ranch contact shall only be for the revocation or suspension of their private land program participation privileges unless they have accumulated 20 or more criminal revocation points.

A. 20 points:

(1) outfitter or guide failure to comply with registration audit or conditions;

(2) outfitter or guide misrepresentation;

(3) outfitter or guide failure to disclose;

(4) landowner's or authorized ranch contact's misrepresentation or violation of the conditions of a contract, application or agreement with the department;

(5) any person submitting, or allowing to be submitted for them, false or fraudulent harvest reporting or pelt tagging information as required by rule; or

(6) any person purchasing a license, permit, certificate or registration without sufficient funds to pay or who stops payment for same.

B. 10 points:

(1) outfitting on state or federal lands without a proper permit or authorization;

(2) outfitter breach of contract; or

(3) outfitter, guide, landowner or authorized ranch contact failure to report illegal activity.

C. five points:

(1) outfitter or guide violation of any conditions of a state or federal permit or authorization;

(2) outfitter or guide failure to comply with any local, state or federal laws other than outfitting on state or federal lands without a proper permit or authorization;

(3) outfitter failure to supervise guides; or

(4) any outfitter or guide misconduct not otherwise specifically listed herein.

D. outfitters, guides and landowners or their authorized ranch contact shall be notified when points are assessed.

[19.31.2.9 NMAC - Rp, 19.31.2.9 NMAC, 04-01-2019]

19.31.2.10 TIMEFRAME: Paragraph 11 of Subsection B of Section 17-1-14 NMSA 1978 provides that the commission shall establish procedures for the suspension, revocation or withholding of license, permit, certificate and registration privileges for a definite period of time.

A. Any person found to have accumulated 20 or more points within any consecutive three-year period in violation of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or state game commission rule, after notice and opportunity to be heard by a hearing officer, shall have his or her privileges revoked for a definite period of time, unless otherwise provided for by law.

B. Any person, who after having had their privileges revoked, is found to have accumulated 20 or more points within any consecutive three-year period in violation of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or state game commission rule, for a second time, after notice and opportunity to be heard by a hearing officer, shall have his or her privileges revoked for up to five years, unless otherwise provided for by law, and provided that any revocation under this section shall commence consecutively to any current revocation.

C. Any person, who after having had their privileges revoked for a second time, is found to have accumulated 20 or more points within any consecutive three-year period in violation of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or state game commission rule, for a third or subsequent time, shall have his or her privileges revoked for up to seven years, unless otherwise provided for by law, and provided that any revocation under this section shall commence consecutively to any current revocation.

D. Any person found to have taken or killed a bighorn sheep, ibex, oryx, Barbary sheep, elk, deer or pronghorn, without a valid license or during closed season, which results in the unnecessary or wanton waste of game, shall have his or her privileges revoked for up to seven years, unless otherwise provided for by law, and provided that any revocation under this section shall commence consecutively to any current revocation.

E. Any person found to have taken or killed a bighorn sheep, ibex, oryx, Barbary sheep, elk, deer or pronghorn, without a valid license or during closed season, which results in the unnecessary or wanton waste of game, for a second or subsequent time, shall have his or her privileges revoked for up to 10 years, unless otherwise provided for by law, and provided that any revocation under this section shall commence consecutively to any current revocation.

F. Any person that buys, sells, trades or attempts to buy, sell or trade illegal wildlife or the parts thereof, or aids and abets in this activity, shall have his or her privileges revoked for up to five years, unless otherwise provided for by law, and provided that any revocation under this section shall commence consecutively to any current revocation.

G. Any person that buys, sells, trades or attempts to buy, sell or trade illegal wildlife or the parts thereof, or aids and abets in this activity, for a second or subsequent time, shall have his or her privileges revoked for up to seven years, unless otherwise provided for by law, and provided that any revocation under this section shall commence consecutively to any current revocation.

H. Any person found to not comply with a department sponsored private lands agreement shall have his or her private lands program privileges revoked for up to three years.

I. Any person not in compliance with the Parental Responsibility Act (Section 40-5A-1 NMSA 1978) or the Interstate Wildlife Violator Compact (Section 11-16-1 NMSA 1978) shall have his or her privileges revoked or suspended for the timeframe designated and allowed by law.

J. The commission may revoke a person's privileges for any definite period of time they deem appropriate if they determine that the person has committed a flagrant or egregious violation of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or state game commission rule, and provided that any revocation under this section shall commence consecutively to any current revocation.

K. The commission or department may suspend, revoke or deny a person's privileges for any definite period of time they deem appropriate if they determine that the person has violated any provision of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or state game commission rule, or any other license, permit, certificate, registration, authorization or agreement issued by the department that is not otherwise listed in this rule.

L. If the department fails to initiate (initiation shall be calculated based on the post mark on the notice of contemplated action or notice of intent letter) a revocation or suspension action against an individual within one year of the date that the individual is either convicted of an act or accepts a penalty assessment misdemeanor, which results in the accumulation of 20 or more points, the department shall not bring a revocation or suspension action against that individual unless and until that individual is either convicted of an additional violation or accepts an additional penalty assessment misdemeanor of any point value within three years of the most recent point accrual originally equaling or exceeding 20 points.

[19.31.2.10 NMAC - Rp, 19.31.2.10 NMAC, 04-01-2019]

19.31.2.11 REVOCATION AND SUSPENSION PROCEDURES: The department shall mail out a notice of contemplated action (NCA) or a notice of intent (NOI) when it

determines that there is sufficient evidence that a person has accumulated 20 or more points, or when the commission is contemplating revoking a landowner's or authorized ranch contact's privileges to participate in any department sponsored private land program or when the department determines that there has been a violation of the terms of a permit, license or authorization. The commission grants approval to the department, through the director, to initiate this process without commission consideration. However, the commission retains all authority for final decisions with the exception of decisions made by the director, where no hearing was requested, under the Interstate Wildlife Violator Compact, Parental Responsibility Act or failure to appear, failure to pay a penalty assessment or failure to pay a civil judgement. The NCA or NOI shall clearly describe the proposed action and shall contain a statement that includes the following**:**

A. Sufficient evidence: That the department of game and fish has sufficient evidence which, if not rebutted or explained, will justify taking the proposed action.

B. Hearing may be requested: That the respondent may secure a hearing before a hearing officer designated by the commission by depositing in the mail within 20 days after service of the notice, a certified, return receipt requested letter addressed to the department at PO Box 25112, Santa Fe, NM 87504, and containing a request for a hearing.

C. Rights of respondent: Informing the respondent of his or her rights under applicable law.

[19.31.2.11 NMAC - Rp, 19.31.2.11 NMAC 04-01-2019]

19.31.2.12 NO HEARING REQUESTED: If a respondent does not mail a request for a hearing within the time frame and in the manner required by this rule, or the notice mailed by the department is returned as undeliverable or unclaimed at the address the department has on file, the commission may take the action contemplated in the notice and such action shall be final and not subject to judicial review.

A. The commission shall consider the department's submission of names of respondents who have not requested a hearing at a properly scheduled commission meeting and the respondent's privileges shall be automatically revoked or suspended pursuant to this rule.

B. Within 20 days after the commission's decision is rendered and signed by the chairman of the commission, the department shall serve upon the respondent a copy of the written decision.

[19.31.2.12 NMAC - Rp, 19.31.2.12 NMAC 4-01-2019]

19.31.2.13 HEARING REQUESTED: If a respondent requests a hearing as provided by this rule, the department, within 20 days of receipt of such request, shall notify the respondent of the time and place of the hearing, the name or names of the person or persons who shall conduct the hearing for the commission, and the statutes and rules authorizing the commission to take the contemplated action. The hearing shall be held not more than 90 or less than 30 days from the date of service of such notice unless a continuance is granted to either party by the hearing officer. If a continuance has been requested by the department and granted by the hearing officer the hearing shall be rescheduled within 60 days from the original hearing date. If a continuance has been requested by the violator and granted by the hearing officer all timelines are waived for the hearing. Continuances may only be granted for good cause. The decision to grant or deny a continuance is at the sole discretion of the hearing officer.

[19.31.2.13 NMAC - Rp, 19.31.2.13 NMAC, 04-01-2019]

19.31.2.14 RIGHTS OF A PERSON REQUESTING A HEARING: A person entitled to be heard under this rule shall have the right to be represented by counsel or may appear on his or her own behalf; to present all relevant evidence by means of witnesses, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues. All notices issued pursuant to this rule shall contain a statement of these rights.

A. Written request: Upon written request to another party, any party is entitled to:

(1) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and

(2) inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing.

B. Response time frame: The party to whom such a request is made shall comply with the request within 20 days after the delivery of the request. No such request shall be made less than 20 days before the hearing.

C. Stipulated agreements: At the Department's discretion, a person entitled to be heard under this rule may enter into a written stipulated agreement with the department. Signing such an agreement shall waive the person's right to a hearing and the filing of a written exception. The agreement shall be presented to the commission as the department's recommendation and the commission retains authority for the final decision.

[19.31.2.14 NMAC - Rp, 19.31.2.14 NMAC, 04-01-2019]

19.31.2.15 METHOD OF SERVICE: Any notice or decision required by this rule shall be served by certified mail, return receipt requested, directed to the respondent, at his or her last known address as shown by the records of the department of game and fish.

[19.31.2.15 NMAC - Rp, 19.31.2.15 NMAC, 04-01-2019]

19.31.2.16 REVOCATION

NOTICE OF SERVICE: Notice by certified mail shall be deemed to have been served on the date born by the return receipt showing delivery or the last attempted delivery of the notice or decision to the respondent or refusal to accept delivery of the notice or decision.
[19.31.2.16 NMAC - Rp, 19.31.2.16 NMAC, 04-01-2019]

19.31.2.17 VENUE: Hearings held under this rule shall be conducted in Santa Fe county, New Mexico. Under exigent circumstances, and at the discretion of the hearing officer, the hearing may be held in another county in New Mexico. Hearings may be conducted in person or telephonically. Witnesses may appear in person or telephonically.
[19.31.2.17 NMAC - Rp, 19.31.2.17 NMAC, 04-01-2019]

19.31.2.18 HEARING OFFICER: All hearings under this rule shall be conducted by a hearing officer who is designated by the commission. The hearing officer may be disqualified as provided for under the rules of civil procedure by filing an affidavit of disqualification with the department.
[19.31.2.18 NMAC - Rp, 19.31.2.18 NMAC, 04-01-2019]

19.31.2.19 HEARING OPEN TO THE PUBLIC: All hearings conducted under this rule shall be open to the public.
[19.31.2.19 NMAC - Rp, 19.31.2.19 NMAC, 04-01-2019]

19.31.2.20 HEARING INTERPRETER PROVIDED: The commission shall provide technology or an interpreter for individuals requesting a hearing who provide proof of hearing impairment to the extent that he or she cannot understand voice communications. The respondent must give notice of this need to the department at the time they request a hearing or 30 days prior to their hearing.
[19.31.2.20 NMAC - Rp, 19.31.2.20 NMAC, 04-01-2019]

19.31.2.21 LANGUAGE INTERPRETER PROVIDED: The commission shall provide an interpreter for individuals requesting a hearing who provide proof of inability to comprehend English well enough to understand the proceedings. The respondent must give notice of this need to the department at the time they request a hearing or 30 days prior to their hearing.
[19.31.2.21 NMAC - Rp, 19.31.2.21 NMAC, 04-01-2019]

19.31.2.22 RULES OF EVIDENCE: The hearing officer shall consider a certified copy or a filed copy of a conviction from any court of competent jurisdiction as conclusive evidence of a violation of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or state game commission rule. In cases where court records associated with a conviction are not available, the official form of the records maintained by either the court or the department of game and fish shall be admissible. These records shall also stand as conclusive evidence of a violation of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or state game commission rule. In the case of hearings in which a criminal conviction is not germane, the standard of proof shall be a preponderance of the evidence.

A. Admission of evidence: In proceedings held under this regulation, the hearing officer may admit any evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent people in the conduct of serious affairs. The hearing officer may, at his or her discretion, exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. Documentary evidence may be received in the form of copies or excerpts.

B. Judicial notice: The hearing officer may take notice of judicially cognizable facts.

C. Rules of privilege: The rules of privilege shall be effective to the extent that they are required to be recognized in civil actions in district courts of the state of New Mexico.

D. Mitigating circumstances: The hearing officer may consider mitigating, extenuating and aggravating circumstances surrounding the violations of game and fish laws and rules to determine the recommended period of the revocation or suspension.
[19.31.2.22 NMAC - Rp, 19.31.2.22 NMAC, 04-01-2019]

19.31.2.23 HEARING AND POST-HEARING PROCEDURES:

A. Record of hearing: In all hearings conducted under this rule, the hearing officer shall cause a complete record to be made by audio recording and shall preserve all evidence received. The hearing officer shall observe any standards pertaining to audio recordings established for the district courts of this state.

B. Post-hearing briefs: The hearing officer may require post-hearing briefs, proposed findings of fact and conclusions of law, or both.

C. Hearing officer's report: Within 20 days of any hearing, the hearing officer shall make and submit to the department a report setting forth his or her findings of fact, conclusions of law and recommended decision.

D. Report copies to parties: The department shall serve a copy of the recommended decision on the parties by certified mail with return receipt requested.

E. Filing of exceptions to hearing officer's report: The parties to the proceeding may file exceptions, or supporting briefs, to a hearing officer's recommended decision within a time period set by the hearing officer or within 30 days of the hearing if not otherwise specified by the hearing officer.

F. Exceptions and briefs served on all parties: Copies of exceptions to the hearing officer's recommended decision and any briefs shall be served on all parties within the time period set by the hearing officer or no later than 30 days from

the hearing if no time period was set.

G. Exception and brief requirements: Any exception not specifically made shall be considered waived. Any exception that fails to comply with the foregoing requirements may be disregarded. Any brief or exception shall not contain matters not related to or within the scope of the hearing.

[19.31.2.23 NMAC - Rp, 19.31.2.23 NMAC, 04-01-2019]

19.31.2.24 FINAL DECISION OF THE COMMISSION:

A. Review and consideration of hearing officer's report and filed exceptions and briefs: After a hearing has been completed, the commission shall review and consider the hearing officer's report and any filed exceptions or briefs to the recommended decision.

B. No oral arguments; no new evidence: The commission shall not permit any oral arguments. The commission shall not consider any evidence outside of the hearing officer's report and filed exceptions or briefs.

C. Final decision: The commission's final decision shall be made by a quorum of the commission at a properly scheduled commission meeting.

D. Written decision served: Within 20 days after the commission's decision is rendered and signed by the chairman of the commission, the department shall serve upon the respondent a copy of the written decision.

[19.31.2.24 NMAC - Rp, 19.31.2.24 NMAC, 04-01-2019]

19.31.2.25 JUDICIAL REVIEW: In accordance with Section 17-3-34 NMSA 1978, any person whose privileges have been revoked or suspended by the commission or department, and who has requested and received a hearing, may appeal to the district court for further relief. Upon appeal, the district court shall set aside the decision only if it is found to be:

A. arbitrary, capricious or an abuse of discretion;

B. not supported by substantial evidence in the record; or

C. otherwise not in accordance with law.

[19.31.2.25 NMAC - Rp, 19.31.2.25 NMAC, 04-01-2019]

19.31.2.26 WILDLIFE VIOLATOR COMPACT SUSPENSION AND REVOCATION: Any person whose name appears on the wildlife violator compact list or who has been revoked by another wildlife violator compact member state and is in accordance with Subsection B of Section 17-2-10.3 NMSA 1978 shall have his or her privileges revoked or suspended. Any resident who fails to comply with the terms of a citation including failure to appear, from a member state shall have his or her privileges suspended until they have complied with the court appearance or citation requirements in the other state.

A. Notice procedures: The information provided by the board of wildlife violator compact administrators or their designee shall be deemed sufficient to allow the department by and through its director to send the same violator a NOI and an opportunity to request a hearing.

B. Hearing procedures: If a hearing is requested, it shall be conducted in accordance with this rule with the following limitations:

(1) The issues to be decided at the hearing, if requested, are limited to whether:

(a) the violation(s) leading to a revocation or suspension in another state, if committed in New Mexico, would have accrued 20 or more points;

(b) the respondent is the person whose name appears on the wildlife violator compact list as being revoked by another wildlife violator compact member state;

(c) the revocation or suspension in the other wildlife violator compact member state ended or has been rescinded.

(2) In any hearing under this section, relevant evidence shall be limited to documentary evidence that refutes the issues listed in this subsection.

C. Default orders for failure to request a hearing: In the event a respondent does not request a hearing within 20 days of the date that notice was served, the director may administer the suspension or revocation under 19.31.2.26 NMAC without further commission consideration.

D. Notification to the commission: The department shall notify the commission of the number of individuals revoked or suspended pursuant to Subsection C of Section 19.31.2.26 NMAC at a properly scheduled commission meeting after the director has taken action to revoke or suspend such individuals.

[19.31.2.26 NMAC - Rp, 19.31.2.26 NMAC, 04-01-2019]

19.31.2.27 SUSPENSION: The Parental Responsibility Act (PRA), Section 40-5A-1 NMSA 1978, provides that the commission shall suspend the privileges of any person not in compliance with the PRA, and allows the reinstatement of such privileges at any time that the obligor comes into compliance and pays the reinstatement fee. Chapter 17 NMSA 1978 provides that the commission shall suspend the privileges of any person who fails to pay a penalty assessment or a civil judgment, until the assessment or judgment is paid in full or who fails to appear, after proper notice, for hearings as required by law or regulation until they have made an appearance in the court.

[19.31.2.27 NMAC - Rp, 19.31.2.27 NMAC, 04-01-2019]

19.31.2.28 PARENTAL RESPONSIBILITY ACT: Any person found to be in violation of the PRA, after notice and an opportunity to request a hearing, shall have his or her privileges suspended until he or she provides a certificate of compliance from the HSD and has paid the reinstatement fee.

A. Notice procedures:

When the department receives a HSD certified list of obligors not in compliance with the PRA, the director shall send a NOI to any named obligor in the department's database. The NOI shall inform the obligor that the obligor's privileges will be suspended unless the obligor:

(1) files a written request for a hearing within 30 days from the date that the notice is mailed; or

(2) provides the department, within 30 days from the date the notice is mailed, a valid certificate of compliance from the HSD.

B. Hearing procedures: Hearings shall be in accordance with this rule.

(1) The issues to be decided at the hearing, if requested, are limited to whether the respondent is:

(a) in compliance with a judgment and order for support;

(b) in compliance with a subpoena or warrant relating to paternity or child support proceedings; and

(c) the person whose name appears on the certified list sent to the department from the HSD.

(2) In any hearing under this section, relevant evidence shall be limited to documentary evidence that refutes the issues listed in this subsection.

C. Default orders for failure to request a hearing: In the event an obligor does not request a hearing, or provide proof of compliance within 30 days of the date the notice was mailed, the director may administer the suspensions without further commission consideration.

D. Notification to the commission: The department shall notify the commission of the number of individuals suspended pursuant to Subsection C of 19.31.2.28 NMAC at a properly scheduled commission meeting after the director has taken action to suspend such individuals.

E. Reinstatement fee: Any person whose privileges have been suspended in accordance with the PRA shall be reinstated after demonstrating proof of compliance from the HSD, and having paid the department of game and fish a reinstatement fee of $25.00 and all costs associated with his or her hearing. The director has the authority to waive this fee in the case of unusual circumstances or clerical errors.

[19.31.2.28 NMAC - Rp, 19.31.2.28 NMAC, 04-01-2019]

19.31.2.29 FAILURE TO APPEAR, FAILURE TO PAY PENALTY ASSESSMENT OR CIVIL JUDGEMENT: In accordance with Section 17-2-10.3 NMSA 1978 the privileges of a person who fails to comply with the terms of a citation including failure to appear in court after proper notice for a hearing as required by law, a person who fails to pay a penalty assessment levied pursuant to Section 17-2-10.1 NMSA 1978, or a person who has a civil judgment assessed against them pursuant to Section 17-2-26 NMSA 1978, shall be suspended until in compliance.

A. Notice procedures: Pursuant to Section 17-2-10.3 NMSA 1978, a person who has failed to appear in court for a hearing as required by law, has failed to pay a penalty assessment pursuant to Section 17-2-10.2 NMSA 1978, or a person who owes damages pursuant to a civil judgment in accordance with Section 17-2-26 NMSA 1978, the director shall send a NOI. The NOI shall inform the respondent that the respondent's privileges will be suspended unless the respondent:

(1) files a written request for a hearing within 30 days from the date that the notice is mailed; or

(2) pays the penalty assessment or civil judgement in full within 30 days from the date the notice is mailed.

B. Hearing procedures: Hearings shall be conducted in accordance with this rule with the following limitations:

(1) The issues to be decided at the hearing are limited to whether the respondent:

(a) owes an outstanding penalty assessment or civil judgement; or

(b) failed to appear for a court hearing as required by law.

(2) In any hearing under this section, relevant evidence shall be limited to documentary evidence that refutes the issues listed in this subsection.

C. Default orders for failure to request a hearing: In the event a respondent does not request a hearing, or pay their outstanding penalty assessment or civil judgement in full within 30 days of the date that notice was mailed, the commission grants approval to the department through the director to administer the suspension without further commission consideration or notice.

D. Notification to the commission: The department shall notify the commission of the number of individuals suspended pursuant to Subsection C of 19.31.2.29 NMAC at a properly scheduled commission meeting after the director has taken action to suspend such individuals.

E. Reinstatement: Any person whose privileges have been suspended in accordance with this section shall be reinstated after paying their outstanding penalty assessment(s) or civil judgement(s) in full.

[19.31.2.29 NMAC - Rp, 19.31.2.29 NMAC, 04-01-2019]

HISTORY OF 19.31.2 NMAC:

NMAC History:

19.31.2 NMAC Hunting and Fishing License Revocation, filed 04/01/1995; amended 10/31/1998, 11/14/1998, 01/29/1999, 12/14/2001, 12/28/2001, 05/15/2002, 09/30/2002, 06/15/2006, 12/14/2006.

History of Repealed Material:

19.31.2 NMAC, Hunting and Fishing License Revocation, filed 12-03-2001, repealed effective 09-14-2012.

19.31.2 NMAC, Hunting and Fishing License Revocation, filed 09-14-2012, repealed effective 12-19-2017.

19.31.2 NMAC, Hunting and Fishing License Revocation, filed 12-19-2017, repealed effective 04-01-2019.

GAME AND FISH DEPARTMENT

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 31 HUNTING AND FISHING REGULATIONS
PART 3 HUNTING AND FISHING
LICENSES AND APPLICATION

19.31.3.1 ISSUING AGENCY: New Mexico department of game and fish.
[19.31.3.1 NMAC - Rp, 19.31.3.1 NMAC, 1-1-2019]

19.31.3.2 SCOPE: Sportspersons interested in fishing, hunting and trapping and management of big game and furbearers in New Mexico. Additional requirements may be found in Chapter 17 NMSA 1978 and other Parts of Title 19, Chapter 31 NMAC.
[19.31.3.2 NMAC - Rp, 19.31.3.2 NMAC, 1-1-2019]

19.31.3.3 STATUTORY AUTHORITY: Sections 17-1-14, 17-1-26, 17-3-2, 17-3-5, 17-3-7, 17-3-13, 17-3-14, and 17-3-14.1 NMSA 1978, which pertain to the types of licenses and permits available and grant the state game commission authority to create regulations setting the license fees and application procedure.
[19.31.3.3 NMAC - Rp, 19.31.3.3 NMAC, 1-1-2019]

19.31.3.4 DURATION: Permanent.
[19.31.3.4 NMAC - Rp, 19.31.3.4 NMAC, 1-1-2019]

19.31.3.5 EFFECTIVE DATE: January 1, 2019, unless a later date is cited at the end of a section.
[19.31.3.5 NMAC - Rp, 19.31.3.5 NMAC, 1-1-2019]

19.31.3.6 OBJECTIVE: Basic regulation, rules and procedures governing the issuance of licenses, permits and stamps, as well as special permits and licenses issued by the department pertaining to deer, elk, pronghorn antelope, turkey, oryx, ibex, javelina, furbearers, and other species determined by the state game commission.
[19.31.3.6 NMAC - Rp, 19.31.3.6 NMAC, 1-1-2019]

19.31.3.7 DEFINITIONS: [Reserved]

19.31.3.8 PUBLIC DRAW LICENSES AND PERMITS - APPLICATION FOR:

A. Application form: Application for all public licenses and permits shall be submitted via the department website.

B. Application deadline(s): Applications for all public licenses and permits, including population management hunts, turkey, pronghorn antelope, elk, bighorn sheep, bear, deer, oryx, javelina, and ibex hunts must be received by 5:00 p.m. on dates set by the state game commission.

C. One applicant per application: No more than one person may apply under each application number for bighorn sheep, bear, and GMU 5A private land deer.

D. Two applicants per application: No more than two persons may apply under the same application number for turkey, ibex and oryx.

E. Four applicants per application: No more than four persons may apply under the same application number for deer, elk, pronghorn antelope, Barbary sheep and javelina.

F. Resident and non-resident application combination: Any mixture or combination of residents and non-residents may make application for special drawing providing the number of applicants does not exceed the restriction of this section (Subsection D or E).

G. Applications rejected: Applications for licenses may be rejected by the department if an applicant did not:

(1) apply on the proper online form as designated by the director;

(2) submit the correct or required information;

(3) submit the correct license or application fee, and any other required fee;

(4) meet the deadline date; or

(5) comply with a current statute or rule

H. More applications than permits: If more applications for public licenses or permits are received than there are licenses or permits available, the available licenses or permits shall be allotted by means of a public drawing.

I. Increase in licenses or permits: The number of licenses or permits available may be increased to accommodate corrections or errors by the department which results in the addition of names to the successful list.

J. Additional choices: Applicants for public licenses may designate additional choices for hunt periods.

K. Application categories: Applications for special drawing hunts will be placed into the appropriate categories, as specified in Section 17-3-16 NMSA 1978 by department personnel or their designee. Special drawings shall continue to draw applicants from the appropriate drawing pool progressively for each respective hunt code, starting with first choice applicants, then proceeding to second and subsequent choice applicants until the quota has been met or the pool of applicants has been exhausted.

L. Resident and non-resident applications:

(1) To be placed in the separate pool designated for guided hunts, an applicant must have a valid registration number issued to a New Mexico outfitter as prescribed in Paragraph H of Section 17-3-6 NMSA 1978, on their application.

(2) For an

application to be successfully drawn, there must be a sufficient number of licenses or permits available for that hunt code to accommodate all applicants from their respective drawing pools.

(3) Any licenses left over from the appropriate drawing pool will be allocated as prescribed in Subsection C of Section 17-3-16 NMSA 1978.

M. New Mexico department of game and fish customer identification number: All persons purchasing licenses, making application to the department for hunt drawings for public licenses and permits, and converting private landowner authorizations to licenses must have a "New Mexico department of game and fish (NMDGF) customer identification number."

(1) **"**NMDGF customer identification number" shall be obtained only from the department and must be obtained prior to the submission of any application or private landowner authorization.

(2) Each person making application for public drawing license, permit or private landowner authorization must use their own valid NMDGF customer identification number on his or her application.

(3) Any application received without a valid NMDGF customer identification number or false NMDGF customer number will be rejected.

N. Trapper license restriction: No nonresident who resides in a state that does not permit New Mexico residents to procure nonresident trapper licenses may purchase a New Mexico nonresident trapper license.

O. Director's authority to adjust licenses and permits: The director may adjust licenses or permit numbers for special drawings, by no more than one per hunt code, to comply with Chapter 17 NMSA 1978 and its corresponding rules.

[19.31.3.8 NMAC - Rp, 19.31.3.8 NMAC, 1-1-2019]

19.31.3.9 PRIVATE LAND - ELK LICENSES:

A. Private land licenses for elk will not be issued through the public draw.

B. The amount due for a private land elk license in the primary and special management zones as defined in 19.31.14 NMAC shall be composed of the "landowner authorization certificate" fee and the appropriate "certificate of application" fee as defined in 19.30.9 NMAC, and the appropriate license fees as defined in Sections 17-3-13 and 17-3-7 NMSA 1978.

C. Licenses for primary and special management zones will be issued only up to the number of authorizations allotted for each ranch and only to persons who provide a valid authorization and ranch number and pay the appropriate fees.

D. Ranch codes allowing purchase of private-land elk licenses in the secondary management zone, as defined in 19.31.14 NMAC, will be issued to landowners in accordance with 19.30.5 NMAC.

[19.31.3.9 NMAC - Rp, 19.31.3.9 NMAC, 1-1-2019]

19.31.3.10 NEW MEXICO RESIDENT MILITARY AND VETERAN DISCOUNT:

A. A New Mexico resident, as defined in Section 17-3-4 NMSA 1978, who is active duty military or a veteran of the United States military as defined by the New Mexico department of veterans' services is eligible for a fifty percent discount on all licenses, permits and stamps as defined in 19.30.9 NMAC and in Section 17-3-13 NMSA 1978. Exceptions: No discount shall apply to the resident, disabled veteran game hunting and fishing combination license, or to any administrative fee, including the "landowner authorization certificate" fee, the "certificate of application" fee, and the license vendor fee.

B. Nonresident military personnel stationed on Fort Bliss who qualify for resident prices on big-game hunts that occur on Fort Bliss are not eligible for the resident military and veteran discount.

C. The department shall conduct audits to determine eligibility for benefits as defined under 19.31.3.10 NMAC. Failure to provide requested documentation within the timeframe specified by the department shall result in the removal of the discount and suspension of any future discounts until such time as the requested documents are received and verified.

D. Any license, permit or stamp obtained by falsely claiming this discount is unlawful.

[19.31.3.10 NMAC - Rp, 19.31.3.10 NMAC, 1-1-2019]

19.31.3.11 RESTRICTIONS:

A. One license per big game species per year: It shall be unlawful for anyone to hold more than one permit or license for any one big game species during the current license year unless otherwise allowed by rule.

B. Validity of license or permit: All permits or licenses shall be valid only for the dates, eligibility requirements or restrictions, legal sporting arms, bag limit and area specified by rule for the species, or by the hunt code printed on the permit, license or carcass tag. Hunting licenses are valid on areas designated as public or private land per a current unitization agreement between the Department and U.S. bureau of land management, New Mexico state land office or other public land holding entity or landowner. The unitization agreement may apply to all small game, turkey and big game species. A permit or license will be valid on the contiguous deeded land of private property that extends into an adjacent GMU that is open to hunting for that species, when the license holder is in possession of current, valid written permission from the appropriate landowner. This exception shall only apply when the adjacent unit has the same restrictions as to weapon type, bag limit, season dates and license availability.

C. Improper license and permit: Any person who attempts to capture or shoot, hunts,

kills, injures or takes, in any manner any game animal, fur-bearing animal, game bird or game fish other than in accordance with the specified hunt code or dates, legal sporting arm, bag limit allowance or area designated on a license or permit issued by the department to that person is deemed to be hunting, fishing or trapping without a proper license as required by Section17-3-1 NMSA 1978 unless otherwise exempted by a valid commission rule.

D. Transfer of permits or licenses: The director may grant the transfer of a hunting license or permit once it has been determined that prior to the hunt start date, a licensee or their official representative provides written, verifiable information indicating the licensee has died, sustained an injury or life-threatening illness, or has been subject to deployment by the United States military that prohibits the licensee from hunting. Transfer requests must be submitted in writing prior to the hunt start date. When a transfer of a license results in a higher license fee due to differences between the original licensee and the new licensee (age, residency, etc.), the difference shall be paid prior to issuance of a license or permit.

E. Refunds: The director may grant the refund of a hunting license once it has been determined that a licensee or their official representative provides written, verifiable information indicating the licensee has died, sustained an injury or life-threatening illness, or has been subject to deployment by the United States military that prohibits the licensee from hunting. Refund requests must be submitted in writing prior to the hunt start date.

F. Donation of permits or licenses: Upon written request from a licensee or their official representative, the director may grant the donation of a hunting license for transfer to a youth 17 years of age or younger, a New Mexico resident veteran of the United States military as approved by the New Mexico department of veterans' services, or a "first responder" who is a resident of the state of New Mexico as defined by Subsection B of Section 12-10D-2 NMSA 1978 who has been qualified through an approved nonprofit organization that promotes hunting, fishing and trapping activities. The donor of the license shall not be eligible for a refund of license or application fees. When a transfer of a license results in a higher license fee due to differences between the original licensee and the new licensee (age, residency, etc.), the difference shall be paid prior to issuance of a license or permit. The state game commission must approve any nonprofit organizations prior to their participation in receiving, identifying or submitting recipients for donated licenses or permits. In order to be an approved nonprofit organization, the organization must demonstrate to the state game commission their history and ability to promote hunting, fishing, and trapping activities. A once-in-a-lifetime licensee may be reinstated as eligible to participate in future drawings for the same species and hunt type if the licensee donated his or her license to an individual qualified by an approved nonprofit organization. Donation of a once-in-a-lifetime license will not prohibit the donor from applying for and receiving another license for the same species and restrictions in the future.

G. More than one application: It shall be unlawful to submit more than one application per species for any license issued through a special drawing, unless otherwise permitted by regulation.

H. Handicapped fishing or handicapped game hunting license qualifications: To hold a handicapped fishing or handicapped game hunting license, the individual must be a resident of New Mexico and must be able to show proof of having a severe physical or developmental disability that substantially limits one or more major life activities. Reasonable accommodation will be made, relating to these licenses, upon request.

I. Mobility impaired (MI) deer, elk, oryx, or pronghorn license qualifications: To hold a mobility impaired deer, elk, oryx, or pronghorn license, a person must submit verifiable documentation on the proper department form that is attested to by a certified medical physician that the individual has a mobility restriction which limits their activity to a walker, wheelchair, or two crutches, or severely restricts the movement in both arms or who has a combination of permanent disabilities which cause comparable substantial functional limitation and then obtain department approval for MI hunt eligibility. Every person qualified as MI shall have their card/eligibility expire 48 months from the department's approval date or issuance date, whichever is later, and must resubmit their application and obtain department approval as required above prior to being eligible to apply for any MI hunt.

J. Youth only hunts: Only applicants who have not reached their 18th birthday by the opening day of the hunt are eligible to apply for or participate in any youth-only hunt, including federal youth waterfowl hunt days. Applicants must provide a hunter education certificate number, or mentor youth number for appropriate species on application.

K. Required information: An individual making license application shall supply the department on the appropriate form with all required personal information including, but not limited to name, address, date-of-birth, last four digits of his/her social security number prior to an application form being processed or a license being awarded.

L. Military only hunts: Applicants must be full time active military and proof of military status must accompany application or, if applying online, must be forwarded to the department by the application deadline date.

M. Penalty assessments: When a person is issued a penalty assessment citation for fishing without a license or hunting small game without a license, the citation will serve as a special

permit for that specific activity for 15 calendar days. The person must remit the prescribed penalty amount indicated on the face of the citation within 30 days of the date of citation issuance.

N. NMDGF customer identification number: It shall be unlawful for an applicant to use another person's NMDGF customer identification number or to provide false information to obtain a NMDGF customer identification number.

O. Application fee: Prior to the drawing, all applicants for special hunt drawings for public draw licenses shall pay the applicable species license fees including depredation damage stamp, the required game hunting license fee and the non-refundable application fee as defined by 19.30.9.9 NMAC. Disabled American veterans certified as holders of lifetime general hunting and fishing licenses are exempt from paying the application fee when applying for deer hunt drawings.

P. Game hunting license fee refund: Applicants for special hunt drawings for public draw licenses may elect to receive a refund of the game hunting license and appropriate fees if they are unsuccessful in the drawing for all of the species applied for, as long as an authorization number (pursuant to Section 17-3-5 NMSA 1978) has not been issued to the applicant by the department. This provision may be rescinded by the director if such action is approved by the chairperson of the state game commission. This rescission may only take effect if the director moves to rescind between January 1, 2019 and June 30, 2019. If no such action is taken then the provision will remain unchanged. [19.31.3.11 NMAC - Rp, 19.31.3.11 NMAC, 1-1-2019]

19.31.3.12 DENIAL OR REVOCATION:

A. Any applicant for any license, permit, certificate or registration will be automatically rejected if their name and other identifying factors appears on the department's revocation list or a list of provided by the wildlife violator compact.

B. Any applicant automatically rejected shall be afforded a revocation hearing in accordance with 19.31.2 NMAC, unless a hearing has already been offered.

C. Any applicant automatically rejected must re-apply for any license; permit, certificate or registration if they are found to be eligible, providing applicant shall comply with all the conditions set forth by Chapter 17 and its implementing regulations. [19.31.3.12 NMAC - Rp, 19.31.3.12 NMAC, 1-1-2019]

History of 19.31.3 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 5/31/67;
Regulation No. 487, Establishing 1967 Seasons On Javelina And Barbary Sheep, filed 12/15/67;
Regulation No. 489, Establishing Turkey Seasons For The Spring of 1968, filed 3/1/68;
Regulation No. 491, Establishing Big Game Seasons For 1968 For Jicarilla Reservation, filed 3/1/68;
Regulation No. 492, Establishing Seasons On Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, And Barbary Sheep, filed 6/6/68;
Regulation No. 495, Establishing A Season On Bighorn Sheep, filed 10/2/68;
Regulation No. 496, Establishing An Elk Season In The Tres Piedras Area, Elk Area P-6, filed 12/11/68;
Regulation No. 502, Establishing Turkey Seasons For The Spring Of 1969, filed 3/5/69;
Regulation No. 503, Establishing 1969 Deer Seasons For Bowhunting Only And Big Game Seasons For The Jicarilla Indian Reservation, filed 3/5/69;
Regulation 504, Establishing Seasons on Deer, Bear, Turkey, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, And Barbary Sheep, filed 6/4/69;
Regulation No. 507, Establishing A Season On Bighorn Sheep, filed 8/26/69;
Regulation No. 512, Establishing Turkey Season For The Spring Of 1970, filed 2/20/70;
Regulation No. 513, Establishing Deer Season For Bowhunting Only In Sandia State Game Refuge, filed 2/20/70;
Regulation No. 514, Establishing Seasons On Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Barbary Sheep And Bighorn Sheep, filed 6/9/70;
Regulation No 520, Establishing Turkey Seasons For The Spring Of 1971, filed 3/9/71;
Regulation No. 522, Establishing 1971 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 3/9/71;
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 6/9/71;
Regulation No. 531, Establishing A Season On Javelina, filed 12/17/71;
Regulation No. 532, Establishing Turkey Seasons For The Spring Of 1972, filed 3/20/72;
Regulation No. 534, Establishing 1972 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 3/20/72;
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 6/26/72;
Regulation No. 542, Establishing A Season On Javelina, filed 12/1/72;
Regulation No. 545, Establishing Turkey Seasons For The Spring Of 1973, filed 2/26/73;
Regulation No. 546, Establishing 1973 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 2/26/73;
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 5/31/73;
Regulation No. 554, Establishing Special Turkey Seasons For The Spring of 1974, filed 3/4/74;
Regulation No. 556, Establishing 1974 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 3/14/74;
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 5/29/74;
Regulation No. 565, Establishing Special Turkey Seasons For The Spring Of 1975, filed 3/24/75;
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 3/24/75;
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 6/25/75;
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 2/23/76;
Regulation No. 583, Establishing Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/11/77;
Regulation No. 590, Establishing Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/15/78;
Regulation No. 596, Establishing Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/23/79;
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 2/22/80;
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 2/17/81;
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 3/10/82;
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 3/9/83;
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 4/2/84;
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 4/18/85;
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 3/25/86;
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 2/12/87;
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 12/18/87;
Regulation No. 658, Establishing A System For Allocating Elk Licenses On Private And Public Lands Within Game Management Units, filed 6/1/88;
Regulation No. 663, Establishing Opening Spring Turkey For The Period April 1, 1989 through March 31, 1990, filed 3/28/89;
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 3/20/89;
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 11/21/89;
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 2/8/91;
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 3/4/92;
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 3/11/93.

History of Repealed Material:
19.31.3 NMAC, Hunting and Fishing License Applications, filed 1/17/01 - Repealed effective 12/30/04.
19.31.3 NMAC, Hunting and Fishing License Applications, filed 12/30/04 - Repealed effective 4/1/16.
19.31.3 NMAC, Hunting and Fishing Licenses and Application, filed 4/1/16

- Repealed effective 10/31/17.
19.31.3 NMAC, Hunting and Fishing Licenses and Application, filed 4/1/16 - Repealed effective 1/1/19.

GAME AND FISH DEPARTMENT

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 31 HUNTING AND FISHING
PART 10 HUNTING AND FISHING - MANNER AND METHOD OF TAKING

19.31.10.1 ISSUING AGENCY: New Mexico department of game and fish.
[19.31.10.1 NMAC - Rp, 19.31.10.1 NMAC, 4-1-2019]

19.31.10.2 SCOPE: Hunters, anglers, trappers and the general public. Additional requirements may be found in Chapter 17 NMSA 1978 and Title 19 NMAC.
[19.31.10.2 NMAC - Rp, 19.31.10.2 NMAC, 4-1-2019]

19.31.10.3 STATUTORY AUTHORITY: Sections 17-1-14, 17-1-26, 17-2-1, 17-2-2, 17-2-2.1, 17-2-4.2, 17-2-6, 17-2-10.1, 17-2-13, 17-2-14, 17-2-20, 17-2-32, 17-2-43, 17-3-2, 17-3-29, 17-2A-3, 17-3-32, 17-3-33, 17-3-42, 17-4-33, 17-5-4 and 17-6-3 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.
[19.31.10.3 NMAC - Rp, 19.31.10.3 NMAC, 4-1-2019]

19.31.10.4 DURATION: Permanent.
[19.31.10.4 NMAC - Rp, 19.31.10.4 NMAC, 4-1-2019]

19.31.10.5 EFFECTIVE DATE: April 1, 2019, unless a later date is cited at the end of a section.
[19.31.10.5 NMAC - Rp, 19.31.10.5 NMAC, 4-1-2019]

19.31.10.6 OBJECTIVE: To establish general rules, restrictions, requirements, definitions, and regulations governing lawful hunting, fishing, or trapping and the lawful taking or killing of game animals, furbearers, game birds, and game fish, water pollution, possession of wildlife, permits and licenses issued, importation, intrastate transportation, release of wildlife, manner and methods of hunting and fishing and use of department lands.
[19.31.10.6 NMAC - Rp, 19.31.10.6 NMAC, 4-1-2019]

19.31.10.7 DEFINITIONS:

A. "Angling" shall mean taking or attempting to take fish by angling hook and line, with the line held in the hand or attached to a pole or rod or other device that is held in the hand or closely attended.

B. "Angling hook" shall mean a single, double, or treble (triple) point attached to a single shank.

C. "Any sporting arm" shall mean any firearm, muzzle-loader, compressed air gun, shotgun, bow or crossbow. All firearms, except handguns, must be designed to be fired from the shoulder.

D. "Arrow" or "Bolt" shall mean only those arrows or bolts having broadheads with cutting edges, except that "judo", "blunt" or similar small game points may be used for upland game and migratory game bird hunting and arrows for bow fishing must have barbs to prevent the loss of fish.

E. "Bag limit" shall mean the protected species, qualified by species, number, sex, age, antler/horn requirement, or size allowed by state game commission rule that a legally licensed person may attempt to take or take.

F. "Bait" shall mean any salt, mineral, grain, feed, commercially produced game attractant or any other organic material which is attractive to wildlife.

G. "Baiting" shall mean the placing, exposing, depositing, distributing, or scattering of any bait on or over areas where any person is attempting to take protected game mammals or game birds as defined in 17-2-3 NMSA 1978.

H. "Bait fish" is defined as those nongame fish which are not otherwise protected by statute or regulation.

I. "Barbless lure or fly" shall mean an artificial lure made of wood, metal, or plastic or an artificial fly made from fur, feathers, other animal or man-made materials to resemble or simulate insects, bait fish, or other foods. A barbless fly or lure may only bear a single hook, from which any or all barbs must be removed or bent completely closed, or which are manufactured without barbs. Living or dead arthropods and annelids or other foods are not considered barbless lures or flies.

J. "Big game species" shall mean Barbary sheep, bear, bighorn sheep, cougar, deer, elk, javelina, oryx Persian ibex, and pronghorn.

K. "Big game sporting arms" shall mean any centerfire firearm at least .22 caliber or larger, any muzzle-loading firearm at least .45 caliber or larger, any shotgun .410 caliber or larger firing a single slug (including muzzle-loading shotguns), any bow or any crossbow. All firearms, except handguns, must be designed to be fired from the shoulder.

L. "Bow" shall mean compound, recurve, or long bow, which is not equipped with a mechanical device (draw lock) which locks the bow string at full draw. Sights on bows shall not project light, however, illuminated pins/reticles and scopes of any magnification are allowed.

M. "Bow fishing" shall mean taking or attempting to take game fish with arrows/bolts that are discharged above the surface of the water by a bow or crossbow. Arrows/bolts must be attached by string, line, or rope to facilitate fish retrieval.

N. "Bullet" shall mean

a single projectile fired from a firearm which is designed to expand or fragment upon impact. Tracer or full metal jacket ammunition is not legal for the take or attempted take of any big game species.

O. "Cellular", "Wi-Fi" or "satellite camera" shall mean any remote camera which transmits or is capable of transmitting images or video wirelessly via a cellular, Wi-Fi or satellite connection.

P. "Chumming" is defined as a means of attracting fish by placing organic materials, non-injurious to aquatic life, into the water.

Q. "Compressed air gun" shall mean any kind of gun that launches a single non-spherical projectile, pneumatically with compressed air or other gases that are pressurized mechanically without involving any chemical reaction.

R. "Crossbow" shall mean a device with a bow limb or band of flexible material that is attached horizontally to a stock and has a mechanism to hold the string in a cocked position. Sights on crossbows shall not project light, however, illuminated pins/reticles and scopes of any magnification are allowed.

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

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

U. "**Drone**" is defined as any device used or designed for navigation or flight in the air that is unmanned and guided remotely or by an onboard computer or onboard control system. Drones may also be referred to as "unmanned aerial vehicle (UAV)" or "unmanned aerial vehicle systems (UAVS)".

V. "Established road" is defined as follows:

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

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

W. "Game management unit" or "GMU" shall mean those areas as described in 19.30.4 NMAC, Boundary Descriptions for Game Management Units.

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

Y. "Locate" shall mean any act or activity, in which any person is searching for, spotting or otherwise finding a protected species from or with the aid of any aircraft or drone.

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

AA. "Muzzle-loader" or "muzzle-loading firearms" shall mean those sporting arms in which the charge and projectile(s) are loaded through the muzzle. Only blackpowder or equivalent blackpowder substitute may be used. Use of smokeless powder is prohibited.

BB. "Nets" shall mean cast nets, dip nets, and seines which shall not be longer than 20 feet and shall not have a mesh larger than three-eighths of an inch.

CC. "Non-toxic shot" shall mean that non-toxic shot approved for use by the U. S. fish and wildlife service.

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

(1) all animals defined as protected wildlife species and game fish under Section 17-2-3 NMSA 1978;

(2) all animals defined as furbearing animals under Section 17-5-2 NMSA 1978;

(3) all animals listed as endangered or threatened species or subspecies as stated in 19.33.6 NMAC: and

(4) all animals listed under Sections 17-2-13, 17-2-14 or 17-2-4.2 NMSA 1978.

EE. "Retention" or **"retain"** shall mean the holding of live protected species in captivity.

FF. "Restricted muzzle-loading rifle" shall mean any muzzle-loading rifle using open sights, black powder or equivalent propellant and firing a full bore diameter bullet or patched round ball. The use of in-line ignition, scopes and smokeless powder are prohibited.

GG. "Shotgun" shall mean any centerfire shotgun or muzzle-loading shotgun not larger than 10 gauge.

HH. "Snagging" is the repeated or exaggerated jerking or pulling of the fishing line or angling hooks in any attempt to impale fish, whether or not it results in physically snagging a fish.

II. "Spear fishing" shall mean taking or attempting to take game fish with spears, gigs and arrows with barbs.

JJ. "Sporting arm types" shall be designated in the hunt code as follows unless further restricted or allowed by state game commission rule:

(1) all hunt codes denoted with -0- shall authorize use of any shotgun firing shot (ex. SCR-0-XXX);

(2) all hunt codes denoted with -1- shall authorize use of any big game sporting arm (ex. ELK-1-XXX);

(3) all hunt codes denoted with -2- shall authorize use of bows only (ex. ELK-2-XXX);

(4) all hunt codes denoted with -3- shall authorize use of bows, crossbows and muzzle-loading firearms (ex. ELK-3-XXX).

KK. "Take" shall mean to hunt, fish, kill or capture any protected species or parts thereof.

LL. "Trotline" shall be synonymous with "set line" or "throw line" or "jug", "Yo-Yo line" or "limb line", and shall mean a fishing line

that is used without rod or reel and that need not be held in the hand or closely attended.

MM. "Upland game" shall mean dusky grouse, Eurasian collared-dove, all protected squirrel species, all quail species, chukar and pheasant.

NN. "Wildlife management area" or "WMA" shall mean those areas as described in 19.34.5 NMAC.

OO. "Written permission" shall mean a document (which may include a valid hunting, trapping or fishing license) that asserts the holder has permission from the private land owner or their designee to hunt, fish, trap or drive off road on the landowner's property. The information on the document must be verifiable and include the name of the person(s) receiving permission, activity permitted, property's location and name (if applicable), name of person granting permission, date and length of time the permission is granted, and phone number or e-mail of the person granting the permission. Licenses issued for private land which have the ranch name printed on them constitute written permission for that property and no other permission is required except for private land elk licenses in the secondary management zone pursuant to 19.30.5 and 19.31.14 NMAC.

PP. "Zone" shall mean those bear or cougar hunt areas, consisting of one or more GMUs, as described in 19.31.11 NMAC.

[19.31.10.7 NMAC - Rp, 19.31.10.7 NMAC, 4-1-2019]

19.31.10.8 UNLAWFUL SUBSTANCE IN PUBLIC WATERS: It is unlawful for any person, firm, corporation or municipality to introduce, directly or indirectly, into any public water of this state any substance that may stupefy, injure, destroy or drive away from such water any protected species or may be detrimental to the growth and reproduction of those protected species except as exempted in Section 17-2-20 NMSA 1978.

[19.31.10.8 NMAC - Rp, 19.31.10.8 NMAC, 4-1-2019]

19.31.10.9 POSSESSION OR SALE OF PROTECTED SPECIES: It is unlawful to possess, sell or offer for sale all or part of any protected species except as provided below:

A. License or permit: A person may possess protected species or parts thereof that they have lawfully taken under a license or permit, in any jurisdiction, or for which they possess a valid possession certificate, permit or invoice from the department or department permitted facility.

B. Game taken by another "Possession certificate": It is unlawful for any person to possess any protected species, or parts thereof, taken by another person except as follows: Any person may have in their possession or under their control any protected species or parts thereof that have been lawfully taken by another person, if they possess a possession certificate which shall be provided by the lawful possessor of the protected species, or parts thereof, to the person receiving the animal or parts and which shall contain the following:

(1) the first and last name of the person receiving the protected species or parts;

(2) the kind and number of game or furbearer parts donated or provided to a taxidermist, meat processor or any other similar business;

(3) the date and GMU where the game or furbearer was lawfully taken;

(4) the lawful possessor's name, phone number, address, and the hunting, fishing or trapping license number, or the permit, certificate or invoice number under which the protected species was lawfully taken;

(5) the date and place of the donation or transaction;

(6) the reason the lawful possessor transferred the animal or parts to the receiver (ie. donation, transportation, taxidermy, meat processing etc). Any possession certificate which only authorizes temporary possession (ie. taxidermist or meat processor) shall have a date of estimated return to the original lawful possessor; and

(7) the signature of both the person receiving and the person transferring the animal or parts.

C. Retention of live animals: It is unlawful to retain protected species in a live condition except under permit or license issued by the director. It is unlawful to sell, attempt to sell or possess live protected species in New Mexico, including captive raised animals, except as allowed by permit issued by the director or while in transit through New Mexico when the transporter can demonstrate proof of legal possession of the protected animal being transported.

D. Sale of protected species parts: Only skins, heads, antlers, horns, rendered fat, teeth or claws of legally taken or possessed protected species, all parts of furbearers, and feathers from non-migratory game birds may be bartered or sold (internal organs of big game species may not be sold). The disposer must supply to the recipient a written statement which shall contain the following:

(1) the first and last name of the person receiving the protected species or parts;

(2) description of the parts involved;

(3) the date and GMU where the game was taken;

(4) the disposer's name, phone number, address, and the number of either the hunting license, permit, certificate or invoice under which the game was taken;

(5) the date and place of the transaction or sale; and

(6) the signature of both the person selling and the person purchasing the parts.

E. Possession of

game animal parts found in the field: It is unlawful to possess heads, horns, antlers, or other parts of protected species found in the field without an invoice or permit from the department, with the exception of obviously shed antlers. All shed antlers collected in violation of any state or federal land closure, in violation of criminal trespass, in violation of the habitat protection act, while driving off road on public land or on a closed road on public land remain property of the State of New Mexico and shall be seized.
[19.31.10.9 NMAC - Rp, 19.31.10.9 NMAC, 4-1-2019]

19.31.10.10 PERMITS AND LICENSES ISSUED:

A. Proof of license: Each licensee or permitee must have a copy of their hunting, fishing or trapping license or their department issued collection permit in their possession while hunting, fishing, trapping or collecting protected species in New Mexico. Licenses or permits may be in electronic or paper format. The authorization number for fishing or game hunting is also valid pursuant to Subsection C of Section 17-3-5 NMSA 1978. The license, authorization or permit must be produced upon request by any law enforcement officer authorized to enforce Chapter 17 NMSA 1978.

B. Permits and licenses, other than hunting, fishing or trapping licenses, which authorize the holder to import, collect, handle, purchase, possess, barter, transfer, transport, sell or offer to sell species listed as group II, III or IV on the directors "species importation list" or any protected species may only be issued by the director or their designee as authorized by Chapter 17 NMSA 1978 and 19.35 NMAC.

C. Permit or license provisions: Specific provisions for applications, conditions, reporting and other stipulations for permits or licenses will be provided by the department with each permit and license.

D. Violation of permit or license provisions or importation/ possession of un-permitted wildlife:

(1) It is unlawful for any person receiving any permit or license pursuant to state game commission rule to violate any provision of state game commission rule or any provision listed on the permit or license.

(2) Any violation of Chapter 17 NMSA 1978, state game commission rule or any permit provision shall render that permit or license invalid. If such an invalidated permit or license authorized possession of any species listed as group II, III or IV on the directors "species importation list" or any protected species, the animals shall be subject to seizure by any officer authorized to enforce the provisions of Chapter 17 NMSA 1978.

(3) It is unlawful to import, collect, handle, purchase, possess, barter, transfer, transport, sell or offer to sell any live animal listed as group II, III or IV on the directors "species importation list" or any protected species without a department issued permit or license or contrary to the provisions of Chapter 17 NMSA 1978, state game commission rule or any department issued permit.

(4) Any animal possessed contrary to this section shall be subject to seizure by any officer authorized to enforce the provisions of Chapter 17 NMSA 1978. Any dangerous, venomous, invasive species or any diseased animals may be destroyed to protect human safety, native wildlife populations or livestock.

(5) Any person who has had an animal seized from them shall have no more than 30 days to arrange for the illegal animal to be transported out of New Mexico and pay for the care and transportation rendered. Failure to make these arrangements within 30 days will result in the animal being considered abandoned. Abandoned animals will be disposed of at the discretion of the department.

E. Release of wildlife: It is unlawful for any person or persons to release, intentionally or otherwise; or cause to be released in this state any mammal, bird, fish, reptile or amphibian, except domestic mammals, domestic fowl, or fish from government hatcheries, without first obtaining a permit from the department except department employees while performing their official duties or those individuals working on behalf of the department when directed by a department employee.
[19.31.10.11 NMAC - Rp, 19.31.10.11 NMAC, 4-1-2019]

19.31.10.11 USE OF VEHICLES, BOATS, AIRCRAFT AND ROADS IN HUNTING:

A. Shooting from the road: It is unlawful to shoot at, wound, take or attempt to take any protected species on, from, across or from within the right-of-way fences of any graded, paved or maintained public road. In the absence of a right-of-way fence it is unlawful to shoot at, wound, take or attempt to take any protected species from any part of the graded, paved or maintained surface of the public road. "Public road" as used herein shall mean any road, street or thoroughfare which is open to the public or which the public has a right of access and which has been paved, graded, maintained or any road, street or thoroughfare which has been paved, graded or maintained using public funds.

B. Shooting at artificial wildlife from the road: It is unlawful to shoot at artificial wildlife on, from, across or from within the right-of-way fences of any graded, paved or maintained public road. In the absence of a right-of-way fence it is unlawful to shoot at any artificial wildlife from any part of the graded, paved or maintained surface of the public road. "Public road" as used herein shall mean any road, street or thoroughfare which is open to the public or which the public has a right of access and which has been paved, graded, maintained or any road, street or thoroughfare which has been paved, graded or maintained

using public funds.

C. Shooting from within or upon a vehicle, boat or aircraft: It is unlawful to shoot at any protected species from within or upon a motor vehicle, motor-driven boat, sailboat or aircraft except as allowed by a department issued permit. A person may shoot from any motor-driven boat when, the motor has been completely shut off and its progress therefrom has ceased.

D. Harassing protected species: It is unlawful, at any time, to pursue, harass, harry, drive or rally any protected species by any means except as allowed while legally hunting, or as otherwise allowed by Chapter 17 NMSA or state game commission rule.

E. Hunting after air travel: It shall be unlawful for anyone to hunt for or take any protected species until after the start of legal hunting hours on the day following any air travel except by regularly scheduled commercial airline flights or legitimate direct flight to the final destination.

F. Use of aircraft for spotting game: It shall be unlawful to use aircraft or drone to spot or locate and relay the location of any protected species to anyone on the ground by any means of communication or signaling device or action.

G. Using information gained from air flight:

(1) It shall be unlawful to hunt for or to take, or assist in the hunting for or taking of, any protected species with the use of information regarding location of any protected species gained from the use of any aircraft until 48 hours after such aircraft use.

(2) It shall be unlawful to hunt for or to take, or assist in the hunting for or taking of, any protected species with the use of information regarding location of any protected species gained from the use of any drone at any time.

H. Aircraft, drone and vehicle exemptions to this rule: The Director may exempt a person from the prohibition of utilizing an aircraft, drone or vehicle for management purposes.

I. Vehicle off of established road or driving on a closed road:

(1) During the seasons established for any protected species, it is unlawful to drive or ride in a motor vehicle which is driven off an established road on public land or to drive or ride in a motor vehicle on a closed road on public land, when the vehicle bears a licensed hunter, angler or trapper.

(2) During the seasons established for any protected species, it is unlawful to drive or ride in a motor vehicle which is driven off an established road on private land without written permission, when the vehicle bears a licensed hunter, angler or trapper.

(3) It is unlawful to drive or ride in a motor vehicle which is being driven off an established road when gathering or searching for shed antlers on public land or to drive or ride in a motor vehicle on a closed road when gathering or searching for shed antlers on public land.

(4) Exception: Snowmobiles and to retrieve lawfully taken game in an area not closed to vehicular traffic.

(5) Public land as used in this section shall mean any federally owned or managed property, any state owned or managed property, any private property which is part of a unitization hunting agreement, ranch wide agreement or unit wide agreement for the species being hunted, any private property which the department has paid for public access for the species being hunted or any New Mexico state game commission owned or managed property.

J. Mobility Impaired (MI) hunters:

(1) Shooting from a vehicle: The holder of a MI card is authorized to shoot at, take or attempt to take protected species during their respective open seasons, with the appropriate license, from a stationary motor-driven vehicle only if the vehicle has been parked completely off of the established road's surface and only when the established road has no right-of-way fence. The holder of a MI card may not shoot at, take or attempt to take any protected species from within the right-of-way fence on any established road.

(2) Crossbow use: The holder of a MI card may use a crossbow during any bow hunt.

(3) Assistance for MI hunters: The holder of a MI card may be accompanied by another person, who is designated in writing, to assist in taking or attempting to take any big game animal which has clearly been wounded by the licensed MI hunter. The person so designated must carry that written authorization from the MI hunter at all times while in the field in order to act as their assistant. A MI hunter may only designate one person at a time to assist them. Any person assisting a MI hunter must follow the sporting arm type designated for that hunt and all other laws and rules which apply to a licensed hunter.

[19.31.10.13 NMAC - Rp, 19.31.10.13 NMAC, 4-1-2019]

19.31.10.12 BIG GAME AND TURKEY:

A. Legal hunting hours: A person may only take or attempt to take any big game species or turkey during the period from one-half hour before sunrise to one-half hour after sunset. It is unlawful to take or attempt to take big game or turkey outside of legal hunting hours.

B. Killing out of season: It is unlawful to take or attempt to take any big game species or turkey outside of the established hunting season.

C. Bag limit: It is unlawful for any person to take any big game species or turkey other than the legal bag limit as specified on their big game or turkey license or as indicated by the hunt code, or for any bear hunter to take a sow with cub(s), or any cub less than one year old, or for any cougar hunter to take a spotted cougar kitten or any female

accompanied by spotted kitten(s).

D. Exceeding the bag limit on big game:

(1) It is unlawful for any person to hunt for or take more than one animal of any big game species per year unless otherwise allowed by state game commission rule.

(2) It is unlawful for any person to hunt for or take more than two cougars per year unless otherwise allowed by state game commission rule.

E. Exceeding the bag limit on turkey: It is unlawful for any person to hunt for or take more than two bearded turkeys during the spring turkey season or more than one turkey during the fall turkey season unless otherwise specifically allowed by 19.31.16 NMAC.

F. Proof of sex or bag limit: It is unlawful for anyone to transport or possess the carcass of any big game species or turkey without proof of sex or bag limit (except donated parts when accompanied by a proper possession certificate). Proof of sex or bag limit shall be:

(1) Bear and cougar – External genitalia of any bear or cougar killed shall remain naturally attached to the pelt and be readily visible until the pelt has been inspected and pelt-tagged by a department official.

(2) Barbary sheep and oryx – The horns of any Barbary sheep or oryx taken shall remain naturally attached to the skull or skull plate until arriving at a residence, taxidermist, meat processing facility or place of final storage.

(3) Deer – The antlers of any buck deer taken shall remain naturally attached to the skull or skull plate until arriving at a residence, taxidermist, meat processing facility or place of final storage. The scalp and both ears of any antlerless deer or the naturally attached female genitalia shall accompany the carcass in the same manner.

(4) Elk – The antlers of any bull elk taken shall remain naturally attached to the skull or skull plate until arriving at a residence, taxidermist, meat processing facility or place of final storage. The scalp and both ears of any antlerless elk or the naturally attached female genitalia shall accompany the carcass in the same manner.

(5) Pronghorn - The horns, scalp and both ears of any pronghorn taken shall remain naturally attached to the skull or skull plate and must accompany the carcass until arriving at a residence, taxidermist, meat processing facility or place of final storage. If the horns of a female pronghorn are longer than its ears, and the bag limit is F/IM, the external genitalia must remain naturally attached to the hide/carcass, as appropriate, and be visible to provide proof of legal bag limit until arriving at a residence, taxidermist, meat processing facility or place of final storage.

(6) Bighorn sheep - The horns of any ram shall remain naturally attached to the skull or skull plate and the external genitalia of any ewe taken shall remain naturally attached to the hide/carcass, and be visible until arriving at a residence, taxidermist, meat processing facility or place of final storage.

(7) Persian ibex - The horns of any ibex shall remain naturally attached to the skull or skull plate. If the horns of any female ibex are 15 inches or longer the external genitalia shall remain naturally attached to the hide/carcass, and be visible until arriving at a residence, taxidermist, meat processing facility or place of final storage.

(8) Turkey – When the bag limit is a bearded turkey, the beard and a small patch of feathers surrounding the beard shall remain with the carcass, and be visible until arriving at a residence, taxidermist, meat processing facility or place of final storage.

(9) Javelina – The skull of each javelina shall be proof of bag limit and must be retained until arriving at a residence, taxidermist, meat processing facility or place of final storage.

G. Tagging of harvested game:

(1) Physical Tagging of harvested game: Licensed hunters of any big game species or turkey, who have chosen to receive a department issued tag at application or purchase, upon harvesting an animal, shall immediately and completely notch out the appropriate month and day on the carcass tag. Prior to moving any part of the carcass from the kill site, the licensed hunter shall remove the entire backing material from the carcass tag and adhere it to the appropriate location on the carcass leaving the entire face of the tag visible. If the species or sex harvested requires the use of an antler or horn tag the licensed hunter shall, prior to moving any part of the carcass from the kill site, remove the entire backing material from the antler/horn tag and adhere it to the appropriate location on the antler or horn leaving the entire face of the tag visible. All tags shall remain attached to the carcass, antlers or horns until it is delivered to a meat processing facility, taxidermist, placed in final cold storage or if required, is inspected and documented or pelt tagged by a department official. The antler/horn tag is not required to be attached or used on antlerless/hornless animals.

(2) Electronic Tagging of harvested game: Licensed hunters of any big game species or turkey, who have chosen to electronically tag their game at application or purchase, upon harvesting an animal, shall immediately access the department's electronic tagging (e-tag) application to receive an e-tag number specific to the license. The licensed hunter will legibly write the e-tag number, customer identification number, and the date of harvest on any durable material using permanent ink and shall attach one piece to the big game species or turkey on the appropriate

location on the carcass and another piece to the antler or horns as required prior to moving any part of the carcass from the kill site. All e-tag pieces shall remain attached to the carcass, antlers or horns until it is delivered to a meat processing facility, taxidermist, placed in final cold storage or if required, is inspected and documented or pelt tagged by a department official. An antler/horn e-tag is not required to be attached or used on antlerless/hornless animals.

(3) The proper location to attach all carcass tags and e-tags:

(a) The proper location to attach the carcass tag or e-tag on any game species is to attach it conspicuously on the hock tendon on either hind leg.

(b) The proper location to attach the carcass tag or e-tag on javelina is to adhere it to the head/skull around the nose.

(c) The proper location to attach the carcass tag or e-tag on a turkey is to adhere it around the leg above the foot and below the feathers on the thigh.

(d) The proper location to attach the carcass tag or e-tag on a bear or cougar is to adhere it around the ankle area of the hide above the foot. Bear and cougar carcass tags authorize possession of those animals until pelt tagged in accordance with state game commission rule or for five days from date of kill, whichever comes first.

(i) Any bear or cougar killed shall be tagged with a pelt tag furnished free of charge by the department.

(ii) The hunter who kills the bear or cougar or the hunter's designee must present the unfrozen skull and pelt to a department official for tooth removal and pelt tagging within five calendar days from the date of harvest, before the pelt can be frozen, processed, tanned or salted by a taxidermist, or before taking the pelt out of New Mexico, whichever comes first.

(iii) Any hunter who appoints a designee to present the skull and pelt for pelt tagging is required to contact a conservation officer prior to having the pelt inspected and tagged.

(iv) The pelt tag shall remain attached until the pelt is tanned.

(v) Skulls with mouths closed may not be accepted until the mouth is opened by the hunter or designee.

(vi) Licensed bear or cougar hunters or their designees who provide false or fraudulent information regarding the required information including, but not limited to, sex, date or location of harvest shall be assessed 20 revocation points pursuant to 19.31.2 NMAC.

(e) The proper location to attach an antler tag or e-tag is to adhere the tag around the main beam of the antler between any of the points or tines as close to the base as possible to prevent the tag from coming off.

(f) The proper location to attach a horn tag or e-tag is to adhere the tag around the horn as close to the base as possible to prevent the tag from coming off.

H. It is unlawful:

(1) for any licensed hunter to fail to properly tag their big game species or turkey with the carcass and antler tag or e-tag as prescribed;

(2) to possess any portion of a big game or turkey carcass that does not have a properly notched carcass tag attached to it or a completed e-tag attached to it, except lawfully taken game that is accompanied by a proper possession certificate or department invoice;

(3) to possess any bear or cougar or parts thereof which has not been pelt tagged within five days of kill, has been taken out of state prior to pelt tagging or has not otherwise been pelt tagged in accordance with state game commission rule;

(4) for any person to transport or possess the carcass of any big game species or turkey without proof of sex naturally attached or proof of legal bag limit until the carcass arrives at a residence, taxidermist, meat processing facility, place of final storage or if required, is inspected and documented or pelt tagged by a department official, except lawfully taken game that is accompanied by a proper possession certificate or department invoice;

(5) to use a carcass or antler tag that is cut, torn, notched or mutilated. Cut, torn, notched or mutilated tags are no longer valid for the take of a big game species or turkey; or

(6) to use a previously issued carcass or antler tag once a duplicate has been obtained or to use the carcass, antler tag or e-tag of any other person. Any previous carcass or antler tag assigned to a license which is replaced by a duplicate is void and no longer valid for the take of a big game species or turkey.

I. Once-in-a lifetime hunts: It is unlawful for any person to apply for, receive or use any once-in-a lifetime license if they have ever held a once-in-a lifetime license for that species which has the same bag limit or eligibility requirements.

J. Youth only (YO), mobility impaired (MI), Iraq/Afghanistan veterans (I/A) and military only (MO) hunts or military discounted licenses: It is unlawful for anyone to apply for or receive or use any YO, MI, I/A or MO license or any military discounted license except as allowed by state game commission rule.

K. License sale: It is unlawful for anyone to sell or offer for sale any hunting, fishing or trapping license, permit or tag which has been issued by the department, or to sell or offer for sale any commercial collection permit or scientific collection permit.

L. Use of dogs in hunting:

(1) It is unlawful to use dogs to hunt or pursue big game species or turkey, except for bear and cougar.

(2) Dogs may be used only to hunt bear and cougar during open seasons unless otherwise restricted. It is unlawful to:

(a)

hunt for or pursue bear or cougar with dog(s) on the Valle Vidal except holders of bear entry permits for the hunting of bear only;

(b) hunt for or pursue bear or cougar with dog(s) during any September big game bow season statewide except as otherwise allowed by state game commission rule;

(c) release dog(s) to pursue or hold bear or cougar outside of legal hunting hours or during closed season or in a closed area or zone;

(d) to pursue bear or cougar with dog(s) without the licensed hunter, who intends to kill or who kills the bear or cougar, present continuously from the initial release of any dog(s).

(3) It is unlawful to use dog(s) to assist in the recovery of wounded or dead big game or turkey except as follows:

(a) Dog(s) may be used to assist in the recovery of wounded game provided that no more than two dogs may be used at any one time to locate a wounded or dead deer, elk, pronghorn, bighorn sheep, Barbary sheep, oryx, Persian ibex, javelina or turkey.

(b) Dog(s) used to assist in the recovery of deer, elk, pronghorn, bighorn sheep, Barbary sheep, oryx, Persian ibex, javelina or turkey shall be leashed and under the control of the handler at all times and cannot be used to pursue or harass wildlife. No person assisting in the recovery of a wounded animal may shoot or kill the animal being tracked unless they are a licensed hunter for that species, season and area and they intend to tag the animal as their own.

M. Use of bait: It is unlawful for any person to take or attempt to take any big game species or turkey by use of baiting or for any person to take or attempt to take big game or turkey from an area which has not been completely free of bait (including in feeders) for at least 10 days. Preexisting legitimate livestock salt and mineral and natural attractants such as cultivated fields, water, orchards, natural kills, carrion or offal are not considered bait unless they have been moved or placed there from another location. It is unlawful to create, maintain or use any bait station in hunting bear or cougar. It is unlawful to use any scent attractant in hunting bears.

N. Live animals: It is unlawful to use live protected species as a decoy in taking or attempting to take any big game species or turkey.

O. Hunting captive big game species: It is unlawful to take or attempt to take any big game species within any fence or enclosure, or by use of any fence or enclosure, which significantly restricts or limits the free ingress or egress of that big game species except as allowed by permit from the department. Any fence which is 7.5 feet tall or taller shall be considered game proof and hunting within any such enclosure, even if there are open gate(s), is unlawful. Exception: Net wire fencing commonly used as sheep or goat fencing which is not taller than four feet is not considered to significantly restrict or limit the free ingress or egress of any protected species.

P. Use of calling devices: It is unlawful to use any electronically or mechanically recorded calling device in taking or attempting to take any big game species or turkey, except javelina, bear and cougar.

Q. Automatic firearms: It is unlawful to take or attempt to take any big game species or turkey with a fully automatic firearm.

R. Bullets: It is unlawful to take or attempt to take any big game species or turkey by the use of a prohibited bullet.

S. Drugs and explosives: It is unlawful to use any form of drug to capture, take or attempt to take any big game species or turkey unless specifically authorized by the department, or to use arrows driven by explosives, gunpowder or compressed air.

T. Legal sporting arm types:

(1) It is unlawful to use any sporting arm type for big game species other than those defined under big game sporting arms except for cougar and javelina which may be taken with those defined under any sporting arm. For cougar and javelina, compressed air guns must be .22 caliber or larger and shotguns must fire a single slug or #4 buckshot or larger.

(2) It is unlawful to use any sporting arm type for a big game species which does not correspond with the hunt code authorized sporting arm type.

(3) It is unlawful to use sporting arms for turkey other than a shotgun firing shot, bow or crossbow.

U. Hunting on the wrong ranch, in the wrong area or in the wrong GMU: It is unlawful for any person to hunt in any location, GMU or ranch other than that area specified on their license or permit unless otherwise allowed by state game commission rule.

(1) A landowner whose contiguous deeded property extends into an adjacent GMU(s) may enter into a written agreement with the department to hunt big game on the contiguous deeded property of the ranch. This permission shall be requested annually, at the local department office, in person or in writing by the landowner at least one week prior to the desired hunt dates. The landowner must show proof of ownership and property location. The season dates, bag limit and sporting arm type will be determined by the GMU where the majority of the deeded property lies. Landowners who enter into this agreement may not hunt the GMU where the minority of the contiguous property lies during that minority GMU's season dates if different from the majority dates. Unit-wide and ranch-wide properties are not eligible for this agreement for those species for which the unit-wide or ranch-wide agreement applies.

(2) A

licensed big game hunter may hunt a landowner's contiguous private property which extends into an adjoining GMU(s) only when a department agreement exists and must adhere to the department issued agreement unless otherwise restricted by state game commission rule.

V. Restricted areas on White Sands missile range:

(1) It is unlawful to drive or ride in a motor vehicle into an area signed "no hunting" or otherwise restricting hunting or as documented on a map or as presented during the hunt's briefing, except if the hunter or driver is escorted by official personnel;

(2) It is unlawful for a licensed hunter to enter an area signed "no hunting" or otherwise restricting hunting except if the hunter is escorted by official personnel; and

(3) It is unlawful for a licensed security badged hunter to hunt or take any oryx in an area other than their "to be assigned" area.

W. Validity of licenses and unitizations: All big game and turkey licenses shall be valid only for the specified dates, eligibility requirements or restrictions, legal sporting arms, bag limit, and area specified by the hunt code printed on the license including those areas designated as public or private land per a current unitization agreement between the department and U. S. bureau of land management, state land office or other public land holding entity.

X. Hunting on public land with a private land only license: It is unlawful to hunt big game on any public land with a private land only license. Public land as used in this section shall mean any federally owned or managed property, any state owned or managed property, or any private property which is part of a unitization hunting agreement, ranch wide agreement or unit wide agreement for the species being hunted, any private property which the department has paid for public access for the species being hunted or any New Mexico state game commission owned or managed property.

Y. Collars or tracking devices: It is unlawful to attach any collar or electronic tracking device to any big game species or turkey except as specifically authorized by the department.

Z. License purchase: Bear or cougar hunters must purchase their bear or cougar license at least two calendar days prior to taking or attempting to take any bear or cougar. It is unlawful for any bear or cougar hunter to take or attempt to take a bear or cougar within two calendar days of purchasing their license.

AA. Zones: It is unlawful to pursue, take or attempt to take a bear or cougar in a closed zone. Zones will close pursuant to 19.31.11 NMAC.

BB. Valle Vidal: It is unlawful to hunt bear or cougar on the Valle Vidal except for properly licensed bear or cougar hunters that also possess a Valle Vidal elk hunting license (only during the dates and with the sporting arm type specified on their elk license) and holders of a Valle Vidal bear entry permit (only during their entry permit hunt dates).

CC. Cougar ID: It is unlawful for any person to hunt for cougar without having completed the department's cougar ID course and having the verification code printed on their license.

DD. Cougar trapping season: It is unlawful to trap or foot snare cougar outside of the season established for furbearer trapping or to kill any cougar which has been trapped or foot snared in a cougar zone which is closed.

EE. Use of traps and foot snares for cougar: Licensed trappers who also hold a valid cougar license may use traps or foot snares to harvest cougars on state trust land, or private land with written permission from the landowner or person authorized to grant permission. Neck snares are not permitted. Restrictions for cougar take using traps or foot snares shall follow the regulations on methods, trap specification, trap inspection, wildlife removal as defined in 19.32.2 NMAC. No trap with a jaw spread of larger than 6.5 inches or 7 inches if outside laminated shall be allowed.

(1) It is unlawful to set a foot snare for cougar in GMU 27 and those portions of GMU 26 designated by the United States fish and wildlife service as critical habitat for jaguar.

(2) It is unlawful to kill any cougar captured on BLM or US Forest Service land by the use of traps or foot snares unless authorized by the director.

(3) It is unlawful to take any cougar with a neck snare or prohibited trap.

FF. Use of cellular, Wi-Fi or satellite cameras: It is unlawful for any person to use any cellular, Wi-Fi or satellite camera for the purpose of hunting or scouting for any big game animal. Exception: This section does not apply to cellular or satellite phones which are kept on one's person and not used remotely or department employees and their designees while performing their official duties.

[19.31.10.13 NMAC - Rp, 19.31.10.13 NMAC, 4-1-2019]

19.31.10.13 UPLAND GAME AND MIGRATORY GAME BIRDS:

A. Upland game hunting hours: Upland game species may be hunted or taken only during the period from one-half hour before sunrise to one-half hour after sunset. It is unlawful to take or attempt to take upland game outside of legal hunting hours.

B. Killing out of season: It is unlawful to kill any migratory game bird or upland game out of season.

C. Exceeding the bag limit: It is unlawful for any person to take or attempt to take more than one daily bag limit of any migratory game bird species or upland game species allowed by state game commission rule. There shall be no daily bag or possession limit for light geese during the light goose conservation order

hunt dates.

D. Possession limit: It is unlawful for any person to possess more than one possession limit of any migratory game bird or upland game species.

E. Proof of species or sex: It is unlawful for any person to possess any migratory bird or upland game without proof of species or sex as required below:

(1) One foot shall remain attached to each quail taken until the bird has arrived at a residence, taxidermist, meat processing facility or place of final cold storage.

(2) The head or one leg of each pheasant taken must remain attached to the bird until the bird arrived at a residence, taxidermist, meat processing facility or place of final cold storage.

(3) One fully feathered wing must remain attached to all migratory game birds, except dove and band-tailed pigeon, until the bird has arrived at a residence, taxidermist, meat processing facility or place of final cold storage.

F. Youth only (YO), mobility impaired (MI), Iraq/ Afghanistan veterans (I/A) and military only (MO) hunts or military discounted licenses: It is unlawful for anyone to apply for or receive or use any YO, MI, I/A or MO license or any military discounted license except as allowed by state game commission rule.

G. License sale: It is unlawful for anyone to sell or offer for sale any hunting, fishing or trapping license, permit or tag which has been issued by the department, or to sell or offer for sale any commercial collection permit or scientific collection permit.

H. Use of dogs in hunting: Dog(s) may be used to hunt migratory game bird species and upland game. It is unlawful to pursue migratory game birds or upland game with dog(s) outside of the hunting seasons established except in conjunction with a permitted event.

I. Use of bait: It is unlawful for any person to take or attempt to take any migratory game bird species or upland game by use of baiting or for any person to take or attempt to take migratory game birds or upland game from an area which has not been completely free of bait (including in feeders) for at least 10 days. Preexisting legitimate livestock salt and mineral and natural attractants such as cultivated fields, water, orchards, carrion or offal are not considered bait unless they have been moved there from another location.

J. Live animals: It is unlawful to use live protected species as a decoy in taking or attempting to take any migratory game bird species or upland game species.

K. Use of calling devices: It is unlawful to use any electrically or mechanically recorded calling device in taking or attempting to take any migratory game bird or upland game species. During the light goose conservation order hunt dates, electronic calling devices are allowed for the take of light geese.

L. Automatic firearms: It is unlawful to take or attempt to take any migratory game bird or upland game species with a fully automatic firearm.

M. Non-toxic shot: It is unlawful for any person to use or possess any shotgun shell loaded with anything other than non-toxic shot or for any person using a muzzle-loading shotgun to possess anything other than non-toxic shot while hunting for any migratory game bird species, except when hunting dove, band-tailed pigeon or eastern sandhill crane. Non-toxic shot is required for all migratory game birds and upland game species on Bernardo WMA, La Joya WMA, and Huey WMA.

N. Drugs and explosives: It is unlawful to use any form of drug to capture, take or attempt to take any migratory game bird or upland game species unless specifically authorized by the department, or to use arrows driven by explosives, gunpowder or compressed air.

O. Legal sporting arms and ammunition: It is unlawful to use sporting arms other than those listed below to take or attempt to take of any migratory game bird or upland game species.

(1) The following are legal sporting arms for pheasants and quail:

(a) shotguns firing shot;

(b) bows; and

(c) crossbows.

(2) The following are legal sporting arms for dusky grouse, chukar, Eurasian collared-dove, Abert's squirrels, Arizona gray squirrels, fox squirrels, eastern gray squirrels and red squirrels:

(a) shotguns firing shot;

(b) rimfire firearms;

(c) muzzle-loading firearms;

(d) bows;

(e) crossbows; and

(f) compressed air guns, .177 caliber or larger.

(3) The following are legal sporting arms for migratory game birds:

(a) shotguns firing shot, shotguns shall not be capable of holding more than three shells except while hunting light geese during the light goose conservation order hunt dates, as defined in 19.31.6 NMAC;

(b) bows; and

(c) crossbows.

P. Areas closed to migratory game bird hunting: It shall be unlawful to hunt migratory game birds in that portion of the stilling basin below Navajo dam lying within a line starting from N.M. 511

at the crest of the bluff west of the Navajo dam spillway and running west along the fence approximately one-quarter mile downstream, southwest along the fence to N.M. 511 to the Navajo dam spillway, across the spillway, and to the crest of the bluff.

Q. Collars or tracking devices: It is unlawful for any person to attach any collar or electronic tracking device to any migratory game bird or upland game except as specifically authorized by the department.

R. Use of traps and snares: It is unlawful for any person to intentionally set any trap, snare, cage, box or other device to capture or attempt to capture any migratory game bird or upland game or for any person to intentionally capture or attempt to capture any migratory game bird or upland game unless specifically allowed by license or permit.

[19.31.10.14 NMAC - Rp, 19.31.10.14 NMAC, 4-1-2019]

19.31.10.14 FISHING:

A. Angling: Game fish may be taken by angling in all waters that are open for fishing.

B. Season and hours: It is unlawful to fish in any water during a closed season or to fish in any water outside of the legal fishing hours as prescribed in 19.31.4 NMAC.

C. Closed waters: It is unlawful to fish in any water closed by state game commission rule.

D. Ice fishing: It is unlawful to take fish from or through the ice on the following waters: Santa Cruz lake, Bonito lake, and Springer lake. Ice fishing is legal on all other waters unless otherwise prohibited.

E. Hatchery waters: It is unlawful to take or attempt to take fish from the waters of any fish hatchery or rearing ponds owned or operated by state or federal agencies. Exception: During open season, angling for trout shall be permitted in the Glenwood pond at the Glenwood state fish hatchery, Red River hatchery pond at the Red River state fish hatchery, Brood pond at Seven Springs state fish hatchery, and Laguna del Campo at Los Ojos state fish hatchery. Additionally, the director may expressly authorize other limited fishing at the state's fish hatcheries based on management needs.

F. Trotlines: Game fish may be taken by use of trotlines in any water except those listed below, however:

(1) It is unlawful for any person to set more than one trotline at a time.

(2) It is unlawful to tie or join together trotlines belonging to two or more persons.

(3) It is unlawful for any trotline to have more than 25 angling hooks.

(4) It is unlawful for a person who has set or maintained a trotline to not personally visit and inspect it at least once every calendar day and remove or release all game fish which are caught.

(5) It is unlawful for anyone to check, pull up or otherwise tamper with another's trotline.

(6) It is unlawful for anyone to set, check or maintain a trotline which is not tagged or marked as follows:

(a) A person fishing with a trotline shall attach to it an identification tag that is visible above the water line. The identification tag shall bear the angler's department issued customer identification number (CIN).

(b) An unlicensed angler 11 years of age and younger shall list their department issued customer identification number (CIN) or their name and date of birth.

(7) It is unlawful to set or use a trotline in any water listed in 19.31.4 NMAC which has a reduced bag limit on catfish or in any trout water, with the following exceptions: Abiquiu lake, Chama river downstream from the northern boundary of the Monastery of Christ in the Desert, Gila river downstream from its junction with its east fork, Navajo lake and the Rio Grande downstream from its junction with the Chama river.

(8) Any officer authorized to enforce Chapter 17 NMSA 1978 and state game commission rules may seize and destroy any trotlines not set or checked in accordance with this subsection.

G. Spearfishing and bow fishing:

(1) Game fish may be taken by spearfishing and bow fishing only in lakes and reservoirs open to fishing. It is unlawful to spearfish or bow fish in any special trout water as designated in 19.31.4 NMAC or in any river or stream.

(2) It is unlawful to take any largemouth bass by spearfishing or bow fishing in the following waters: Bill Evans lake, Clayton lake, and lake Roberts.

H. Noodling or hand fishing: It is unlawful to catch any game fish by hand without the use of angling equipment.

I. Use of nets: It is unlawful to use cast nets, dip nets, seines or gill nets to capture and retain any protected species of fish from any water unless specifically allowed by permit or state game commission rule. Dip nets may be used to assist in landing fish taken by legal angling methods.

J. Illegal device or substance: It is unlawful to use any device or substance capable of catching, stupefying or killing fish except as permitted by state game commission rule.

K. Bait:

(1) It is unlawful to use protected game fish or the parts thereof as live or dead bait, except the genus Lepomis (sunfish), taken by legal means may be used as live or dead bait in the water from which they were taken, and the roe, viscera and eyes of any legally taken game fish may be used.

(2) It is unlawful to use bullfrogs or bullfrog tadpoles as bait, or to possess any live bullfrogs or live bullfrog tadpoles while fishing.

L. Use of bait fish: It

is unlawful to use or possess any baitfish while angling except as follows:

(1) The following baitfish species can be used live or dead unless otherwise prohibited:

Water:	**Approved bait fish species:**
Rio Grande drainage	Fathead minnow, red shiner and shad
Elephant Butte and Caballo reservoirs	Fathead minnow, red shiner, shad and golden shiner
Pecos river drainage except for Bitter lake national wildlife refuge and Bottomless lakes state park	Fathead minnow and red shiner
Canadian river drainage	Fathead minnow, red shiner, white sucker and shad
San Juan river drainage	Fathead minnow and red shiner
Gila river and San Francisco river drainages	Fathead minnow

(2) The following bait fish species can only be used as dead bait unless otherwise prohibited:

Water:	**Approved dead baitfish species:**
Statewide	Common carp
Heron reservoir	White sucker

(3) Commercially packaged and processed species of fish which are dead or products thereof are not considered bait fish and are legal in all regular waters.

M. Methods for taking bait fish for personal use: Licensed anglers and children 11 years of age and younger may take bait fish for personal use only in waters containing game fish by angling, nets, traps, spears, arrows and seines. All protected species of fish taken in seines, nets and traps shall be immediately returned to the water.

N. Illegal taking of bait fish:

(1) It is unlawful for any person, except children 11 years of age and younger, to take bait fish from any water without having a valid fishing license.

(2) It is unlawful for any person to take bait fish from any water for commercial use without a permit issued from the department.

(3) It is unlawful for licensed minnow dealers to violate any of the provisions of their license or permit.

O. Permits for taking bait fish: The director may issue permits for the use of nets, seines, traps or cast nets in taking bait fish in waters containing protected species of fish. The permit shall specify methods of taking, places for taking and duration of the permit. The permittee shall report monthly, to the department, the species, numbers and poundage of bait fish taken during the preceding month.

P. Limit on angling hooks: It is unlawful to angle with more than two barbless lures or flies with single point angling hooks on a single line when fishing the special trout water on the San Juan river designated in Subsection A of 19.31.4.11 NMAC.

Q. Eradication of fish: In waters where fish are being eradicated or where water shortage warrants reduction of fish numbers the director may permit licensed anglers and children 11 years of age and younger to take and possess game fish in numbers exceeding current bag and possession limits. In granting such permission the director may specify bag and possession limits and manner and method of taking for such waters.

R. Possession and release of live game fish:

(1) It is unlawful to release any live game fish into any water in the state, except for fish which were legally caught from that water, without a permit issued by the department.

(2) It is unlawful to possess or transport any live game fish away from the water from which they were caught without a permit issued by the department.

(3) Exception: Department employees or federal employees while performing their official duties or those individuals working on behalf of the department when directed by a department employee.

S. Possession of undersized fish: It is unlawful for any person to have game fish in their possession which do not meet the minimum length requirements as specified in 19.31.4 NMAC.

T. Number of fishing poles or lines: It is unlawful to angle with more than one pole or line without having purchased a current two rod validation during the current license year. It is unlawful under any circumstance to angle with more than two poles or lines. A trotline shall not count toward an anglers limit on fishing poles or lines.

U. Exceeding daily bag limit: It is unlawful to exceed the daily bag limit of any protected fish species, as specified in 19.31.4 NMAC.

V. Exceeding possession limit: It is unlawful to exceed the possession limit of any protected fish species, as specified in 19.31.4 NMAC.

W. Exceeding daily bag limit or possession limit - Penalty Assessment: Any person exceeding the daily bag limit or the possession limit by two fish or less shall be offered a penalty assessment.

X. Snagging game fish: It is unlawful to snag game fish or to keep any snagged game fish except Kokanee salmon during the special Kokanee salmon season as specified in 19.31.4 NMAC.

Y. Special trout waters: Only barbless lures or flies may be used in the special trout waters designated in 19.31.4 NMAC, except in the following waters any legal angling gear and legal bait may be used: the Vermejo river system within Vermejo Park ranch boundaries, Gilita, Little Turkey, and Willow creeks, Mineral creek, Red River from its confluence with the Rio Grande upstream to the lower walking bridge at Red River state fish hatchery, Rio Chama from the river crossing bridge on U.S. 84 at Abiquiu upstream 7.0 miles to the base of Abiquiu dam, Rio Grande, Rio Ruidoso, and Whitewater creek from Catwalk National Recreation Trail parking area upstream to headwaters. It is unlawful to use tackle which does not meet these restrictions in the designated special trout waters.

Z. Attracting or concentrating fish:

(1) Artificial lights: Use of artificial lights is permitted for attracting game fish.

(2) Disturbing the bottom: It is unlawful in all special trout waters defined in Subsection A of 19.31.4.11 NMAC, to disturb or dislodge aquatic plant growth, sediment, or rocks for the purpose of attracting or concentrating fish. It shall also be unlawful to angle in the immediate vicinity where such disturbance has occurred.

(3) Chumming: Chumming is legal in all waters which have no tackle restrictions.

AA. Violation of age or disability restrictions: It is unlawful for any person to fish in any water with age or disability restrictions when that person does not meet the requirements as specified in 19.31.4 NMAC.

[19.31.10.14 NMAC - Rp, 19.31.10.14 NMAC, 4-1-2019]

19.31.10.15 LANDS AND WATERS OWNED, ADMINISTERED,CONTROLLED, OR MANAGED BY THE STATE GAME COMMISSION:

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

B. Violating provisions of posted signs: It is unlawful to violate the provisions of posted signs on areas under the control of, leased by or managed by the state game commission.

C. Trespass on state game commission owned lands: It is unlawful to enter upon state game commission owned lands unless licensed or as otherwise allowed by state game commission rule or as posted by the department.

[19.31.10.15 NMAC - Rp, 19.31.10.15 NMAC, 4-1-2019]

19.31.10.16 BOATS, OTHER FLOATING DEVICES, AND MOTORS: It is unlawful to operate, control or ride in any boat or other floating device contrary to sections A-D below.

A. Electric or gas motors allowed: On the following lakes controlled by the department, boats and other floating devices with electric or gas motors shall be permitted only during the season and hours when fishing is permitted. Boats or floating devices on these lakes shall not be operated at greater than normal trolling speed: **Clayton lake WMA, and McAllister lakeWMA**

B. Electric motors only: On the following lakes controlled by the department, only boats and other floating devices using electric motors or with gas motors that are not in use shall be permitted: **Bear canyon lake WMA, Bill Evans lake WMA, Green Meadow, Fenton lake WMA, Hopewell, Lake Roberts WMA, Morphy, Quemado, Snow, Conoco lakes and Tucumcari lake WMA.**

C. No motors allowed: On the following lakes controlled by the department, only boats and other floating devices using no motors shall be permitted: **Bernardo WMA, La Joya WMA, Jackson lake WMA, McGaffey, San Gregorio, Shuree ponds and Wagon Mound WMA.**

D. No boats or floating devices allowed: On the following lakes controlled by the department, no boats or other floating devices shall be permitted: **Bonito lake, Monastery lake, and Red River hatchery pond.**

E. Department personnel or persons authorized by the director may use gasoline powered motors on all waters in the state while performing official duties.

[19.31.10.17 NMAC - Rp, 19.31.10.17 NMAC, 4-1-2019]

19.31.10.17 HUNTING ON PRIVATE LAND WITHOUT WRITTEN PERMISSION AND SEIZURE OF GAME ANIMALS, FURBEARERS, GAME BIRDS, OR SHED ANTLERS:

A. It is unlawful to knowingly enter upon any private property to take or attempt to take any game animal, furbearer, game bird or game fish without possessing written permission from the landowner or person in control of the land or trespass rights unless otherwise permitted in rule or statute.

B. Any game animal, furbearer or game bird taken in violation of this section or Section 30-14-1 NMSA 1978 is unlawfully taken and shall be subject to seizure.

C. All shed antlers collected in violation of any New Mexico state game commission, state or federal land closure, in violation of Section 30-14-1 NMSA 1978 or in violation of any of the provisions of Chapter 17 NMSA 1978 or state game commission rule remain property of the State of New Mexico and shall be seized.

D. Exception: Written permission is not required on any property which is participating in a unitization, receives compensation for

allowing public access, receives unit-wide authorizations or has agreed to a ranch-wide agreement when species being harvested is part of any of these agreements.
[19.31.10.18 NMAC - Rp, 19.31.10.18 NMAC, 4-1-2019]

19.31.10.18 MANNER AND METHOD PENALTY ASSESSMENTS: Individuals who commit the following violations shall be offered penalty assessments:

A. No habitat management and access validation stamp (HMAV), contrary to Section 17-4-34 NMSA 1978;

B. No habitat stamp (Sikes Act), contrary to 19.31.10 NMAC;

C. Size limit violations on fish, contrary to 19.31.10 NMAC;

D. Trotline violations, contrary to 19.31.10 NMAC;

E. Use of bait or prohibited lure or fly in a special trout water or noodling, contrary to 19.31.10 NMAC;

F. Disturbing the bottom "shuffling" in a special trout water, contrary to 19.31.10 NMAC;

G. Use of bait fish, contrary to 19.31.10 NMAC;

H. Release of bait fish, contrary to Section 17-3-28 NMSA 1978;

I. More than two lines or two lines without stamp, contrary to 19.31.10 NMAC;

J. Exceeding the daily bag limit or the possession limit of fish by two fish or less, contrary to 19.31.10 NMAC;

K. Snagging or keeping snagged game fish, contrary to 19.31.10 NMAC;

L. Spearfishing and bow fishing violations, contrary to 19.31.10 NMAC;

M. Unlawfully fishing in waters with age or individuals with disabilities use restrictions, contrary to 19.31.10 NMAC;

N. Boat or other floating device violation, contrary to 19.31.10 NMAC;

O. Use of live protected species as a decoy, contrary to 19.31.10 NMAC;

P. Use of an electronic calling device, contrary to 19.31.10 NMAC;

Q. Use of unapproved shot or shotgun capable of holding more than three shells while hunting migratory game birds, contrary to 19.31.10 NMAC;

R. Unlawful ammunition/ bullet/ shot or unlawful caliber, contrary to 19.31.10 NMAC;

S. Hunting hours violations, contrary to 19.31.10 NMAC;

T. Possession of game animal parts found in field, contrary to 19.31.10 NMAC;

U. Shooting at artificial wildlife from the road, contrary to 19.31.10 NMAC;

V. Harassing protected species, contrary to 19.31.10 NMAC;

W. Driving off road or on a closed road, contrary to 19.31.10 NMAC;

X. Violation of posted signs, contrary to 19.31.10 NMAC;

Y. Unlawful use of dogs, contrary to 19.31.10 NMAC;

Z. Unlawful use of cellular, Wi-Fi or satellite camera, contrary to 19.31.10 NMAC; or

AA. Angling with more than two flies in the San Juan, contrary to 19.31.10 NMAC.
[19.31.10.20 NMAC - Rp, 19.31.10.20 NMAC, 4-1-2019]

19.31.10.19 SEIZURE: Any officer authorized to enforce Chapter 17 NMSA 1978 and state game commission rules shall seize unlawfully possessed or imported species, or any protected species or the carcass or parts of any protected species that is taken or possessed contrary to Chapter 17 NMSA 1978 or state game commission rule.
[19.31.10.20 NMAC - N, 4-1-2019]

19.31.10.20 DIRECTOR'S AUTHORITY TO ACCOMMODATE DISABILITY OR MEDICAL IMPAIRMENT: The director may authorize reasonable modifications to the manner and method of take for any licensee who has a verifiable medical condition that, in the director's sole discretion, necessitates such accommodation. In order to apply for such accommodation, the licensee shall complete and submit any form, information and records required by the director. Any licensee granted an accommodation must adhere to all other state game commission rules as to manner and method of take that are not specifically waived by such accommodation; and shall adhere to any restrictions imposed by the director and shall carry a copy of any director granted accommodations on their person while hunting, fishing or trapping.
[19.31.10.21 NMAC - Rp, 19.31.10.21 NMAC, 4-1-2019]

HISTORY OF 19.31.10 NMAC:
Pre-NMAC History: The material in this part was derived from that previously file with the Commission of Public Records - State Records Center and Archives:
DFR 67-5 Basic Regulation No. 500, Concerning Method and Manner of Hunting, Taking, Possessing, Disposing, and Transporting of Game Animals, Birds, Fish or Bullfrogs, or parts thereof, Taken in New Mexico, Use and Occupancy of Lands and Waters Administered, Owned, Controlled or Managed by the State Game Commission, 5-25-67.
DGF 68-11 Basic Regulation No. 525, Concerning Method and Manner of Hunting, Taking, Possessing, Disposing, and Transporting of Game Animals, Game Birds, Game Fish or Bullfrogs, or parts thereof, Taken in New Mexico, the Use and Occupancy of Lands and Waters Administered, Owned, Controlled or Managed by the State Game Commission, 8-21-68.
DGF 72-6 Basic Regulation 550 Governing Water Pollution, Water Diversion, Animal Releases, Possession of Game, Manner of Hunting and Fishing, and Use of Department Lands, 5-31-72.
Regulation No. 612 Basic Regulation Governing Water Pollution, Water Diversion, Animal Releases, Possession of Game, Manner of Hunting and Fishing, Use of Department Lands, Retention of

Protected Species, Permits and Licenses Issued, and the Hunter Safety Certificate Requirement, 3-2-82.
Regulation No. 677 Basic Regulation Governing Water Pollution, Possession of Game, Permits and Licenses Issued, Retention and Importation of Protected Species, Manner of Hunting and Fishing, Use of Department Lands, Hunter Training Course Required, Hunting License Revocation, Camping Near a Water Hole, 6-25-90.
Order No. 5-91 Requiring that Live-Firing Courses by Taught only by Department of Game and Fish and Volunteer Hunter Education Instructors Certified in Live-Firing Instruction, 10-3-91.

NMAC History:
19 NMAC 31.1, Hunting and Fishing - Manner and Method of Taking, 3-1-95.
19.31.10 NMAC, Hunting and Fishing - Manner and Method of Taking - Amended 4-1-2018.
19.31.10 NMAC, Hunting and Fishing - Manner and Method of Taking - Replaced 4-1-2019.

History of Repealed Material:
19.31.10 NMAC, Hunting and Fishing - Manner and Method of Taking - Repealed 4-1-2007.
19.31.10 NMAC, Hunting and Fishing - Manner and Method of Taking - Repealed 11-7-2016.
19.31.10 NMAC, Hunting and Fishing - Manner and Method of Taking - Repealed 4-1-2019.

GAME AND FISH DEPARTMENT

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 31 HUNTING AND FISHING
PART 13 DEER

19.31.13.1 ISSUING AGENCY: New Mexico department of game and fish.
[19.31.13.1 NMAC - Rp, 19.31.13.1 NMAC, 4-1-19]

19.31.13.2 SCOPE: Sportspersons interested in deer management and deer hunting. Additional requirements may be found in Chapter 17, NMSA 1978, and Chapters 30, 31, 32 and 33 of Title 19 NMAC.
[19.31.13.2 NMAC - Rp, 19.31.13.2 NMAC, 4-1-19]

19.31.13.3 STATUTORY AUTHORITY: 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.
[19.31.13.3 NMAC - Rp, 19.31.13.3 NMAC, 4-1-19]

19.31.13.4 DURATION: April 1, 2019 through March 31, 2023.
[19.31.13.4 NMAC - Rp, 19.31.13.4 NMAC, 4-1-19]

19.31.13.5 EFFECTIVE DATE: April 1, 2019, unless a later date is cited at the end of an individual section.
[19.31.13.5 NMAC - Rp, 19.31.13.5 NMAC, 4-1-19]

19.31.13.6 OBJECTIVE: Establishing open hunting seasons and regulation, rules, and procedures governing the distribution and issuance of deer licenses by the department.
[19.31.13.6 NMAC - Rp, 19.31.13.6 NMAC, 4-1-19]

19.31.13.7 DEFINITIONS:

A. "Antlerless deer" or "A" shall mean a deer without antlers.

B. "Deer" as used herein, shall mean any wild cervid of the genus Odocoileus.

C. "Deer enhancement program" as used herein, shall mean the department activity that allows the issuance of not more than two permits for the taking of one fork antlered deer per permit, with the purpose of raising funds for programs and projects to benefit deer.

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. "Either sex" or "ES" shall mean any one deer.

G. "Either sex white-tailed deer" or "ESWTD" shall mean any one white-tailed deer (Odocoileus virginianus).

H. "Fork antlered deer" or "FAD" shall mean a deer possessing antlers, one of which shall have a definite fork showing two or more distinct points. A burr at the base does not constitute a point or fork.

I. "Fork antlered mule deer" or "FAMD" shall mean a mule deer (Odocoileus hemionus) possessing antlers, one of which shall have a definite fork showing two or more distinct points. A burr at the base does not constitute a point or fork.

J. "Fork antlered white-tailed deer" or "FAWTD" shall mean a white-tailed deer (Odocoileus virginianus) possessing antlers, one of which shall have a definite fork showing two or more distinct points. A burr at the base does not constitute a point or fork.

K. "Game management unit" or "GMU" shall mean those areas as described in 19.30.4 NMAC, Boundary Descriptions for Game Management Units.

L. "High demand hunt" shall mean a special draw hunt where the total number of non-resident applicants for a deer hunt exceeds twenty-two percent of the total applicants based on data for the two immediately preceding years.

M. "Private land-only deer license" shall mean the valid official document for hunting deer on private deeded land during designated private land-only hunts.

N. "Quality hunt" shall mean a hunt designed to provide a hunter with an opportunity to achieve one or more of the following: an enhanced experience based on

timing and length of hunt season; lower hunter density; or an increased opportunity for success.

O. "Web sale" shall refer to accessing the department's internet address to initiate the process to purchase specific deer hunting licenses as designated by the director annually.

P. "Wildlife management areas" or "WMAs" shall mean those areas as described in 19.34.5 NMAC Wildlife Management Areas.

[19.31.13.7 NMAC - Rp, 19.31.13.7 NMAC, 4-1-19]

19.31.13.8 ADJUSTMENT OF LICENSES, PERMITS AND AUTHORIZATIONS: The director, with the verbal concurrence of the chairperson or their designee, may adjust the number of licenses, permits, or authorizations for deer up or down by no more than twenty percent of the total licenses available in the GMU to address significant changes in population levels or to address critical department management needs. This adjustment may be applied to any or all of the specific hunt codes for deer. The director may change or cancel all hunts on military lands to accommodate closures on those lands; if changed, the season length and bag limit shall remain the same as assigned on the original hunt code.

[19.31.13.8 NMAC - Rp, 19.31.13.8 NMAC, 4-1-19]

19.31.13.9 GMUs 2A, 2B, 2C, 4 AND 5A PRIVATE LAND-ONLY HUNTS:

A. Persons applying for private land-only deer licenses in GMUs 2A, 2B, 2C, 4 and 5A must do so on a special application form that may only be obtained from landowners in these GMUs.

B. GMU 2A, 2B, 2C, 4 and 5A landowners are required to provide proof of land ownership to obtain special application forms from the department.

C. For GMU 5A, the department may use input from landowners to develop a process to distribute special application forms to private landowners that provides reasonable and equitable participation opportunities for landowners.

D. When applying for private land hunts in GMU 5A, no more than one person may apply on each application form.

[19.31.13.9 NMAC - Rp, 19.31.13.9 NMAC, 4-1-19]

19.31.13.10 CHRONIC WASTING DISEASE: The director has the authority to designate possession criteria to any deer hunter where chronic wasting disease (CWD) is a concern. It is unlawful to transport dead deer, or their parts, taken from any GMU or area identified by the director in which the presence of, or possibility of, exposure to CWD has been identified to any location outside that GMU except for the following:

A. meat that is cut and wrapped (either commercially or privately);

B. quarters or other portions of meat with no part of the spinal column or head attached;

C. meat that has been boned out;

D. hides with no heads attached;

E. clean skull plates with antlers attached; clean is defined as having been immersed in a bath of at least one part chlorine bleach and two parts water with no meat or tissue attached;

F. antlers with no meat or tissue attached;

G. finished taxidermied heads;

H. or by prior arrangement to a department office.

[19.31.13.11 NMAC - Rp, 19.31.13.10 NMAC, 4-1-19]

19.31.13.11 QUALITY DEER HUNTS: Quality hunts for deer are as follows:

A. the third any legal sporting arms hunt in GMU 2B;

B. the January bow hunts in GMU 2B;

C. all hunts in GMU 2C;

D. all hunts in GMU 5B;

E. all hunts in the Burro mountains hunt area in GMU 23 as defined in 19.30.4 NMAC;

F. all hunts in GMUs 17, 27, 33 and 41;

G. all hunts in the Valle Vidal;

H. all private land deer incentive program hunts;

I. the November bow hunt in Sugarite canyon state park; and

J. all hunts on the Humphries/Rio Chama/Sargent WMAs.

[19.31.13.12 NMAC - Rp, 19.31.13.11 NMAC, 4-1-19]

19.31.13.12 SPECIAL DEER HUNTING OPPORTUNITIES:

A. Deer enhancement program:

(1) Program description: The director of the department shall collect all proceeds generated through the auction and lottery of special deer permits, and such monies shall be deposited in the game protection fund. These monies shall be made available for expenditure by the department solely for programs and projects to benefit deer and for direct costs incurred in carrying out these programs. These monies shall be used to augment, and not replace, monies appropriated from existing funds available to the department for the conservation, restoration, utilization and management of deer.

(2) Requirements for issuance of special deer permits:

(a) The state game commission shall authorize the director of the department to issue not more than two special deer permits in any one license year to take one fork antlered deer per permit. The director shall allow the sale of one permit through auction to the highest bidder and one permit to a person selected through a random drawing of a lottery ticket by the department or an incorporated, nonprofit organization dedicated to the conservation of deer.

(b) Unless their hunting privileges have been revoked pursuant to law, any person is eligible to submit a bid for the special deer auction permit or purchase lottery tickets in an attempt to be selected for the special deer lottery permit.

(c) The special deer permits issued through auction and lottery may be transferred through sale, barter or gift by the successful individuals to only other individuals qualified to hunt.

(3) Enhancement hunts: Deer enhancement licenses shall be valid from September 1 through January 31, for any legal sporting arms. These licenses shall be valid statewide where hunting is allowed. The bag limit shall be one fork antlered deer. The authorization to obtain a deer enhancement license may be used either by the applicant or any individual.

B. Deer incentive programs:

(1) Chronic wasting disease (CWD) reporting incentive: The director may annually allow up to two deer authorizations to be issued through a random drawing for deer and elk hunters submitting their legally harvested animal for CWD testing. Authorizations awarded pursuant to this rule may be transferred through sale, barter or gift. Deer incentive hunts shall be valid only for the dates, legal sporting arms, bag limit and area specified by the director.

(2) Private land deer incentive program: Private landowners who are conducting and maintaining substantial habitat improvements or land management practices on their deeded lands that directly and significantly benefit deer may be considered for special recognition. Only those projects as determined by the department to be relevant and beneficial to deer will be considered. Landowners must submit an application and once approved, develop a deer conservation and management plan in cooperation with the department. Upon approval of the plan the landowner may be granted alternative season dates as approved by the department. Landowners receiving incentive authorizations are required to submit an update as directed by the department to be considered for continued participation. The hunt code for any unique hunt season approved pursuant to this program shall be DER-1-600.

C. Premium hunt opportunity: One premium deer draw hunt will be issued each license year through the draw. The hunt area will be statewide on any public land open to hunting, including WMAs, and private land with written permission.

open GMUs or areas	2019-2020 hunt dates	2020-2021 hunt dates	2021-2022 hunt dates	2022-2023 hunt dates	hunt code	licenses	bag limit
statewide	9/1/2019-1/31/2020	9/1/2020-1/31/2021	9/1/2021-1/31/2022	9/1/2022-1/31/2023	DER-1-700	1	FAD

[19.31.13.13 NMAC - Rp, 19.31.13.12 NMAC 4-1-19]

19.31.13.13 POPULATION MANAGEMENT HUNTS:

A. The director or their designee may authorize population management hunts for deer when justified in writing by department personnel.

B. The director or their designee shall designate the legal sporting arms, season dates, season lengths, bag limits, hunt boundaries, specific requirements or restrictions, and number of licenses to be issued.

C. In the event that an applicant is not able to hunt on the dates specified, the applicant's name shall be moved to the bottom of the list and another applicant may be contacted for the hunt.

D. In those instances where a population management hunt is warranted on deeded private lands, the landowner may suggest eligible hunters of their choice by submitting a list of prospective hunters' names to the department for licensing consideration. No more than one-half of the total number of licenses authorized shall be available to landowner identified hunters. The balance of prospective hunters shall be identified by the department.

[19.31.13.14 NMAC - Rp, 19.31.13.13 NMAC, 4-1-19]

19.31.13.14 DEER HUNTS:

A. Public draw (and private lands in GMUs 2A, 2B, 2C, 4 and 5A) deer hunts, listing the open GMUs or areas, eligibility requirements or restrictions, hunt dates, hunt codes, legal sporting arms, number of licenses and bag limit shall be as indicated below. The state game commission owned prairie-chicken areas shall be open for deer hunting during established seasons. Hunters holding a valid bow deer license for GMUs 23 or 24 who did not harvest a deer during their hunt will be allowed to hunt for antlerless deer within the Silver City deer management area as delineated by the department from January 16 through February 5.

open GMUs or areas	2019-2020 hunt dates	2020-2021 hunt dates	2021-2022 hunt dates	2022-2023 hunt dates	hunt code	licenses	bag limit
2A	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-1-100	150	FAD
2A: private land only	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-1-101	40	FAD
2A: **youth only**	11/23-12/1	11/21-11/29	11/20-11/28	11/19-11/27	DER-1-102	40	FAD
2A	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-103	40	FAD
2A: private land only	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-104	15	FAD
2A	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-105	80	FAD
2A: private land only	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-106	15	FAD
2A	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-107	50	FAD
2A: private land only	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-108	10	FAD
2B	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-1-109	275	FAD
2B: private land only	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-1-110	25	FAD
2B	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-1-111	400	FAD
2B: private land only	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-1-112	25	FAD
2B	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	DER-1-113	475	FAD
2B: private land only	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	DER-1-114	75	FAD
2B: **youth only**	11/23-12/1	11/21-11/29	11/20-11/28	11/19-11/27	DER-1-115	150	FAD
2B	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-116	130	FAD
2B: **youth only**	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-117	20	FAD
2B: private land only	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-118	10	FAD
2B	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-119	180	FAD
2B: **youth only**	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-120	50	FAD
2B: private land only	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-121	30	FAD
2B	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-122	175	FAD

2B: **youth only**	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-123	20	FAD
2B: private land only	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-124	10	FAD
2C	11/9-11/13	11/14-11/18	11/13-11/17	11/12-11/16	DER-1-125	30	FAD
2C: private land only	11/9-11/13	11/14-11/18	11/13-11/17	11/12-11/16	DER-1-126	8	FAD
2C	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-127	50	FAD
2C: private land only	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-128	15	FAD
2C	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-129	20	FAD
2C: private land only	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-130	9	FAD
4: Humphries/ Rio Chama/ Sargent WMAs	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-1-131	20	FAD
4: Humphries/ Rio Chama/ Sargent WMAs, **youth only**	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-1-132	10	FAD
4: private land only	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-1-133	175	FAD
4: Humphries/ Rio Chama/ Sargent WMAs	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-1-134	20	FAD
4: private land only	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-1-135	175	FAD
4: Humphries/ Rio Chama/ Sargent WMAs	11/16-11/20	11/14-11/18	11/13-11/17	11/12-11/16	DER-1-136	10	FAD
4: private land only	11/16-11/20	11/14-11/18	11/13-11/17	11/12-11/16	DER-1-137	10	FAD
4: Humphries/ Rio Chama/ Sargent WMAs, **youth only**	11/27-12/1	11/25-11/29	11/24-11/28	11/23-11/27	DER-1-138	5	FAD
4: Humphries/ Rio Chama/ Sargent WMAs	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-139	10	FAD
4: private land only	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-140	150	FAD
4: private land only	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-141	100	FAD
5A: public land only	11/5-11/11	11/10-11/16	11/9-11/15	11/8-11/14	DER-1-142	40	FAD
5A: private land only	11/5-11/11	11/10-11/16	11/9-11/15	11/8-11/14	DER-1-143	220	FAD

5A: public land only	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-144	30	FAD
5A: private land only	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-145	220	FAD
5A: public land only	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-146	10	FAD
5A: private land only	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-147	50	FAD
5B	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	DER-1-148	25	FAD
5B: **youth only**	11/23-12/1	11/21-11/29	11/20-11/28	11/19-11/27	DER-1-149	10	FAD
5B	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-150	10	FAD
5B	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-151	10	FAD
6A and 6C: **mobility impaired**	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	DER-1-152	20	FAD
6A and 6C	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	DER-1-153	100	FAD
6A and 6C	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-154	100	FAD
6A and 6C	9/28-10/2	10/3-10/7	10/2-10/6	10/1-10/5	DER-3-155	115	FAD
7	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	DER-1-156	25	FAD
7	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-157	10	FAD
7	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-158	20	FAD
8: **youth only**	11/23-12/1	11/21-11/29	11/20-11/28	11/19-11/27	DER-2-159	50	FAD
8	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-160	65	FAD
9: including Water canyon and Marquez WMAs	11/9-11/13	11/14-11/18	11/13-11/17	11/12-11/16	DER-1-161	10	FAD
9: including Water canyon and Marquez WMAs, **youth only**	11/23-12/1	11/21-11/29	11/20-11/28	11/19-11/27	DER-1-162	10	FAD
9: including Water canyon and Marquez WMAs	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-163	10	FAD
9: including Water canyon and Marquez WMAs, **restricted muzzleloader only**	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-164	10	FAD

10: **mobility impaired**	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-1-165	20	FAD
10	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-1-166	70	FAD
10	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-1-167	65	FAD
10	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	DER-1-168	90	FAD
10: **youth only**	11/23-12/1	11/21-11/29	11/20-11/28	11/19-11/27	DER-1-169	25	FAD
10	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-170	100	FAD
10	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-171	90	FAD
12	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-1-172	90	FAD
12	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-173	20	FAD
12	11/9-11/13	11/14-11/18	11/13-11/17	11/12-11/16	DER-3-174	40	FAD
13	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	DER-1-175	150	FAD
13	11/9-11/13	11/14-11/18	11/13-11/17	11/12-11/16	DER-1-176	150	FAD
13: **youth only**	11/23-12/1	11/21-11/29	11/20-11/28	11/19-11/27	DER-1-177	50	FAD
13	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-178	125	FAD
13	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-179	75	FAD
13	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-3-180	200	FAD
14	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-1-181	50	FAD
14	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-182	30	FAD
14	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-183	25	FAD
14	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-184	50	FAD
15	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-185	75	FAD
15	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-186	25	FAD
15	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-3-187	165	FAD
15: **youth only**	11/23-12/1	11/21-11/29	11/20-11/28	11/19-11/27	DER-3-188	100	FAD
16	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	DER-1-189	300	FAD
16: **mobility impaired**	11/9-11/13	11/14-11/18	11/13-11/17	11/12-11/16	DER-1-190	25	FAD
16	11/9-11/13	11/14-11/18	11/13-11/17	11/12-11/16	DER-1-191	300	FAD
16: **youth only**	11/23-12/1	11/21-11/29	11/20-11/28	11/19-11/27	DER-1-192	100	FAD
16	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-193	230	FAD
16	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-194	175	FAD
16	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-3-195	300	FAD
17	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	DER-1-196	80	FAD
17	11/9-11/13	11/14-11/18	11/13-11/17	11/12-11/16	DER-1-197	80	FAD
17: **youth only**	11/23-12/1	11/21-11/29	11/20-11/28	11/19-11/27	DER-1-198	80	FAD
17	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-199	75	FAD
17	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-200	75	FAD
17	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-3-201	80	FAD

18	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	DER-1-202	70	FAD
18	11/9-11/13	11/14-11/18	11/13-11/17	11/12-11/16	DER-1-203	70	FAD
18	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-204	50	FAD
18	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-205	40	FAD
18	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-3-206	75	FAD
19: White Sands missile range only, **mandatory** check-in/check-out	1/3-1/5 & 1/17-1/19	1/15-1/17 & 1/29-1/31	1/14-1/16 & 1/28-1/30	1/13-1/15 & 1/27-1/29	DER-1-207	5	FAD
19: except the White Sands missile range portion, **mandatory** check-in/check-out	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-208	10	FAD
	12/7-12/11	12/5-12/9	12/4-12/8	12/3-12/7	DER-3-209	10	FAD
20	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	DER-1-210	90	FAD
20	11/9-11/13	11/14-11/18	11/13-11/17	11/12-11/16	DER-1-211	90	FAD
20	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-212	40	FAD
20	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-213	25	FAD
20	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-3-214	85	FAD
21	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	DER-1-215	425	FAD
21	11/9-11/13	11/14-11/18	11/13-11/17	11/12-11/16	DER-1-216	425	FAD
21: **youth only**	11/23-12/1	11/21-11/29	11/20-11/28	11/19-11/27	DER-1-217	100	FAD
21	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-218	300	FAD
21	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-219	200	FAD
21	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-3-220	350	FAD
22	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	DER-1-221	70	FAD
22	11/9-11/13	11/14-11/18	11/13-11/17	11/12-11/16	DER-1-222	70	FAD
22: **youth only**	11/23-12/1	11/21-11/29	11/20-11/28	11/19-11/27	DER-1-223	20	FAD
22	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-224	30	FAD
22	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-225	25	FAD
22	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-3-226	65	FAD
23: except the Burro mountains hunt area	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	DER-1-227	450	FAMD
	11/9-11/13	11/14-11/18	11/13-11/17	11/12-11/16	DER-1-228	450	FAMD
	11/16-11/20	11/21-11/25	11/20-11/24	11/19-11/23	DER-1-229	100	FAWTD
	12/7-12/15	12/5-12/13	12/4-12/12	12/3-12/11	DER-1-230	50	FAWTD
23: except the Burro mountains hunt area, **youth only**	11/23-12/1	11/21-11/29	11/20-11/28	11/19-11/27	DER-1-231	75	FAD

23: except the Burro mountains hunt area	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-232	205	FAMD
23/24: Silver City management area	1/16-2/5	1/16-2/5	1/16-2/5	1/16-2/5			A
23: except the Burro mountains hunt area	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-233	50	FAMD
23/24: Silver City management area	1/16-2/5	1/16-2/5	1/16-2/5	1/16-2/5			A
23: except the Burro mountains hunt area	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-234	100	FAWTD
23/24: Silver City management area	1/16-2/5	1/16-2/5	1/16-2/5	1/16-2/5			A
23: except the Burro mountains hunt area	1/16-1/31	1/16-1/31	1/16-1/31	1/16-1/31	DER-2-235	50	FAWTD
23/24: Silver City management area	1/16-2/5	1/16-2/5	1/16-2/5	1/16-2/5			A
23: except the Burro mountains hunt area	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-3-236	225	FAMD
23: except the Burro mountains hunt area	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-3-237	45	FAWTD
23: Burro mountains hunt area	11/2-11/10	11/7-11/15	11/6-11/14	11/5-11/13	DER-1-238	35	FAMD
	12/7-12/15	12/5-12/13	12/4-12/12	12/3-12/11	DER-1-239	40	FAWTD
23: Burro mountains hunt area, **youth only**	11/23-12/1	11/21-11/29	11/20-11/28	11/19-11/27	DER-1-240	25	FAD
23: Burro mountains hunt area	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-241	40	FAMD
23/24: Silver City management area	1/16-2/5	1/16-2/5	1/16-2/5	1/16-2/5			A
23: Burro mountains hunt area	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-242	20	FAWTD
23/24: Silver City management area	1/16-2/5	1/16-2/5	1/16-2/5	1/16-2/5			A
23: Burro mountains hunt area	1/16-1/31	1/16-1/31	1/16-1/31	1/16-1/31	DER-2-243	50	FAWTD
23/24: Silver City management area	1/16-2/5	1/16-2/5	1/16-2/5	1/16-2/5			A
23: Burro mountains hunt area	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-3-244	40	FAMD
23: Burro mountains hunt area	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-3-245	40	FAWTD
24: including Fort Bayard management area, **youth only**	9/28-10/6	10/3-10/11	10/2-10/10	10/1-10/9	DER-1-246	50	FAD
24: excluding Fort Bayard management area	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	DER-1-247	400	FAMD
24: excluding Fort Bayard management area	11/9-11/13	11/14-11/18	11/13-11/17	11/12-11/16	DER-1-248	400	FAMD

24: excluding Fort Bayard management area	11/16-11/20	11/21-11/25	11/20-11/24	11/19-11/23	DER-1-249	100	FAWTD
24: including Fort Bayard management area, **youth only**	11/23-12/1	11/21-11/29	11/20-11/28	11/19-11/27	DER-1-250	50	FAD
24: excluding Fort Bayard management area	12/7-12/15	12/5-12/13	12/4-12/12	12/3-12/11	DER-1-251	50	FAWTD
24: excluding Fort Bayard management area	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-252	125	FAMD
23/24: Silver City management area	1/16-2/5	1/16-2/5	1/16-2/5	1/16-2/5			A
24: excluding Fort Bayard management area	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-253	75	FAMD
23/24: Silver City management area	1/16-2/5	1/16-2/5	1/16-2/5	1/16-2/5			A
24: excluding Fort Bayard management area	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-254	60	FAWTD
23/24: Silver City management area	1/16-2/5	1/16-2/5	1/16-2/5	1/16-2/5			A
24: excluding Fort Bayard management area	1/16-1/31	1/16-1/31	1/16-1/31	1/16-1/31	DER-2-255	40	FAWTD
23/24: Silver City management area	1/16-2/5	1/16-2/5	1/16-2/5	1/16-2/5			A
24: excluding Fort Bayard management area	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-3-256	280	FAMD
24: excluding Fort Bayard management area	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-3-257	40	FAWTD
25	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	DER-1-258	100	FAD
25	11/9-11/13	11/14-11/18	11/13-11/17	11/12-11/16	DER-1-259	100	FAD
25	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-260	45	FAD
25	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-261	30	FAD
25	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-3-262	45	FAD
26	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	DER-1-263	100	FAD
26	11/9-11/13	11/14-11/18	11/13-11/17	11/12-11/16	DER-1-264	100	FAD
26	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-265	25	FAD
26	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-266	15	FAD
26	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-3-267	60	FAD
27	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	DER-1-268	50	FAMD

27	11/9-11/13	11/14-11/18	11/13-11/17	11/12-11/16	DER-1-269	50	FAMD
27	11/16-11/20	11/21-11/25	11/20-11/24	11/19-11/23	DER-1-270	40	FAWTD
27: **youth only**	11/23-12/1	11/21-11/29	11/20-11/28	11/19-11/27	DER-1-271	25	FAD
27	12/7-12/15	12/5-12/13	12/4-12/12	12/3-12/11	DER-1-272	25	FAWTD
27	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-273	40	FAMD
27	1/16-1/31	1/16-1/31	1/16-1/31	1/16-1/31	DER-2-274	40	FAWTD
27	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-3-275	40	FAMD
27	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-3-276	50	FAWTD
28: McGregor range	12/21-12/22	12/19-12/20	12/18-12/19	12/17-12/18	DER-1-277	25	FAD
28: McGregor range, **military only**	12/21-12/22	12/19-12/20	12/18-12/19	12/17-12/18	DER-1-278	25	FAD
29	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-1-279	170	FAD
29	11/9-11/13	11/14-11/18	11/13-11/17	11/12-11/16	DER-1-280	170	FAD
29	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-281	100	FAD
29	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-282	50	FAD
29	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-3-283	70	FAD
30	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-1-284	800	FAD
30	11/9-11/13	11/14-11/18	11/13-11/17	11/12-11/16	DER-1-285	800	FAD
30: **youth only**	11/23-12/1	11/21-11/29	11/20-11/28	11/19-11/27	DER-1-286	250	FAD
30	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-287	200	FAD
30	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-288	100	FAD
30	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-3-289	325	FAD
31	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	DER-1-290	465	FAD
31	11/16-11/20	11/21-11/25	11/20-11/24	11/19-11/23	DER-1-291	460	FAD
31	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-292	175	FAD
31	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-293	100	FAD
31	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-3-294	175	FAD
32	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-1-295	625	FAD
32	11/9-11/13	11/14-11/18	11/13-11/17	11/12-11/16	DER-1-296	625	FAD
32: portions, **youth only**	12/16-12/31	12/16-12/31	12/16-12/31	12/16-12/31	DER-1-297	15	A
32: portions	1/16-1/31	1/16-1/31	1/16-1/31	1/16-1/31	DER-1-298	15	A
32	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-299	150	FAD

32	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-300	100	FAD
32	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-3-301	175	FAD
33	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	DER-1-302	150	FAD
33	11/16-11/20	11/21-11/25	11/20-11/24	11/19-11/23	DER-1-303	150	FAD
33	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-304	60	FAD
33	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-305	50	FAD
33: **restricted muzzleloader only**	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-3-306	140	FAD
31/33 Huey WMA only, **youth only**	11/23-12/1	11/21-11/29	11/20-11/28	11/19-11/27	DER-3-307	10	ES
31/33 Huey WMA only, **youth only**	12/26/19-1/1/20	12/26/20-1/1/21	12/26/21-1/1/22	12/26/22-1/1/23	DER-3-308	10	A
34: **mobility impaired**	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-1-309	50	FAD
34: **youth only**	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-1-310	45	FAD
34	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-1-311	735	FAD
34	11/9-11/13	11/14-11/18	11/13-11/17	11/12-11/16	DER-1-312	735	FAD
34	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-313	450	FAD
34	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-314	350	FAD
34	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	DER-3-315	340	FAD
36: excluding Fort Stanton	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	DER-1-316	300	FAD
36: excluding Fort Stanton	11/9-11/13	11/14-11/18	11/13-11/17	11/12-11/16	DER-1-317	300	FAD
36: including Fort Stanton, **youth only**	11/23-12/1	11/21-11/29	11/20-11/28	11/19-11/27	DER-1-318	25	FAD
36: including Fort Stanton	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-319	225	FAD
36: including Fort Stanton	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-320	125	FAD
36: excluding Fort Stanton	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-3-321	115	FAD
36: including Fort Stanton, **youth only**	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-3-322	25	FAD
37	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	DER-1-323	375	FAD
37	11/16-11/20	11/21-11/25	11/20-11/24	11/19-11/23	DER-1-324	375	FAD
37	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-325	100	FAD
37	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-326	80	FAD
37	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-3-327	125	FAD
38	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	DER-1-328	175	FAD
38	11/16-11/20	11/21-11/25	11/20-11/24	11/19-11/23	DER-1-329	175	FAD
38	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-330	65	FAD

38	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-331	40	FAD
38	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-3-332	100	FAD
39	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	DER-1-333	40	FAD
39	11/16-11/20	11/21-11/25	11/20-11/24	11/19-11/23	DER-1-334	40	FAD
39	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-335	25	FAD
39	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-336	15	FAD
39	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-3-337	40	FAD
40	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	DER-1-338	50	FAD
40	11/16-11/20	11/21-11/25	11/20-11/24	11/19-11/23	DER-1-339	50	FAD
40	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-340	15	FAD
40	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-341	10	FAD
40	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-3-342	25	FAD
41	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-1-343	40	FAD
41	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-1-344	40	FAD
41: **youth only**	11/23-12/1	11/21-11/29	11/20-11/28	11/19-11/27	DER-1-345	5	FAD
41: **youth only**	12/7-12/11	12/5-12/9	12/4-12/8	12/3-12/7	DER-1-346	15	ESWTD
41	12/14-12/18	12/12-12/16	12/11-12/15	12/10-12/14	DER-1-347	10	ESWTD
41	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-348	10	FAD
41	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-349	10	FAD
41	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-350	25	FAD
42	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-1-351	40	FAD
42	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-1-352	35	FAD
42	11/27-12/1	11/25-11/29	11/24-11/28	11/23-11/27	DER-1-353	10	ESWTD
42	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-354	10	FAD
42	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-355	10	FAD
43	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-1-356	35	FAD
43	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-357	10	FAD
43	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-3-358	10	FAD
45	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-1-359	250	FAD
45: **mobility impaired**	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	DER-1-360	25	FAD
45	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	DER-1-361	250	FAD
45: **youth only**	11/23-12/1	11/21-11/29	11/20-11/28	11/19-11/27	DER-1-362	25	FAD
45	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-363	150	FAD
45	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-364	160	FAD
47	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-1-365	20	FAD
47	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-1-366	20	FAD
47	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-367	10	FAD

47	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-368	20	FAD
48	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-1-369	40	FAD
48	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-1-370	50	FAD
48	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-371	45	FAD
48	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-372	25	FAD
49	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-1-373	90	FAD
49	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-1-374	90	FAD
49	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-375	100	FAD
50	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-1-376	50	FAD
50	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-1-377	50	FAD
50	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-378	5	FAD
51A	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-1-379	145	FAD
51A	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-380	65	FAD
51B	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-1-381	15	FAD
51B	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-1-382	15	FAD
51B	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-383	10	FAD
52	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-1-384	90	FAD
52	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	DER-1-385	90	FAD
52	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-386	80	FAD
52: **restricted muzzleloader only**	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-387	25	FAD
53	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-1-388	85	FAD
53	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	DER-1-389	85	FAD
53	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-390	90	FAD
54/55: Colin Neblett WMA	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-1-391	15	FAD
54/55: Colin Neblett WMA	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-1-392	15	FAD
54/55: Colin Neblett WMA	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-393	10	FAD
55: ES Barker WMA	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-1-394	5	FAD
55: ES Barker WMA, **youth only**	11/23-12/1	11/21-11/29	11/20-11/28	11/19-11/27	DER-1-395	5	FAD
55: Urraca WMA	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-1-396	10	FAD
55: Urraca WMA	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-1-397	10	FAD
55: Valle Vidal	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-398	10	FAD
56	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-1-399	15	FAD
56	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-1-400	15	FAD
56: **youth only**	11/23-12/1	11/21-11/29	11/20-11/28	11/19-11/27	DER-1-401	10	FAD
56: **youth only**	12/7-12/11	12/5-12/9	12/4-12/8	12/3-12/7	DER-1-402	10	ESWTD

56	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-403	10	FAD
56	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-404	10	FAD
57	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-1-405	25	FAD
57	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-1-406	25	FAD
57: **youth only**	11/23-12/1	11/21-11/29	11/20-11/28	11/19-11/27	DER-1-407	10	FAD
57	11/27-12/1	11/25-11/29	11/24-11/28	11/23-11/27	DER-1-408	10	ESWTD
57	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-409	20	FAD
57: Sugarite canyon state park	11/1-11/30	11/1-11/30	11/1-11/30	11/1-11/30	DER-2-410	20	FAD
57	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-411	15	FAD
58	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-1-412	40	FAD
58	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-1-413	35	FAD
58: **youth only**	11/23-12/1	11/21-11/29	11/20-11/28	11/19-11/27	DER-1-414	10	FAD
58: **youth only**	12/7-12/11	12/5-12/9	12/4-12/8	12/3-12/7	DER-1-415	15	ESWTD
58	12/14-12/18	12/12-12/16	12/11-12/15	12/10-12/14	DER-1-416	10	ESWTD
58	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-417	10	FAD
58	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-418	25	FAD
59	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-1-419	40	FAD
59	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-1-420	40	FAD
59: **youth only**	11/23-12/1	11/21-11/29	11/20-11/28	11/19-11/27	DER-1-421	5	FAD
59: **youth only**	12/7-12/11	12/5-12/9	12/4-12/8	12/3-12/7	DER-1-422	15	ESWTD
59	12/14-12/18	12/12-12/16	12/11-12/15	12/10-12/14	DER-1-423	10	ESWTD
59	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-424	10	FAD
59	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-425	25	FAD

B. Private land-only deer hunts: Private land-only deer licenses shall be restricted to the hunt dates, eligibility requirements or restrictions, legal sporting arms and bag limit that corresponds to the draw hunt code listed in Subsection A of 19.31.13.14 NMAC for the GMU where the private landowner's property lies. Private land-only deer licenses shall be unlimited and available from any license vendor and the department's web site. Private land-only hunters in GMUs 2A, 2B, 2C, 4 and 5A must obtain a special application form from the landowner and apply through the draw. Private land-only hunts in GMUs 8, 46, 54 and 55 shall be as indicated below:

open GMUs or areas	**2019-2020 hunt dates**	**2020-2021 hunt dates**	**2021-2022 hunt dates**	**2022-2023 hunt dates**	**hunt code**	**licenses**	**bag limit**
8	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	DER-1-500	unlimited	FAD
8	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-501	unlimited	FAD
8	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-502	unlimited	FAD
46	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-1-503	unlimited	FAD
	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-1-504	unlimited	FAD
46	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-505	unlimited	FAD
46	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-506	unlimited	FAD

54	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-1-507	unlimited	FAD
	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-1-508	unlimited	FAD
	11/27-12/1	11/25-11/29	11/24-11/28	11/23-11/27	DER-1-509	unlimited	ESWTD
54: **youth only**	11/23-12/1	11/21-11/29	11/20-11/28	11/19-11/27	DER-1-510	unlimited	FAD
54	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-511	unlimited	FAD
54	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-512	unlimited	FAD
55	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	DER-1-513	unlimited	FAD
	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	DER-1-514	unlimited	FAD
55: **youth only**	11/23-12/1	11/21-11/29	11/20-11/28	11/19-11/27	DER-1-515	unlimited	FAD
55	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-516	unlimited	FAD
55	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-517	unlimited	FAD
55B	11/27-12/1	11/25-11/29	11/24-11/28	11/23-11/27	DER-1-518	unlimited	ESWTD

[19.31.13.14 NMAC - Rp, 19.31.13.15 NMAC, 4-1-19]

HISTORY OF 19.31.13 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 5/31/67;

Regulation No. 487, Establishing 1967 Seasons On Javelina And Barbary Sheep, filed 12/15/67;

Regulation No. 489, Establishing Turkey Seasons For The Spring of 1968, filed 3/1/68;

Regulation No. 491, Establishing Big Game Seasons For 1968 For Jicarilla Reservation, filed 3/1/68;

Regulation No. 492, Establishing Seasons On Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, And Barbary Sheep, filed 6/6/68;

Regulation No. 495, Establishing A Season On Bighorn Sheep, filed 10/2/68;

Regulation No. 496, Establishing An Elk Season In The Tres Piedras Area, Elk Area P-6, filed 12/11/68;

Regulation No. 502, Establishing Turkey Seasons For The Spring Of 1969, filed 3/5/69;

Regulation No. 503, Establishing 1969 Deer Seasons For Bowhunting Only And Big Game Seasons For The Jicarilla Indian Reservation, filed 3/5/69;

Regulation 504, Establishing Seasons on Deer, Bear, Turkey, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, And Barbary Sheep, filed 6/4/69;

Regulation No. 507, Establishing A Season On Bighorn Sheep, filed 8/26/69;

Regulation No. 512, Establishing Turkey Season For The Spring Of 1970, filed 2/20/70;

Regulation No. 513, Establishing Deer Season For Bowhunting Only In Sandia State Game Refuge, filed 2/20/70;

Regulation No. 514, Establishing Seasons On Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Barbary Sheep And Bighorn Sheep, filed 6/9/70;

Regulation No 520, Establishing Turkey Seasons For The Spring Of 1971, filed 3/9/71;

Regulation No. 522, Establishing 1971 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 3/9/71;

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 6/9/71;

Regulation No. 531, Establishing A Season On Javelina, filed 12/17/71;

Regulation No. 532, Establishing Turkey Seasons For The Spring Of 1972, filed 3/20/72;

Regulation No. 534, Establishing 1972 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 3/20/72;

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 6/26/72;

Regulation No. 542, Establishing A Season On Javelina, filed 12/1/72;

Regulation No. 545, Establishing Turkey Seasons For The Spring Of 1973, filed 2/26/73;
Regulation No. 546, Establishing 1973 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 2/26/73;
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 5/31/73;
Regulation No. 554, Establishing Special Turkey Seasons For The Spring of 1974, filed 3/4/74;
Regulation No. 556, Establishing 1974 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 3/14/74;
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 5/29/74;
Regulation No. 565, Establishing Special Turkey Seasons For The Spring Of 1975, filed 3/24/75;
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 3/24/75;
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 6/25/75;
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 2/23/76;
Regulation No. 583, Establishing Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/11/77;
Regulation No. 590, Establishing Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/15/78;
Regulation No. 596, Establishing Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/23/79;
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 2/22/80;
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 3/17/81;
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 3/10/82;
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 3/9/83;
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 4/2/84;
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 4/18/85;
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 3/25/86;
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 2/12/87;
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 12/18/87;
Regulation No. 663, Establishing Opening Spring Turkey For The Period April 1, 1989 through March 31, 1990, filed 3/28/89;
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 3/20/89;
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 11/21/89;
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 2/8/91;
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 3/4/92;
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 3/11/93.

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.

19.31.13 NMAC, Deer, filed 12-1-2006 - duration expired 3-31-2009.
19.31.13 NMAC, Deer, filed 3-13-2009 - duration expired 3-31-2011.
19.31.13 NMAC, Deer, filed 2-22-2011 - Repealed effective 3-29-2013. Replaced by 19.31.13 NMAC, Deer, effective 3-29-2013.
19.31.13 NMAC, Deer, filed 3-29-2013- Repealed effective 2-27-2015. Replaced by 19.31.13 NMAC, Deer, effective 4-1-2015.
19.31.13 NMAC, Deer, filed 2-17-2015- duration expired 3-31-2019.

GAME AND FISH DEPARTMENT

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 31 HUNTING AND FISHING
PART 14 ELK

19.31.14.1 ISSUING AGENCY: New Mexico department of game and fish.[19.31.14.1 NMAC - Rp, 19.31.14.1 NMAC, 4-1-19]

19.31.14.2 SCOPE: Sportspersons interested in elk management and hunting. Additional requirements may be found in Chapter 17, NMSA 1978, and Chapters 30, 31, 32 and 33 of Title 19 NMAC. [19.31.14.2 NMAC - Rp, 19.31.14.2 NMAC, 4-1-19]

19.31.14.3 STATUTORY AUTHORITY: 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.[19.31.14.3 NMAC - Rp, 19.31.14.3 NMAC, 4-1-19]

19.31.14.4 DURATION: April 1, 2019 through March 31, 2023.[19.31.14.4 NMAC - Rp, 19.31.14.4 NMAC, 4-1-19]

19.31.14.5 EFFECTIVE DATE: April 1, 2019, unless a later date is cited at the end of a section. [19.31.14.5 NMAC - Rp, 19.31.14.5 NMAC, 4-1-19]

19.31.14.6 OBJECTIVE: Establishing open hunting seasons and basic regulation, rules, and procedures governing the issuance of special elk permits and licenses by the department. [19.31.14.6 NMAC - Rp, 19.31.14.6 NMAC, 4-1-19]

19.31.14.7 DEFINITIONS:

A. "Antlerless elk" or "A" shall mean any one elk without antlers.

B. "Antler point restricted elk" or "APRE/6" shall mean any antler point restricted bull elk with a minimum of six visible antler points on one side. A brow tine or eye guard constitutes a point; a burr at the base does not.

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

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

E. "Elk" as used herein, shall mean any wild cervid of the genus Cervus.

F. "Elk enhancement program" and "special elk permits" as used herein, shall mean the department activity that allows the issuance of not more than two permits for the taking of one bull elk per permit, with the purpose of raising funds for programs and projects to benefit elk.

G. "Elk region" shall mean a portion of the state designated by the department to administer elk management activities. An elk region describes an assemblage of one or more herd units and encompasses one or more GMUs.

H. "Either sex" or "ES" shall mean any one elk.

I. "Game management unit" or "GMU" shall mean those areas as described in 19.30.4 NMAC Boundary Descriptions for Game Management Units.

J. "High demand hunt" shall mean a special draw hunt where the total number of non-resident applicants for an elk hunt exceeds twenty-two percent of the total applicants based on data for the two immediately preceding years.

K. "Mature bull" or "MB" shall mean a male elk with at least one brow tine extending six or more inches from the main beam or at least one forked antler with both branches six or more inches long.

L. "Primary management zone" shall mean designated areas of the state upon which elk management goals and subsequent harvest objectives are based.

M. "Private land authorization" shall mean the document generated by the department and issued to a private landowner that authorizes the holder to purchase a specified license to hunt elk.

N. "Quality hunt" shall mean a hunt designed to provide a hunter with an opportunity to achieve one or more of the following: an enhanced experience based on timing and length of hunt season; lower hunter density; or an increased opportunity for success.

O. "Secondary management zone" shall mean areas of the state that are not part of the primary management zone or special management zone.

P. "Special Management Zone" shall mean areas of the state not within the primary management zone or secondary management zone and where private land authorization issuance includes eligibility requirements or restrictions.

Q. "To be determined" or "TBD" shall mean the details of a hunt will be provided to the hunter as designated by the director.

R. "Web sale" shall refer to accessing the department's internet address to initiate the process to purchase specific elk hunting licenses as designated by the director annually.

S. "Wildlife management area" or "WMA" shall mean those areas as described in 19.34.5 NMAC Wildlife Management Areas.

[19.31.14.7 NMAC - Rp, 19.31.14.7 NMAC, 4-1-19]

19.31.14.8 ADJUSTMENT OF LICENSES, PERMITS, AND AUTHORIZATIONS: The director, with the verbal concurrence of the chairperson or their designee, may adjust the number of licenses, permits, or authorizations, up or down by no more than twenty percent to address significant changes in population levels or to address critical department management needs (exception: GMU 34, elk licenses and authorizations may be adjusted beyond this amount as necessary to meet management objectives). This adjustment may be applied to any or all permits, authorizations, or licenses for elk in a specific GMU or designated area.

[19.31.14.8 NMAC - Rp, 19.31.14.8 NMAC, 4-1-19]

19.31.14.9 ELK LICENSE APPLICATION REQUIREMENTS AND RESTRICTIONS:

A. Validity of license or permit: In the primary management zones, except GMUs 4 and 5A, private land "ranch only" (as defined in 19.30.5 NMAC) elk licenses shall not be valid on any other private lands. In GMUs 4, 5A, secondary and special management zones, private land licenses are valid on any other private lands within the GMU and the same zone designation only if accompanied by written permission.

B. Valle Vidal elk once-in-a-lifetime hunts: No person shall apply for a license to hunt bull elk on the Valle Vidal (as described in 19.30.4. NMAC) if he or she has held a license since 1983 allowing them to take a bull elk on the Valle Vidal. Persons that have held a youth-only license may apply for non-youth only licenses as long as they are eligible. No person shall apply for a license to hunt antlerless elk on the Valle Vidal if he or she has held a license since 1983 allowing them to take an antlerless elk on the Valle Vidal. Persons that have held a youth-only antlerless license may apply for non-youth only antlerless licenses as long as they are eligible. Either sex (ES) or mature bull/antlerless (MB/A) shall be considered as a "bull elk" license, and shall not be considered as an "antlerless" license for this restriction. Persons who have held a Valle Vidal elk license through any incentive program are exempt from this restriction.

[19.31.14.9 NMAC - Rp, 19.31.14.9 NMAC, 4-1-19]

19.31.14.10 CHRONIC WASTING DISEASE: The director has the authority to designate possession criteria to any elk hunter where chronic wasting disease (CWD) is a concern. It is unlawful to transport dead elk, or their parts, taken from any GMU or area identified by the director in which the presence of, or possibility of, exposure to chronic wasting disease has been identified, to any location outside that GMU, except for the following:

A. meat that is cut and wrapped (either commercially or privately);

B. quarters or other portions of meat with no part of the spinal column or head attached;

C. meat that has been boned out;

D. hides with no heads attached;

E. clean skull plates with antlers attached; clean is defined as having been immersed in a bath of at least one part chlorine bleach and two parts water with no meat or tissue attached;

F. antlers with no meat or tissue attached;

G. upper canine teeth, also known as "ivories";

H. finished taxidermied heads;

I. or by prior arrangement to a department office.

[19.31.14.11 NMAC - Rp, 19.31.14.10 NMAC, 4-1-19]

19.31.14.11 QUALITY ELK HUNTS: Quality hunts for elk are as follows:

A. all Valle Vidal hunts;

B. first three mature bull hunts and both bow hunts on the Sargent WMA as follows: ELK-1-136, ELK-1-137, ELK-1-138, ELK-2-134 and ELK-2-135;

C. any elk hunt in GMUs 13, 15, 16 and 17, including all sub-units, except antlerless or youth only hunts, that are closest to the rut period of September 15 to October 15 for each weapon type as follows: ELK-2-224, ELK-3-226, ELK-2-232, ELK-3-234, ELK-2-240, ELK-1-242, ELK-2-247, ELK-1-248, ELK-1-249, ELK-2-252, ELK-1-254, ELK-2-259, ELK-1-261, ELK-2-266, ELK-3-268, ELK-2-273, and ELK-3-275

D. the mobility impaired elk hunts in GMUs 16A and 16D as follows: ELK-1-241 and ELK-1-260;

E. all GMU 6B hunts that allow the hunter to take an antlered bull;

F. quality hunt fees in Subsections C and D above shall apply to the conversion of any mature bull or either sex, except youth only, private land authorizations that include any hunt dates from September 15 through October 15 for private lands that lie within the primary management zone.

[19.31.14.12 NMAC - Rp, 19.31.14.11 NMAC, 4-1-19]

19.31.14.12 SPECIAL ELK HUNTING OPPORTUNITIES:

A. Elk enhancement program:

(1) Program description: The director of the department shall collect all proceeds generated through the auction and lottery of special bull elk permits, and such monies shall be deposited in the game protection fund. These

monies shall be made available for expenditure by the department solely for programs and projects to benefit elk and for direct costs incurred in carrying out these programs. These monies shall be used to augment, and not replace, monies appropriated from existing funds available to the department for the conservation, restoration, utilization, and management of elk.

(2)

Requirements for issuance of special elk permits:

(a)

The state game commission shall authorize the director of the department to issue not more than two special elk permits in any one license year to take one bull elk per permit. The director shall allow the sale of one permit through auction to the highest bidder and one permit to a person selected through a random drawing of a lottery ticket by the department or an incorporated, non-profit organization dedicated to the conservation of elk.

(b)

Unless their hunting privileges have been revoked pursuant to law, any person is eligible to submit a bid for the special elk auction permit or purchase lottery tickets in an attempt to be selected for the special elk lottery permit.

(c)

The special elk permits issued through auction and lottery may be transferred, through sale, barter or gift by the successful individuals to only other individuals qualified to hunt.

(d)

Special elk permits granted through auction or lottery, as described above, shall not be considered 'once-in-a-lifetime' permits.

(3)

Enhancement hunts: Elk enhancement licenses shall be valid from September 1 through January 31 for any legal sporting arms. These licenses shall be valid statewide where hunting is allowed. Bag limit shall be one bull elk. The authorization to obtain an elk enhancement license may be used either by the applicant or any individual.

B. Elk incentive programs: The director may annually allow up to two elk authorizations to be issued for deer and elk hunters submitting their legally harvested animal for CWD testing. Authorizations to purchase an incentive license may be used either by the applicant or any individual. The authorization may be transferred through sale, barter or gift. Elk incentive hunts shall be valid only for the dates, legal sporting arms, bag limit and area specified by the director.

C. Encouragement hunts:

(1) Only resident youth hunters as defined by 19.31.3 NMAC who have successfully fulfilled all application requirements and responsibilities for draw hunts for deer, elk, pronghorn, ibex, oryx, Barbary sheep or bighorn sheep in the current license year and were unsuccessful in drawing any licenses will be eligible to apply for licenses for these hunts for 14 days on the department website. Licenses remaining after 14 days shall be available to eligible resident seniors (65 years and older) who have successfully fulfilled all application requirements and responsibilities for draw hunts for deer, elk, pronghorn, ibex, oryx, Barbary sheep or bighorn sheep in the current license year and were unsuccessful in drawing any licenses.

(2) The director, with concurrence of the chairperson of the state game commission, may adjust the number of licenses available in all encouragement hunts listed below based on management objectives.

(3) These hunts will be administered by the department through a web sale, rather than the random draw process. The open GMUs, hunt dates, hunt codes, number of licenses and bag limits shall be as indicated below:

(Continued next page)

open GMUs or areas	2019-2020 hunt dates	2020-2021 hunt dates	2021-2022 hunt dates	2022-2023 hunt dates	hunt code	licenses	bag limit
5B	11/29 -12/3	11/27-12/1	11/26-11/30	11/25-11/29	ELK-1-501	20	A
6A	11/29-12/3	11/27-12/1	11/26-11/30	11/25-11/29	ELK-1-502	50	A
6A	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-503	50	A
6C	11/29-12/3	11/27-12/1	11/26-11/30	11/25-11/29	ELK-1-504	50	A
6C	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-505	50	A
10	11/29-12/3	11/27-12/1	11/26-11/30	11/25-11/29	ELK-1-506	35	A
13	11/29-12/3	11/27-12/1	11/26-11/30	11/25-11/29	ELK-3-507	60	A
13	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-3-508	60	A
15	11/29-12/3	11/27-12/1	11/26-11/30	11/25-11/29	ELK-3-509	75	A
15	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-3-510	75	A
16A	11/29-12/3	11/27-12/1	11/26-11/30	11/25-11/29	ELK-1-511	75	A
16A	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-512	75	A
16C	11/29-12/3	11/27-12/1	11/26-11/30	11/25-11/29	ELK-1-513	75	A
16C	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-514	75	A
16D	11/29-12/3	11/27-12/1	11/26-11/30	11/25-11/29	ELK-1-515	75	A
16D	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-516	75	A
16E	11/29-12/3	11/27-12/1	11/26-11/30	11/25-11/29	ELK-1-517	75	A
16E	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-518	75	A
17	11/29-12/3	11/27-12/1	11/26-11/30	11/25-11/29	ELK-3-519	60	A
17	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-3-520	60	A
34	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-521	80	A
36	11/29-12/3	11/27-12/1	11/26-11/30	11/25-11/29	ELK-1-522	60	A
36	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-523	60	A
49	11/29-12/3	11/27-12/1	11/26-11/30	11/25-11/29	ELK-1-524	50	A
50	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-525	60	A
51	11/29-12/3	11/27-12/1	11/26-11/30	11/25-11/29	ELK-1-526	75	A
51	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-527	75	A
52	11/29-12/3	11/27-12/1	11/26-11/30	11/25-11/29	ELK-1-528	50	A
53	11/29-12/3	11/27-12/1	11/26-11/30	11/25-11/29	ELK-1-529	60	A
53	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-530	60	A

E. Premium hunt opportunity: One premium elk hunt will be issued each license year through the draw. The hunt area will be statewide on any public land open to hunting, including wildlife management areas and private land with written permission.

open GMUs or areas	2019-2020 hunt dates	2020-2021 hunt dates	2021-2022 hunt dates	2022-2023 hunt dates	hunt code	licenses	bag limit
statewide	9/1/2019-1/31/2020	9/1/2020-1/31/2021	9/1/2021-1/31/2022	9/1/2022-1/31/2023	ELK-1-700	1	MB

[19.31.14.13 NMAC - Rp, 19.31.14.12 NMAC, 4-1-19]

19.31.14.13 POPULATION MANAGEMENT HUNTS:

A. The director or their designee may authorize population management hunts for elk when justified in writing by department personnel.

B. The director or their designee shall designate the legal sporting arms, season dates, season lengths, bag limits, hunt boundaries, specific requirements or restrictions, and number of licenses to be issued.

C. In the event that an applicant is not able to hunt on the dates specified, the applicant's name shall be moved to the bottom of the list and another applicant may be contacted for the hunt.

D. In those instances where a population management hunt is warranted on deeded private lands, the landowner may suggest eligible hunters of their choice by submitting a list of prospective hunter's names to the department for licensing consideration. No more than one-half of the total number of licenses authorized shall be available to landowner identified hunters. The balance of prospective hunters shall be identified by the department. [19.31.14.14 NMAC - Rp, 19.31.14.13 NMAC, 4-1-19]

19.31.14.14 ELK HUNTS IN PRIMARY MANAGEMENT ZONES: This section lists elk management information and subsequent hunting opportunities for GMUs in elk regions where a primary management zone has been established. The listed information includes regional elk population information, management goals, harvest objectives, total number of hunting opportunities, GMUs or areas open for hunting, season dates, hunt codes, bag limits, legal sporting arms, number of licenses available in the public draw and the number and type of authorizations available for private lands within the primary management zone of each GMU.

A. Elk management goals:

(1) Quality hunt management (QHM):

(a) Elk harvest in regional populations, herd units or GMUs within a region results in the trend of annual bull mortality rates to be below thirty-five percent.

(b) Seasons should be designed to ensure timing and length of hunts are desirable.

(c) At least two-thirds of all hunters are "satisfied" with the experience.

(2) Optimal opportunity management (OOM):

(a) Elk harvest in regional populations, herd units or GMUs within a region results in the trend of annual bull mortality rates to be below forty-five percent and harvest near optimal sustainable yield.

(b) Season structure should be designed to ensure timing and length of hunts provides significant amount of opportunity.

(c) At least one-third of all hunters are "satisfied" with the experience.

B. Northwest region: primary management zones in GMUs 2, 5A, 9 and 10.

(1) Optimal opportunity management within primary management zones in GMUs 2, 5A, 9 and 10.

(2) Foundational resource information for the northwest region is indicated below:

northwest region population information			**sustainable harvest pursuant to goals**	
herd unit	**population estimate (rounded to nearest 100)**	**bull:cow:calf ratio**	**bulls**	**cows**
San Juan (GMU 2)	1600-2500	37:100:39	130-160	150-170
Lindrith (GMU 5A)	2000-2300	34:100:36	140-170	160-190
Mt. Taylor (GMU 9)	1000-2100	25:100:16	40-100	0
Zuni (GMU 10)	900-1900	37:100:46	100-130	110-140

GMU	**management goals**	**total licenses by bag limit**			
		MB, ES-1, ES-3	**A**	**ES-2**	**total licenses**
2	OOM	235	235	282	752
5A	OOM	250	250	65	565
9	OOM	267	0	375	642
10	OOM	206	324	368	898
Total		958	809	1090	2857

(3) Public draw elk hunts listing the eligibility requirements or restrictions, GMUs or areas, hunt dates, hunt codes, number of licenses, bag limits and legal sporting arms shall be as indicated below:

open GMUs or areas	**2019-2020 hunt dates**	**2020-2021 hunt dates**	**2021-2022 hunt dates**	**2022-2023 hunt dates**	**hunt code**	**licenses**	**bag limit**
2	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-100	120	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-101	120	ES
	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-3-102	125	MB
	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-1-103	75	MB
	12/14-12/18	12/12-12/16	12/11-12/15	12/10-12/14	ELK-1-104	100	A
2 **youth only**	12/14-12/18	12/12-12/16	12/11-12/15	12/10-12/14	ELK-1-105	50	A
2C only	12/7-12/11	12/5-12/9	12/4-12/8	12/3-12/7	ELK-1-106	50	A
5A public land only	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-107	5	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-108	5	ES
	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-1-109	10	MB
	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-1-110	10	A
	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-1-111	10	MB
	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-1-112	10	A
	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	ELK-1-113	10	MB
	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	ELK-1-114	10	A
	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	ELK-1-115	10	MB
	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	ELK-1-116	10	A
9 Marquez WMA	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-117	5	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-118	5	ES
	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-3-119	4	MB
	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-3-120	5	MB
	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	ELK-3-121	5	MB
9 including Water canyon WMA	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-122	117	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-123	117	ES
9 including Water canyon WMA, **mobility impaired**	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-3-124	30	ES
9 including Water canyon WMA	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-3-125	50	MB
	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	ELK-3-126	50	MB
	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	ELK-3-127	30	MB

10	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-128	125	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-129	125	ES
	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-3-130	70	MB
	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-1-131	70	MB
10 **youth only**	11/9-11/13	11/14-11/18	11/13-11/17	11/12-11/16	ELK-1-132	120	A
10	12/21-12/25	12/19-12/23	12/18-12/22	12/17-12/21	ELK-1-133	100	A

(4) Private land elk authorizations for qualifying ranches listing the number of authorizations, bag limits, and legal sporting arms shall be as indicated below:

open GMUs or areas	**2019-20, 2020-21, 2021-22, 2022-23 hunt seasons**			
	MB, ES-1, ES-3	**A**	**ES -2**	**Total**
2	35	35	42	112
5A	210	210	55	475
9	93	0	131	224
10	66	104	118	288
Total	404	349	346	1099

(5) Private land elk hunts for ranches designated as "ranch only" shall be limited to the following eligibility requirements or restrictions, season dates and legal sporting arms. All private land mobility impaired and youth only hunters must satisfy licensing requirements as stated in 19.31.3 NMAC in order to hunt during the "mobility impaired" or "youth only" hunt periods.

legal sporting arms	**open GMUs or area**	**2019-2020 hunt dates**	**2020-2021 hunt dates**	**2021-2022 hunt dates**	**2022-2023 hunt dates**
bows only	2, 5A, 9, 10	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14
		9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24
muzzle loading rifles and bows	2, 10	any 5 consecutive days, 10/5-12/31	any 5 consecutive days, 10/10-12/31	any 5 consecutive days, 10/9-12/31	any 5 consecutive days, 10/8-12/31
	9, **mobility impaired**	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12
	9	any 5 consecutive days, 10/12-12/31	any 5 consecutive days, 10/17-12/31	any 5 consecutive days, 10/16-12/31	any 5 consecutive days, 10/15-12/31
any legal sporting arms	2, 10	any 5 consecutive days, 10/12-12/31	any 5 consecutive days, 10/17-12/31	any 5 consecutive days, 10/16-12/31	any 5 consecutive days, 10/15-12/31
any legal sporting arms	5A	any 5 consecutive days, 10/5-12/31	any 5 consecutive days, 10/10-12/31	any 5 consecutive days, 10/9-12/31	any 5 consecutive days, 10/8-12/31

C. North central region: primary management zones in GMUs 4, 5B, 50, 51 and 52.

(1) Optimal opportunity management within primary management zones in GMUs 4, 5B, 50, 51 and 52.

(2) Foundational resource information for the north central region shall be as indicated below:

north central region population information			**sustainable harvest pursuant to goals**	
herd unit	**population estimate (rounded to nearest 100)**	**bull:cow:calf ratio**	**bulls**	**cows**
Chama-San Antonio (GMUs 4, 5B, 50, 51, and 52)	23600-27300	38:100:40	1740-2400	2000-2590

GMU	management goals	total licenses by bag limit			
		MB, ES-1, ES-3, MB/A	A	ES-2	total licenses
4	OOM	1060	660	475	2195
5B	OOM	367	188	160	715
50	OOM	331	117	156	604
51	OOM	970	909	434	2313
52	OOM	685	406	500	1591
Total		3413	2280	1725	7418

(3) Public draw elk hunts listing the eligibility requirements or restrictions, GMU or area, hunt dates, hunt codes, number of licenses, bag limits and legal sporting arms shall be as indicated below:

open GMUs or areas	2019-2020 hunt dates	2020-2021 hunt dates	2021-2022 hunt dates	2022-2023 hunt dates	hunt code	licenses	bag limit
4:Sargent WMA	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-134	10	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-135	10	ES
	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-1-136	10	MB/A
	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-1-137	10	MB/A
	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	ELK-1-138	10	MB/A
	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	ELK-1-139	10	MB/A
	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	ELK-1-140	10	A
4:Sargent WMA, **youth only**	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	ELK-1-141	10	A
4:Humphries/Rio Chama WMAs	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-142	10	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-143	10	ES
	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-1-144	15	MB/A
	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-1-145	15	MB/A
	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	ELK-1-146	10	A
4:Humphries/Rio Chama WMAs, **youth only**	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	ELK-1-147	15	A
4: Rio Chama WMA only	11/9-11/13	11/14-11/18	11/13-11/17	11/12-11/16	ELK-1-148	15	A

5B	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-149	76	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-150	75	ES
	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-1-151	86	MB
	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-1-152	59	A
	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	ELK-1-153	86	MB
	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	ELK-1-154	59	A
	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	ELK-1-155	87	MB
	11/9-11/13	11/14-11/18	11/13-11/17	11/12-11/16	ELK-1-156	59	A
	12/21-12/25	12/19-12/23	12/18-12/22	12/17-12/21	ELK-1-157	87	MB
50	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-158	60	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-159	55	ES
	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-1-160	120	MB
	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-1-161	125	MB
	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	ELK-1-162	42	A
	11/16-11/20	11/21-11/25	11/20-11/24	11/19-11/23	ELK-1-163	45	A
51	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-164	180	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-165	180	ES
	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-1-166	220	MB
	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-1-167	220	MB
	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	ELK-1-168	220	MB
	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	ELK-1-169	251	A
	11/9-11/13	11/14-11/18	11/13-11/17	11/12-11/16	ELK-1-170	251	A
	11/16-11/20	11/21-11/25	11/20-11/24	11/19-11/23	ELK-1-171	252	A
	12/7-12/11	12/5-12/9	12/4-12/8	12/3-12/7	ELK-3-172	145	ES
52	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-173	230	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-174	230	ES
52 **mobility impaired**	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-3-175	50	MB
52	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-3-176	120	MB
	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-3-177	50	A
	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-1-178	230	MB
	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	ELK-1-179	230	MB
52 **youth only**	11/9-11/13	11/14-11/18	11/13-11/17	11/12-11/16	ELK-1-180	80	A
52 **mobility impaired**	11/16-11/20	11/21-11/25	11/20-11/24	11/19-11/23	ELK-1-181	56	A
52	11/16-11/20	11/21-11/25	11/20-11/24	11/19-11/23	ELK-1-182	73	A
	12/7-12/11	12/5-12/9	12/4-12/8	12/3-12/7	ELK-1-183	115	A

(4) Private land elk authorizations for qualifying ranches listing the number of authorizations, bag limits and legal sporting arms shall be as indicated below:

open GMUs or areas	2019-20, 2020-21, 2021-22, 2022-23 hunt seasons			
	MB, ES-1, ES-3, MB/A	A	ES-2	Total
4	990	600	435	2025
5B	21	11	9	41
50	86	30	41	157
51	165	155	74	394
52	55	32	40	127
Total	1317	828	599	2744

(5) Private land elk hunts for ranches designated as "ranch only" shall be limited to the following eligibility requirements or restrictions, season dates and legal sporting arms. All private land mobility impaired and youth only hunters must satisfy licensing requirements as stated in 19.31.3 NMAC in order to hunt during the "mobility impaired" or "youth only" hunt periods.

legal sporting arms	open GMUs or area	2019-2020 hunt dates	2020-2021 hunt dates	2021-2022 hunt dates	2022-2023 hunt dates
bows only	4, 5B, 50, 51, 52	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14
		9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24
muzzle loading rifles and bows	52	any 5 consecutive days, 10/5-12/31	any 5 consecutive days, 10/10-12/31	any 5 consecutive days, 10/9-12/31	any 5 consecutive days, 10/8-12/31
any legal sporting arms	4	any 5 consecutive days, 10/1-12/31	any 5 consecutive days, 10/1-12/31	any 5 consecutive days, 10/1-12/31	any 5 consecutive days, 10/1-12/31
	5B, 50, 51	any 5 consecutive days, 10/5-12/31	any 5 consecutive days, 10/10-12/31	any 5 consecutive days, 10/9-12/31	any 5 consecutive days, 10/8-12/31
	52	any 5 consecutive days, 10/12-12/31	any 5 consecutive days, 10/17-12/31	any 5 consecutive days, 10/16-12/31	any 5 consecutive days, 10/15-12/31

D. Jemez region: primary management zones in GMUs 6A, 6B, 6C and 7.

(1) Quality hunt management goals for primary management zones in GMUs 6A and 6B.

(2) Optimal opportunity management within primary management zones in GMUs 6C and 7.

(3) Foundational resource information for the Jemez region shall be as indicated below:

Jemez region population information			sustainable harvest pursuant to goals	
Jemez herd unit	population estimate (rounded to nearest 100)	bull:cow:calf ratio	bulls	cows
GMUs 6A, 6B, 6C, and 7	6100-7200	33:100:32	380-470	440-510

GMU	management goal	total licenses by bag limit			
		MB, ES-1, ES-3	A	ES-2	total licenses
6A	QHM	361	117	297	775
6B	QHM	50	165	50	265
6C	OOM	429	259	300	988
7	OOM	68	62	36	166
Total		908	603	683	2194

(4) Public draw elk hunts listing the eligibility requirements or restrictions, GMUs or areas, hunt dates, hunt codes, number of licenses, bag limits and legal sporting arms shall be as indicated below:

open GMUs or areas	**2019-2020 hunt dates**	**2020-2021 hunt dates**	**2021-2022 hunt dates**	**2022-2023 hunt dates**	**hunt code**	**licenses**	**bag limit**
6A	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-184	150	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-185	102	ES
	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-3-186	104	MB
	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-1-187	100	MB
	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	ELK-1-188	103	MB
	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	ELK-1-189	99	A
6B:	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-190	25	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-191	25	ES
	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-3-192	15	ES
	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-1-193	15	ES
	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	ELK-1-194	20	ES
6B **youth only**	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	ELK-1-195	30	A
6B	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	ELK-1-196	35	A
	11/16-11/20	11/21-11/25	11/20-11/24	11/19-11/23	ELK-1-197	35	A
6B **youth only**	11/23-11/27	11/28-12/2	11/27-12/1	11/26-11/30	ELK-1-198	30	A
6B	12/7-12/11	12/5-12/9	12/4-12/8	12/3-12/7	ELK-1-199	35	A
6B **mobility impaired**	TBD	TBD	TBD	TBD	ELK-1-200	TBD	A
6C	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-201	150	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-202	105	ES
	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-3-203	155	MB
	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-1-204	105	MB
	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	ELK-1-205	105	MB
	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	ELK-1-206	110	A
	11/23-11/27	11/28-12/2	11/27-12/1	11/26-11/30	ELK-1-207	110	A
7	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-208	15	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-209	14	ES
	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-3-210	24	MB
	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-1-211	30	MB
	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	ELK-1-212	50	A

(5) Private land elk authorizations for qualifying ranches listing the number of authorizations, bag limits and legal sporting arms shall be as indicated below:

open GMUs or areas	**2019-20, 2020-21, 2021-22, 2022-23 hunt seasons**			
	MB, ES-1	**A**	**ES-2**	**Total**
6A	54	18	45	117
6C	64	39	45	148
7	14	12	7	33
Total	132	69	97	298

(6) Private land elk hunts for ranches designated as "ranch only" shall be limited to the following eligibility requirements or restrictions, season dates and legal sporting arms. All private land mobility impaired and youth only hunters must satisfy licensing requirements as stated in 19.31.3 NMAC in order to hunt during the "mobility impaired" or "youth only" hunt periods.

legal sporting arms	open GMUs or area	2019-2020 hunt dates	2020-2021 hunt dates	2021-2022 hunt dates	2022-2023 hunt dates
bows only	6A, 6C, 7	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14
		9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24
muzzle loading rifles & bows	6A, 6C, 7	any 5 consecutive days, 10/5-12/31	any 5 consecutive days, 10/10-12/31	any 5 consecutive days, 10/9-12/31	any 5 consecutive days, 10/8-12/31
any legal sporting arms	6A, 6C, 7	any 5 consecutive days, 10/12-12/31	any 5 consecutive days, 10/17-12/31	any 5 consecutive days, 10/16-12/31	any 5 consecutive days, 10/15-12/31

E. Southwest region:

(1) Quality hunt management for primary management zones s in GMUs 12, 13, 15, 16A, 16B/22, 16C, 16D, 16E and 17.

(2) Optimal opportunity management for primary management zones in GMUs 21A, 21B, 23 and 24.

(3) Foundational resource information for the southwest region shall be as indicated below:

southwest region population information			sustainable harvest pursuant to goals	
herd unit	population estimate (rounded to nearest 100)	bull:cow:calf ratio	bulls	cows
Fence Lake (GMU 12)	3400-6000	34:100:47	270-590	360-630
Datil (GMU 13)	3600-4500	33:100:32	240-340	280-370
Greater Gila (GMUs 15, 16A, 16B/22, 16C-E)	21000-23300	34:100:33	1340-1730	1530-1870
Lesser Gila (GMUs 21A, 21B, 23, 24)	1300-3600	42:100:38	140-190	160-210
San Mateo (GMU 17)	2000-2600	49:100:41	150-180	170-200

GMU	management goals	total licenses by bag limit			
		MB, ES-1, ES-3	A	ES-2, MB-2, APRE/6	total licenses
12	QHM	593	428	224	1245
13	QHM	583	370	556	1509
15	QHM	923	641	769	2333
16A	QHM	232	155	412	799
16B/22	QHM	323	0	394	717
16C	QHM	200	118	294	612
16D	QHM	148	114	171	433
16E	QHM	239	217	217	673
Greater Gila Totals (15, 16A, 16B/22, 16C-E)		2065	1245	2257	5567
17	QHM	291	262	233	786
21A	OOM	107	31	117	255
21B	OOM	127	167	166	460
23	OOM	180	21	222	423
24	OOM	39	5	28	72
Lesser Gila Totals (21A, 21B, 23, 24)		453	224	533	1210
southwest region total		3985	2529	3803	10317

(4) Public draw elk hunts listing the eligibility requirements or restrictions, hunt dates, hunt codes, number of licenses, bag limits and legal sporting arms shall be as indicated below:

open GMUs or areas	2019-2020 hunt dates	2020-2021 hunt dates	2021-2022 hunt dates	2022-2023 hunt dates	hunt code	licenses	bag limit
12	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-213	36	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-214	35	ES
	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-1-215	35	MB
	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-1-216	60	MB
	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	ELK-1-217	80	MB
	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	ELK-1-218	80	MB
	11/16-11/20	11/21-11/25	11/20-11/24	11/19-11/23	ELK-1-219	60	A
	11/23-11/27	11/28-12/2	11/27-12/1	11/26-11/30	ELK-1-220	60	A
	12/7-12/11	12/5-12/9	12/4-12/8	12/3-12/7	ELK-1-221	64	A
	12/14-12/18	12/12-12/16	12/11-12/15	12/10-12/14	ELK-2-222	25	APRE/6
13	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-223	190	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-224	138	ES
13 **youth only**	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-3-225	30	ES
13	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-3-226	80	MB
	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	ELK-3-227	117	MB
	11/16-11/20	11/21-11/25	11/20-11/24	11/19-11/23	ELK-3-228	117	MB
	12/7-12/11	12/5-12/9	12/4-12/8	12/3-12/7	ELK-3-229	110	A
	12/14-12/18	12/12-12/16	12/11-12/15	12/10-12/14	ELK-3-230	108	A
15	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-231	350	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-232	250	ES
15 **youth only**	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-3-233	25	ES
15	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-3-234	200	MB
	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	ELK-3-235	245	MB
	11/16-11/20	11/21-11/25	11/20-11/24	11/19-11/23	ELK-3-236	250	MB
	12/7-12/11	12/5-12/9	12/4-12/8	12/3-12/7	ELK-3-237	250	A
	12/14-12/18	12/12-12/16	12/11-12/15	12/10-12/14	ELK-3-238	250	A
16A	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-239	250	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-240	150	ES

16A **mobility impaired**	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-1-241	25	MB
16A	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-1-242	75	MB
	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	ELK-1-243	125	MB
	12/7-12/11	12/5-12/9	12/4-12/8	12/3-12/7	ELK-1-244	75	A
	12/14-12/18	12/12-12/16	12/11-12/15	12/10-12/14	ELK-1-245	75	A
16B/22	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-246	225	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-247	165	ES
	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-1-248	25	MB
	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-1-249	135	MB
	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	ELK-1-250	160	MB
16C	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-251	144	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-252	100	ES
16C **youth only**	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-1-253	25	ES
16C	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-1-254	50	MB
	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	ELK-1-255	91	MB
	12/7-12/11	12/5-12/9	12/4-12/8	12/3-12/7	ELK-1-256	50	A
	12/14-12/18	12/12-12/16	12/11-12/15	12/10-12/14	ELK-1-257	48	A
16D	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-258	90	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-259	60	ES
16D **mobility impaired**	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-1-260	25	MB
16D	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-1-261	55	MB
	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	ELK-1-262	50	MB
	12/7-12/11	12/5-12/9	12/4-12/8	12/3-12/7	ELK-1-263	50	A
	12/14-12/18	12/12-12/16	12/11-12/15	12/10-12/14	ELK-1-264	50	A
16E	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-265	90	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-266	60	ES
16E **youth only**	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-1-267	25	ES
16E	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-3-268	70	MB
	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	ELK-1-269	70	MB
	12/7-12/11	12/5-12/9	12/4-12/8	12/3-12/7	ELK-1-270	75	A
	12/14-12/18	12/12-12/16	12/11-12/15	12/10-12/14	ELK-1-271	75	A

17	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-272	125	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-273	75	ES
17 **youth only**	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-3-274	25	ES
17	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-3-275	100	MB
	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	ELK-3-276	100	MB
	11/16-11/20	11/21-11/25	11/20-11/24	11/19-11/23	ELK-3-277	25	MB
	11/16-11/20	11/21-11/25	11/20-11/24	11/19-11/23	ELK-3-278	25	A
	12/7-12/11	12/5-12/9	12/4-12/8	12/3-12/7	ELK-3-279	100	A
	12/14-12/18	12/12-12/16	12/11-12/15	12/10-12/14	ELK-3-280	100	A
21A	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-281	50	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-282	50	ES
	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-1-283	15	MB
	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-1-284	35	MB
	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	ELK-1-285	55	MB
	12/7-12/11	12/5-12/9	12/4-12/8	12/3-12/7	ELK-1-286	30	A
	12/21-12/25	12/19-12/23	12/18-12/22	12/17-12/21	ELK-2-287	15	MB
21B	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-288	25	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-289	25	ES
	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-1-290	10	MB
	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-1-291	15	MB
	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	ELK-1-292	25	MB
	11/16-11/20	11/21-11/25	11/20-11/24	11/19-11/23	ELK-1-293	15	A
	11/23-11/27	11/28-12/2	11/27-12/1	11/26-11/30	ELK-1-294	15	A
	12/7-12/11	12/5-12/9	12/4-12/8	12/3-12/7	ELK-1-295	15	A
	12/14-12/18	12/12-12/16	12/11-12/15	12/10-12/14	ELK-1-296	20	A
	12/21-12/25	12/19-12/23	12/18-12/22	12/17-12/21	ELK-2-297	15	MB
23	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-298	125	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-299	75	ES
23 **youth only**	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-1-300	25	ES
23	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-3-301	75	MB
	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	ELK-1-302	75	MB
	12/7-12/11	12/5-12/9	12/4-12/8	12/3-12/7	ELK-1-303	20	A
	12/21-12/25	12/19-12/23	12/18-12/22	12/17-12/21	ELK-2-304	15	MB
24-excluding Ft. Bayard management area	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-305	15	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-306	10	ES
	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-3-307	15	MB
	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	ELK-1-308	15	MB
24: including Ft. Bayard management area, **youth only**	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-1-309	5	ES
	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	ELK-1-310	5	A

(5) Private land elk authorizations for qualifying ranches listing the number of authorizations, bag limits and legal sporting arms shall be as indicated below:

open GMUs or areas	2019-20, 2020-21, 2021-22, 2022-23 hunt seasons			
	MB, ES-1, ES-3	A	ES-2, MB-2, APRE/6	total
12	338	244	128	710
13	239	152	228	619
15	203	141	169	513
16A	7	5	12	24
16B/22	3	0	4	7
16C	34	20	50	104
16D	18	14	21	53
16E	74	67	67	208
17	41	37	33	111
21A	2	1	2	5
21B	77	102	101	280
23	5	1	7	13
24	4	0	3	7
Total	1045	784	825	2654

(6) Private land elk hunts for ranches designated as "ranch only" shall be limited to the following eligibility requirements or restrictions, season dates and legal sporting arms. All private land mobility impaired and youth only hunters must satisfy licensing requirements as stated in 19.31.3 NMAC in order to hunt during the "mobility impaired" or "youth only" hunt periods.

legal sporting arms	open GMUs or area	2019-2020 hunt dates	2020-2021 hunt dates	2021-2022 hunt dates	2022-2023 hunt dates
bows only	12, 13, 15, 16A, 16B/22, 16C, 16D, 16E, 17, 21A, 21B, 23, 24	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14
		9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24
muzzle loading rifles and bows	13, 15, 16E, 17, 23, 24	any 5 consecutive days, 10/12-12/31	any 5 consecutive days, 10/17-12/31	any 5 consecutive days, 10/16-12/31	any 5 consecutive days, 10/15-12/31
	youth only: 13, 15, 17	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12
muzzle loading rifles only with approval of director or designee and state game commission chairperson	13: **antlerless elk only**	any 5 consecutive days 1/1-1/31	any 5 consecutive days 1/1-1/31	any 5 consecutive days 1/1-1/31	any 5 consecutive days 1/1-1/31
any legal sporting arms	12, 16B/22, 21A, 21B	any 5 consecutive days, 10/5–12/31	any 5 consecutive days, 10/10–12/31	any 5 consecutive days, 10/9–12/31	any 5 consecutive days, 10/8–12/31
	16E, 23, 24	any 5 consecutive days, 10/19-12/31	any 5 consecutive days, 10/24-12/31	any 5 consecutive days, 10/23-12/31	any 5 consecutive days, 10/22-12/31
	16A, 16C, 16D	any 5 consecutive days, 10/12-12/31	any 5 consecutive days, 10/17-12/31	any 5 consecutive days, 10/16-12/31	any 5 consecutive days, 10/15-12/31
	youth only: 16C, 16E, 23, 24	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12
	mobility impaired: 16A, 16D	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12

F. Southeast region: GMUs 34 and 36.

(1) Quality hunt management for primary management zones in GMU 36.

(2) Optimal opportunity management goals for primary management zones in GMU 34.

(3) Foundational resource information for the south central region shall be as indicated below:

southeast region population information			**sustainable harvest pursuant to goals**	
herd unit	**population estimate (rounded to nearest 100)**	**bull:cow:calf ratio**	**bulls**	**cows**
Sacramento (GMU 34)	6000-7000	49:100:49	430-550	570-600
Ruidoso (GMU 36)	3300-6600	71:100:52	340-430	450-460

		total licenses by bag limit			
GMU	**management goal**	**MB, ES-1, ES-3**	**A**	**ES-2, APRE/6/A**	**total licenses**
34	OOM	633	1410	723	2766
36	QHM	583	278	368	1229
Total		1216	1688	1091	3995

(4) Public draw elk hunts listing the hunt dates, hunt codes, number of licenses, bag limits and legal sporting arms shall be as indicated below:

open GMUs or areas	**2019-2020 hunt dates**	**2020-2021 hunt dates**	**2021-2022 hunt dates**	**2022-2023 hunt dates**	**hunt code**	**licenses**	**bag limit**
34	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-311	200	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-312	200	ES
34 **youth only**	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-1-313	75	ES
	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-1-314	120	A
34 **mobility impaired**	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-1-315	50	ES
34	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-3-316	250	ES
	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	ELK-1-317	150	ES
	11/23-11/27	11/28-12/2	11/27-12/1	11/26-11/30	ELK-1-318	350	A
	12/7-12/11	12/5-12/9	12/4-12/8	12/3-12/7	ELK-1-319	350	A
	12/14-12/18	12/12-12/16	12/11-12/15	12/10-12/14	ELK-1-320	350	A
	12/21-12/25	12/19-12/23	12/18-12/22	12/17-12/21	ELK-2-321	200	APRE/6/A
36	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-322	133	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-323	132	ES
	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-3-324	140	MB
	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-1-325	140	MB
	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	ELK-1-326	140	MB
	11/23-11/27	11/28-12/2	11/27-12/1	11/26-11/30	ELK-1-327	100	A
	12/7-12/11	12/5-12/9	12/4-12/8	12/3-12/7	ELK-1-328	100	A

(5) Private land elk authorizations for qualifying ranches listing the number of authorizations, bag limits and legal sporting arms shall be as indicated below:

	2019-20, 2020-21, 2021-22, 2022-23 hunt seasons			
open GMUs or areas	**MB, ES-1, ES-3**	**A**	**ES-2, APRE/6/A**	**total**
34	108	240	123	471
36	163	78	103	344
Total	271	318	226	815

(6) Private land elk hunts for ranches designated as "ranch only" shall be limited to the following eligibility requirements or restrictions, season dates and legal sporting arms. All private land mobility impaired and youth only hunters must satisfy licensing requirements as stated in 19.31.3 NMAC in order to hunt during the "mobility impaired" or "youth only" hunt periods.

legal sporting arms	**open GMUs or area**	**2019-2020 hunt dates**	**2020-2021 hunt dates**	**2021-2022 hunt dates**	**2022-2023 hunt dates**
bows only	34, 36	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14
		9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24
any legal sporting arms	**youth only & mobility impaired:** 34	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12
muzzle loading rifles and bows	34	any 5 consecutive days, 10/12-12/31	any 5 consecutive days, 10/17-12/31	any 5 consecutive days, 10/16-12/31	any 5 consecutive days, 10/15-12/31
	36	any 5 consecutive days, 10/5-12/31	any 5 consecutive days, 10/10-12/31	any 5 consecutive days, 10/9-12/31	any 5 consecutive days, 10/8-12/31
any legal sporting arms	34	any 5 consecutive days, 10/19-12/31	any 5 consecutive days, 10/24-12/31	any 5 consecutive days, 10/23-12/31	any 5 consecutive days, 10/22-12/31
	36	any 5 consecutive days, 10/12-12/31	any 5 consecutive days, 10/17-12/31	any 5 consecutive days, 10/16-12/31	any 5 consecutive days, 10/15-12/31
rifles only with approval of the director or their designee and state game commission chairperson	36: **antlerless elk only**	any 5 consecutive days 1/1-1/31	any 5 consecutive days 1/1-1/31	any 5 consecutive days 1/1-1/31	any 5 consecutive days 1/1-1/31

G. Northeast region:

(1) Quality hunt management for primary management zones in GMU 45.

(2) Optimal opportunity management goals for primary management zones in GMUs 48, 49 and 53.

(3) Foundational resource information for the northeast region shall be as indicated below:

northeast region population information			**sustainable harvest pursuant to goals**	
herd unit	**population estimate (rounded to nearest 100)**	**bull:cow:calf ratio**	**bulls**	**cows**
Pecos (GMU 45)	1100-1800	27:100:27	90-170	120-180
Whites peak (GMU 48)	1000-1900	32:100:44	80-170	100-180
Penasco (GMU 49)	1000-1200	28:100:30	70-110	100-120
Ute-Midnight-San Cristobal (GMU 53)	2200-3900	32:100:27	70-160	90-170

		total licenses by bag limit			
GMU	**management goal**	**MB, ES-1, ES-3**	**A**	**ES-2**	**total licenses**
45	QHM	457	54	163	674
48	OOM	286	170	304	760
49	OOM	161	162	125	448
53	OOM	362	317	174	853
Total		1266	703	766	2735

(4) Public draw elk hunts listing the hunt dates, hunt codes, number of licenses, bag limits and legal sporting arms shall be as indicated below:

open GMUs or areas	2019-2020 hunt dates	2020-2021 hunt dates	2021-2022 hunt dates	2022-2023 hunt dates	hunt code	licenses	bag limit
45	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-329	75	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-330	73	ES
	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-3-331	136	MB
	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-1-332	140	MB
	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	ELK-1-333	140	MB
	11/9-11/13	11/14-11/18	11/13-11/17	11/12-11/16	ELK-3-334	49	A
48	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-335	93	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-336	92	ES
	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-3-337	50	MB
	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-1-338	74	MB
	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	ELK-1-339	50	MB
	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	ELK-1-340	50	A
	12/7-12/11	12/5-12/9	12/4-12/8	12/3-12/7	ELK-1-341	54	A
49	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-342	60	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-343	59	ES
	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-1-344	77	MB
	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-1-345	76	MB
	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	ELK-1-346	77	A
	11/9-11/13	11/14-11/18	11/13-11/17	11/12-11/16	ELK-1-347	77	A
53	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-348	65	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-349	60	ES
53 (exc. Cerro portion)	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-3-350	50	ES
	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-1-351	80	MB
	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	ELK-1-352	131	MB
	11/9-11/13	11/14-11/18	11/13-11/17	11/12-11/16	ELK-1-353	94	A
	11/16-11/20	11/21-11/25	11/20-11/24	11/19-11/23	ELK-1-354	94	A
53 (North of Sunshine Valley road)	1/4-1/19	1/2-1/17	1/1-1/16	1/7-1/22	ELK-1-355	40	A

(5) Private land elk authorizations for qualifying ranches listing the number of authorizations, bag limits and legal sporting arms shall be as indicated below:

open GMUs or areas	2019-20, 2020-21, 2021-22, 2022-23 hunt seasons			
	MB, ES-1, ES-3	A	ES-2	Total
45	41	5	15	61
48	112	66	119	297
49	8	8	6	22
53	101	89	49	239
Total	262	168	189	619

(6) Private land elk hunts for ranches designated as "ranch only" shall be limited to the following eligibility requirements or restrictions, season dates and legal sporting arms. All private land mobility impaired and youth only hunters must satisfy licensing requirements as stated in 19.31.3 NMAC in order to hunt during "mobility impaired" or "youth only" hunt periods.

legal sporting arms	open GMUs or area	2019-2020 hunt dates	2020-2021 hunt dates	2021-2022 hunt dates	2022-2023 hunt dates
bows only	45, 48, 49, 53	9/1-9/14 9/15-9/24	9/1-9/14 9/15-9/24	9/1-9/14 9/15-9/24	9/1-9/14 9/15-9/24
muzzle loading rifles and bows	45, 48, 53	any 5 consecutive days, 10/5-12/31	any 5 consecutive days, 10/10-12/31	any 5 consecutive days, 10/9-12/31	any 5 consecutive days, 10/8-12/31
any legal sporting arms	45, 48, 53	any 5 consecutive days, 10/12-12/31	any 5 consecutive days, 10/17-12/31	any 5 consecutive days, 10/16-12/31	any 5 consecutive days, 10/15-12/31
	49	any 5 consecutive days, 10/5-12/31	any 5 consecutive days, 10/10-12/31	any 5 consecutive days, 10/9-12/31	any 5 consecutive days, 10/8-12/31

any legal sporting arms. Must have approval of director or designee and state game commission chairperson.	48: **antlerless elk only**	any 5 consecutive days 1/1-1/31	any 5 consecutive days 1/1-1/31	any 5 consecutive days 1/1-1/31	any 5 consecutive days 1/1-1/31

[19.31.14.15 NMAC - Rp, 19.31.14.14 NMAC, 4-1-19]

19.31.14.15 ELK HUNTS IN SECONDARY MANAGEMENT ZONES: This section includes eligibility requirements or restrictions, GMUs or areas open for hunting, season dates, hunt codes, legal sporting arms, number of available licenses and bag limits.

A. Public draw elk hunts in GMUs where no primary or special management zones are established:

open GMUs or areas	2019-2020 hunt dates	2020-2021 hunt dates	2021-2022 hunt dates	2022-2023 hunt dates	hunt code	licenses	bag limit
14	10/12-10/16	10/10-10/14	10/9-10/13	10/8-10/12	ELK-1-356	10	ES
18	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-357	25	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-358	25	ES
	10/1-10/5	10/1-10/5	10/1-10/5	10/1-10/5	ELK-1-359	10	ES
19	1/3-1/5 & 1/17-1/19	1/15-1/17 & 1/29-1/31	1/14-1/16 & 1/28-1/30	1/13-1/15 & 1/27-1/29	ELK-1-360	3	ES
28 McGregor range, **military only**	12/14-12/18	12/12-12/16	12/11-12/15	12/10-12/14	ELK-1-361	10	ES
28 McGregor range	12/14-12/18	12/12-12/16	12/11-12/15	12/10-12/14	ELK-1-362	10	ES
30	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-363	10	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-364	10	ES
	10/1-10/5	10/1-10/5	10/1-10/5	10/1-10/5	ELK-1-365	10	ES
	10/12-10/16	10/10-10/14	10/9-10/13	10/8-10/12	ELK-1-366	20	ES
37	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-367	40	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-368	30	ES
	10/1-10/5	10/1-10/5	10/1-10/5	10/1-10/5	ELK-3-369	30	MB
	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-1-370	30	MB
	11/23-11/27	11/28-12/2	11/27-12/1	11/26-11/30	ELK-1-371	45	A
	12/7-12/11	12/5-12/9	12/4-12/8	12/3-12/7	ELK-2-372	50	APRE/6
38	10/1-10/5	10/1-10/5	10/1-10/5	10/1-10/5	ELK-1-373	10	ES
	10/12-10/16	10/10-10/14	10/9-10/13	10/8-10/12	ELK-1-374	10	ES
42/47/59	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-375	10	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-376	10	ES
	10/1-10/5	10/1-10/5	10/1-10/5	10/1-10/5	ELK-1-377	10	ES
43	10/1-10/5	10/1-10/5	10/1-10/5	10/1-10/5	ELK-1-378	30	ES
56	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-379	5	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-380	5	ES
	10/1-10/5	10/1-10/5	10/1-10/5	10/1-10/5	ELK-1-381	10	MB
	10/12-10/16	10/10-10/14	10/9-10/13	10/8-10/12	ELK-1-382	10	A
57: Sugarite canyon state park	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-383	3	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-384	2	ES
57/58	10/1-10/5	10/1-10/5	10/1-10/5	10/1-10/5	ELK-1-385	5	MB
	10/12-10/16	10/10-10/14	10/9-10/13	10/8-10/12	ELK-1-386	10	MB
	12/14-12/18	12/12-12/16	12/11-12/15	12/10-12/14	ELK-1-387	10	A

B. Private land-only elk hunting: For private lands within secondary management zones, unlimited private land licenses are available over-the-counter. Bow-only either-sex hunts will be limited to 9/1 – 9/24 each year. Any legal sporting arms hunts that are antlerless or either-sex will be limited to five consecutive days from 10/1 – 12/31 each year, except as allowed by 19.30.5 NMAC.

[19.31.14.16 NMAC - Rp, 19.31.14.15 NMAC, 4-1-19]

19.31.14.16 ELK HUNTS IN SPECIAL MANAGEMENT ZONES: This section includes eligibility requirements or restrictions, GMUs or areas open for hunting, season dates, hunt codes, legal sporting arms, number of available licenses and bag limits.

A. Public draw elk hunts:

open GMUs or areas	2019-2020 hunt dates	2020-2021 hunt dates	2021-2022 hunt dates	2022-2023 hunt dates	hunt code	licenses	bag limit
54: Colin Neblett WMA	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-388	20	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-389	20	ES
	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-3-390	40	MB
	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-1-391	40	MB
	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	ELK-1-392	40	MB
	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	ELK-1-393	40	A
55A: ES Barker WMA	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-394	5	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-395	5	ES
	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-1-396	10	MB
55A: Urraca WMA	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-397	5	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-398	5	ES
	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-3-399	10	MB
	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-1-400	10	MB
	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	ELK-1-401	10	MB
	11/9-11/13	11/14-11/18	11/13-11/17	11/12-11/16	ELK-1-402	15	A
	11/23-11/27	11/28-12/2	11/27-12/1	11/26-11/30	ELK-1-403	15	A
55A: Valle Vidal	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-404	25	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-405	25	ES
	10/5-10/9	10/10-10/14	10/9-10/13	10/8-10/12	ELK-3-406	20	MB
	10/12-10/16	10/17-10/21	10/16-10/20	10/15-10/19	ELK-1-407	35	MB
	10/19-10/23	10/24-10/28	10/23-10/27	10/22-10/26	ELK-1-408	40	MB
55A: Valle Vidal, **youth only**	10/26-10/30	10/31-11/4	10/30-11/3	10/29-11/2	ELK-1-409	20	MB
55A: Valle Vidal, **youth only**	11/2-11/6	11/7-11/11	11/6-11/10	11/5-11/9	ELK-1-410	35	A
55A: Valle Vidal	11/9-11/13	11/14-11/18	11/13-11/17	11/12-11/16	ELK-1-411	40	A
	11/16-11/20	11/21-11/25	11/20-11/24	11/19-11/23	ELK-1-412	45	A

B. Private land-only elk hunting: For private lands that lie within GMUs designated as special management zones (GMUs 46, 54 west of NM State Road 199, 55A), the department may work with landowners to develop bag limits, legal sporting arms, season dates and authorization numbers for private land hunting on participating ranches. Bow-only either-sex hunts will be limited to 9/1 – 9/24 each year. Any legal sporting arms hunts that are antlerless, mature bull, or either-sex will be limited to five consecutive days from 10/1 – 12/31 each year, except as allowed by 19.30.5 NMAC.

[19.31.14.16 NMAC - N, 4-1-19]

HISTORY OF 19.31.14 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 5/31/67;

Regulation No. 487, Establishing 1967 Seasons On Javelina And Barbary Sheep, filed 12/15/67;

Regulation No. 489, Establishing Turkey Seasons For The Spring of 1968, filed 3/1/68;

Regulation No. 491, Establishing Big Game Seasons For 1968 For Jicarilla Reservation, filed 3/1/68;

Regulation No. 492, Establishing Seasons On Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, And Barbary Sheep, filed 6/6/68;
Regulation No. 495, Establishing A Season On Bighorn Sheep, filed 10/2/68;
Regulation No. 496, Establishing An Elk Season In The Tres Piedras Area, Elk Area P-6, filed 12/11/68;
Regulation No. 502, Establishing Turkey Seasons For The Spring Of 1969, filed 3/5/69;
Regulation No. 503, Establishing 1969 Deer Seasons For Bowhunting Only And Big Game Seasons For The Jicarilla Indian Reservation, filed 3/5/69;
Regulation 504, Establishing Seasons on Deer, Bear, Turkey, Dusky Grouse, Chickaree And Tassel-Eared Squirrel, And Barbary Sheep, filed 6/4/69;
Regulation No. 507, Establishing A Season On Bighorn Sheep, filed 8/26/69;
Regulation No. 512, Establishing Turkey Season For The Spring Of 1970, filed 2/20/70;
Regulation No. 513, Establishing Deer Season For Bowhunting Only In Sandia State Game Refuge, filed 2/20/70;
Regulation No. 514, Establishing Seasons On Deer, Bear, Turkey, Elk, Antelope, Dusky Grouse, Tassel-Eared And Chickaree Squirrel, Barbary Sheep And Bighorn Sheep, filed 6/9/70;
Regulation No 520, Establishing Turkey Seasons For The Spring Of 1971, filed 3/9/71;
Regulation No. 522, Establishing 1971 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 3/9/71;
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 6/9/71;
Regulation No. 531, Establishing A Season On Javelina, filed 12/17/71;
Regulation No. 532, Establishing Turkey Seasons For The Spring Of 1972, filed 3/20/72;
Regulation No. 534, Establishing 1972 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 3/20/72;
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 6/26/72;
Regulation No. 542, Establishing A Season On Javelina, filed 12/1/72;
Regulation No. 545, Establishing Turkey Seasons For The Spring Of 1973, filed 2/26/73;
Regulation No. 546, Establishing 1973 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 2/26/73;
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 5/31/73;
Regulation No. 554, Establishing Special Turkey Seasons For The Spring of 1974, filed 3/4/74;
Regulation No. 556, Establishing 1974 Seasons On Deer, Bear, Turkey, And Elk On The Jicarilla Apache Indian Reservation, filed 3/14/74;
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 5/29/74;
Regulation No. 565, Establishing Special Turkey Seasons For The Spring Of 1975, filed 3/24/75;
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 3/24/75;
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 6/25/75;
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 2/23/76;
Regulation No. 583, Establishing Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/11/77;
Regulation No. 590, Establishing Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/15/78;
Regulation No. 596, Establishing Seasons On Deer, Turkey, Bear, Cougar, Elk, Antelope, Barbary Sheep, Bighorn Sheep, Javelina, Oryx And Ibex, filed 2/23/79;
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 2/22/80;
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 3/17/81;
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 3/10/82;
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 3/9/83;
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 4/2/84;
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 4/18/85;
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 3/25/86;
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 2/12/87;
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 12/18/87;
Regulation No. 663, Establishing Opening Spring Turkey For The Period April 1, 1989 through March 31, 1990, filed 3/28/89;
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 3/20/89;
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 11/21/89;
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 2/8/91;
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 3/4/92;
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 3/11/93.

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.
19.31.14 NMAC, Elk, filed 12-1-2006 - duration expired 3-31-2009.
19.31.14 NMAC, Elk, filed 3-13-2009 - duration expired 3-31-2011.
19.31.14 NMAC, Elk, filed 9-15-2010 - Repealed 3-29-2013.
19.31.14 NMAC, Elk, filed 3-29-2013 - Repealed 2-27-2015.
19.31.14 NMAC, Elk, filed 2-16-2015 - Repealed 3-31-2016.
19.31.14 NMAC, Elk, filed 2-29-2016 - duration expired 3-31-2019.

GOVERNOR'S COMMISSION ON DISABILITY

The Governor's Commission on Disability approved (and adopted), at its 11/30/2018 hearing, to repeal its rule 9.4.20 NMAC, Governor's Committee On Concerns Of The Handicapped By-Laws (recompiled 10/01/2001) and replace it with 9.4.20 NMAC, Governor's Commission On Disability Rules, effective 12/27/2018.

GOVERNOR'S COMMISSION ON DISABILITY

TITLE 9 HUMAN RIGHTS
CHAPTER 4 PERSONS WITH DISABILITIES
PART 20 GOVERNOR'S COMMISSION ON DISABILITY RULES

9.4.20.1 ISSUING AGENCY: Governor's Commission on Disability formally known as governor's committee on concerns of the handicapped.
[9.4.20.1 NMAC - Rp 9.4.20.1 NMAC, 12/27/2018]

9.4.20.2 SCOPE: The provisions in Part 20 apply to all parts of Chapter 4 of Title 9, and provide relevant information to anyone affected or interested in Chapter 4 of Title 9.
[9.4.20.2 NMAC - Rp 9.4.20.2 NMAC, 12/27/2018]

9.4.20.3 STATUTORY AUTHORITY: These rules are adopted pursuant to Subsection I of Section 28-10-2 NMSA 1978. Any conflict with the constitution or laws of the state of New Mexico or of the United States of America is not intended and void.
[9.4.20.3 NMAC - Rp 9.4.20.3 NMAC, 12/27/2018]

9.4.20.4 DURATION: [Permanent]
[9.4.20.4 NMAC - Rp 9.4.20.4 NMAC, 12/27/2018]

9.4.20.5 EFFECTIVE DATE: December 27, 2018, unless a later date is cited at the end of the section.
[9.4.20.5 NMAC - Rp 9.4.20.5 NMAC, 12/27/2018]

9.4.20.6 OBJECTIVE: The purpose of the governor's commission on disability is the removal of barriers to the full integration of persons with disabilities into the mainstream of New Mexico life, increase the quality of life of New Mexicans with disabilities, and to meet all of the responsibilities and exercise all of the authorities granted by law.
[9.4.20.6 NMAC - Rp 9.4.20.6 NMAC, 12/27/2018]

9.4.20.7 DEFINITIONS:

A. "Agency" means an entity, public or private, which provides various social and/or health related services.

B. "Applicant" means an individual in the community with a disability and capable of self-directed care.

C. "Client" means an applicant who has been approved by the governor's commission on disability to receive services of the residential accessibility modification program.

D. "Commission" means the governor's commission on disability.

E. "Contractor" means person(s) who may provide one or more of the services authorized for payment with residential accessibility modification program funds.

F. "Disability" means a physical or mental impairment that substantially limits one or more of the major life activities such as caring for oneself, walking, toileting, etc.

G. "GCD" means the governor's commission on disability;

H. "Notice to Proceed" means a notification letter from the RAMP project manager addressed to the contractor awarding the project, and notification stating the contractor can commence work on the referenced project within 10 consecutive calendar days.

I. "Payer of last resort" means as a condition of eligibility for residential accessibility modification program services, another public or private insurance or coverage and a community resource is exhausted first.

J. "Proof of disability" means a statement of disability signed by a physician or a verification of federally issued disability benefits.

K. "RAMP" means residential accessibility modification program.

[9.4.20.7 NMAC - Rp 9.4.20.7 NMAC, 12/27/2018]

9.4.20.8 COMMISSION CREATED:

A. There is created the "governor's commission on disability".

B. The commission shall consist of 15 members, nine of whom shall be appointed by the governor. Initially, three members shall be appointed for terms ending December 31, 1978, three members for terms ending December 31, 1980 and three members for terms ending December 31, 1982. Thereafter, appointments shall be for six years expiring on December 31 of even-numbered years. Appointed members shall be appointed from different geographic areas of the state and from the major disability services in the state. Appointed members shall include individuals with disabilities, representatives of government and private enterprise, parents or guardians of individuals with disabilities and professionals in, or those who are interested in, service for individuals with disabilities. Not more than five of the members appointed by the governor shall be of the same political party.

C. The six remaining members shall be the director of the department of vocational rehabilitation of the public education department, the secretary of labor or the secretary's designee, the director of the behavioral health services division of the human services department, the secretary of children, youth and families or the secretary's designee, the secretary of aging and long-term services or the secretary's designee and the secretary of human services or the secretary's designee.

D. A majority of the members of the commission constitutes a quorum for the transaction of business. The commission shall meet at least twice a year and shall annually elect a chair and a vice chair.

E. The commission shall be primarily concerned with those individuals with disabilities who have a condition that, regardless of its physical or mental origin, constitutes a substantial occupational disadvantage.

[9.4.20.8 NMAC - Rp 9.4.20.8 NMAC, 12/27/2018]

9.4.20.9 POWERS AND DUTIES: The governor's commission on disability shall establish and maintain a comprehensive statewide program designed to encourage and promote attention to the concerns of education and employment of individuals with disabilities in this state. To further this purpose, the commission shall:

A. cooperate with the president's committee on employment of individuals with disabilities and other federal efforts on behalf of disability concerns;

B. cooperate with all employers and training leaders, both public and private, in locating or developing employment opportunities for individuals with disabilities;

C. encourage and assist in the organization and operation of committees at the community level, the chairs of which shall automatically become members of the advisory council authorized under Section 28-10-4 NMSA 1978;

D. assist state, local and federal agencies to coordinate their activities to secure maximum utilization of funds and efforts that aid in the training and employment of individuals with disabilities;

E. enter into written agreements with public and private employers, unions and rehabilitation agencies for the purpose of achieving the maximum employment of individuals with disabilities;

F. inform individuals with disabilities who are seeking jobs from specific facilities available to assist them in locating suitable training and employment;

G. conduct educational programs via publications and other means to acquaint the public, the legislature and the governor with the abilities and the accomplishments of individuals with disabilities;

H. promote the elimination of architectural barriers in construction so as to make buildings used by the public readily accessible to and usable by persons with physical limitations;

I. make by-laws as it determines advisable for the conduct of its own business;

J. designate standing committees related to state planning, community organization, public relations and information, legislative action, federal coordination, state coordination, youth, medical rehabilitation, employers and awards;

K. designate such special committees as necessary for undetermined periods to carry out special short-term programs;

L. establish and administer a residential accessibility modification program to assist low-income individuals with disabilities to make accessibility modifications to residential dwellings as needed to enable those individuals with disabilities to remain in their homes or to leave institutional settings and be reintegrated into the community;

M. give advice and testimony on disability concerns to the governor or the legislature or any committee established by them, upon request; and

N. provide training to state and local law enforcement officers regarding matters pertaining to accessible parking for persons with disabilities.

[9.4.20.9 NMAC - Rp 9.4.20.9 NMAC, 12/27/2018]

9.4.20.10 MEETINGS: All meetings shall be conducted in accordance with the "Open Meetings Act" (Section 10-15-1 et. seq. NMSA 1978) and the commission's open meetings resolution.

A. Regular meetings of the commission shall be held at least two times each year at the call of the chairperson in consultation with the director. Special or emergency meetings shall likewise be held following the provisions of the applicable section of the open meetings act.

B. No meeting shall be held before reasonable notice to the commission and to the public as described in 9.4.20.11 NMAC.

C. Meetings shall be conducted in accordance with generally accepted principles of parliamentary procedure as determined by the chairperson.

D. Meetings shall be held in accessible locations throughout the state as determined by the director.

E. Annual meeting: One of the regular meetings of the commission will be designated as the annual meeting. This meeting shall be held generally in the spring and shall be conducted in the manner of a statewide conference for all persons with disabilities and agencies and professionals working with persons with disabilities; other meetings shall be generally limited to regular business. The commission will endeavor to hold this meeting in different locations throughout the state. At the annual meeting, the commission will review and make necessary changes to the by-laws and rules, strategic plan and open meetings resolution. The commission shall also approve the operating budget for the next fiscal year at the annual meeting.

[9.4.20.10 NMAC - Rp 9.4.20.10 NMAC, 12/27/2018]

9.4.20.11 REASONABLE NOTICE: Notice for all mettings will be provided in accordance with the "Open Meetings Act" Section 10-15-1 et. seq. and the commission's open meetings resolution.

A. For the public:

(1) At least 10 days prior to each regular meeting an announcement in at least two newspapers of general circulation, including one with statewide circulation and a second with regional or local circulation in the community in which the meeting shall take place, shall be published advising the date, time, place, and general agenda.

(2) Special meetings may be held at least three days subsequent to the release of the general press announcement containing the date, time, location and specific need for a special meeting.

(3) Emergency meetings may be held at least 24 hours subsequent to release of a general press announcement containing the date, time, location and specific need for an emergency meeting.

B. For the commission:

(1) Commissioners shall be notified of the date, time and location of regular meetings via regular mail or email at least three weeks prior to the meeting.

(2) Commissioners shall be notified by regular mail or e-mail at least three days before a special meeting.

(3) Commissioners should be notified by regular mail or e-mail at least three days before an emergency meeting, but in no event without at least three attempted phone calls placed at least 24 hours prior to said emergency meeting.

[9.4.20.11 NMAC - Rp 9.4.20.11 NMAC, 12/27/2018]

9.4.20.12 VOTING:

A. All commissioners, including statutory members, shall be entitled to vote on all matters before the commission.

B. All votes shall be recorded.

C. A commissioner may vote by proxy executed in writing by that commissioner and filed with the director.

D. Commissioners whose terms of appointment have expired, but for whom no replacements have been named, shall continue to serve and be eligible to vote on all matters until such replacement are appointed.

[9.4.20.12 NMAC - Rp 9.4.20.12 NMAC, 12/27/2018]

9.4.20.13 OFFICERS:

A. At the annual conference meeting of each year a chairperson and vice chairperson shall be elected to serve for a period of one year.

B. The duty of the chairperson shall be to call and

conduct the meetings and the vice chairperson shall serve in the absence of the chairperson.

C. No commissioner shall be elected to office in a year in which the term of appointment to the commission expires.

[9.4.20.13 NMAC - Rp 9.4.20.13 NMAC, 12/27/2018]

9.4.20.14 ATTENDANCE:

A. For commissioners appointed by the governor: The director shall request the governor to replace any commissioner who is absent for two consecutive regular meetings without an excuse approved by the chairperson regardless of whether a proxy is sent.

B. For statutory commissioners: The director shall notify the governor of any statutory commissioner who fails to attend any two consecutive regular meetings in person or by proxy, and request the governor to take appropriate action.

[9.4.20.14 NMAC - Rp 9.4.20.14 NMAC, 12/27/2018]

9.4.20.15 DUTIES OF THE COMMISSIONERS: The commissioners shall:

A. perform all duties required by law;

B. hire a director and perform an annual personnel evaluation of the director;

C. approve annual budget requests and operating budgets;

D. ratify inventory deletions;

E. establish priorities for staff activities, according to statute;

F. approve the commission's annual report;

G. adopt positions of support, neutrality or opposition for proposed legislation affecting persons with disabilities;

H. endeavor to learn the needs and concerns of persons with disabilities statewide;

I. perform such other tasks as the governor or legislature may request.

[9.4.20.15 NMAC - Rp 9.4.20.15 NMAC, 12/27/2018]

9.4.20.16 DUTIES OF THE DIRECTOR: The director shall:

A. direct daily operation of the agency in compliance with applicable laws and regulations;

B. hire and supervise staff as authorized by New Mexico state personnel board rules and regulations;

C. advocate for the achievement of agency goals within state, federal, and local governments, and among service providers, private sector and the general public;

D. maintain close ties to the executive and legislative branches of state government; provide testimony on issues affecting persons with disabilities, and keep advised of the status of legislative actions affecting persons with disabilities or the commission;

E. report on activities in past legislative sessions and present issues expected to be discussed in legislative hearings to the commission prior to each session and promote the positions, if any, adopted on such issues by the commission;

F. notify the chair or vice-chair before traveling out-of-state or taking more than three consecutive days of leave;

G. serve full time in that capacity and shall maintain residency in New Mexico during the times of occupancy of that position;

H. ensure that the annual report is prepared in a timely manner.

[9.4.20.16 NMAC - Rp 9.4.20.16 NMAC, 12/27/2018]

9.4.20.17 CODE OF CONDUCT:

A. All commissioners and staff shall be provided with a copy of the New Mexico Governmental Conflict of Interest Act and shall abide by the terms.

B. Any commissioner endorsing a particular commercial product or service shall do so in their individual capacity only.

C. The commission acts only as a body; commissioners wishing to volunteer time between meetings on commission business are encouraged to do so in consultation with the director. No per diem or travel expenses shall be reimbursed unless the travel or expense was first approved by the director.

D. No commissioner may make any commitment or decision which binds on the commission unless that commissioner received specific authorization.

E. All commissioners and staff shall treat their positions as a public trust. They shall use the powers and resources of their positions only to advance the public interest, and not obtain personal benefits or pursue private interests incompatible with public interest.

F. All commissioners and staff shall protect and maintain state property within their possession and shall promptly report all lost, stolen or damaged property beyond normal wear and tear.

G. All commissioners and staff shall familiarize themselves with applicable rules and laws governing their conduct.

H. All commissioners and staff shall conduct themselves in a manner that justifies the confidence placed in them by the public and at all times shall maintain their integrity and discharge ethically the high responsibilities of public service.

I. All commissioners and staff shall fully disclose all activities which constitute a real or potential conflict of interest.

J. All commissioners and staff shall not engage in undue influence or abuse of their positions.

K. All commissioners and staff shall treat each other and members of the public with appropriate respect and courtesy.

L. Staff shall not hold outside employment or consulting work without the prior written approval of the director. The director shall not hold outside employment or consulting work without the prior written consent of the chair.

[9.4.20.17 NMAC - Rp 9.4.20.17 NMAC, 12/27/2018]

9.4.20.18 EXECUTIVE COMMITTEE: There is created an executive committee consisting of

from three to six members appointed by the chairperson to serve at her or his pleasure. The executive committee shall:

A. Meet at least once between regular commission meetings and keep informed on activities of the agency;

B. Make recommendations to the commission on issues, legislative proposals, budget and finance matters and report on activities in process;

C. Advise the director on courses of action in pursuit of commission goals.

D. Perform specific duties and tasks as assigned by the full commission, including but not limited to:

(1) Review of budget requests and operating budgets;

(2) development of draft strategic plan;

(3) recommendations of special projects or taskforces pertinent to current issue resolutions;

(4) actions relative to the agency director; candidate search, recommendation for hire, annual evaluation and recommendation of termination; and

E. all recommendations by executive committee will be taken to the full commission for possible action.

[9.4.20.18 NMAC - Rp 9.4.20.18 NMAC, 12/27/2018]

9.4.20.19 LOCAL CHAPTERS: [RESERVED]

[9.4.20.19 NMAC - Rp 9.4.20.19 NMAC, 12/27/2018]

9.4.20.20 COMPENSATION: Members of the governor's commission on disability shall be reimbursed as provided in the Per Diem Act, Section 10-8-1 et seq. NMSA 1978, but shall receive no other compensation, perquisite or allowance.

[9.4.20.20 NMAC - Rp 9.4.20 NMAC, 12/27/2018]

9.4.20.21 AMENDMENTS: As authorized by the State Rules Act, the Uniform Licensing Act, the attorney general's default procedural rule and other applicable state law, a quorum of the commission may amend its administrative rules.

[9.4.20.21 NMAC - Rp 9.4.20.21 NMAC, 12/27/2018]

9.4.20.22 RESIDENTIAL ACCESSIBILITY MODIFICATION PROGRAM: GCD will provide residential accessibility modifications to New Mexicans with disabilities, in accordinance with policies and proceedures as approved by the commission.

A. Eligibility: Applicants must meet all the following eligibility criteria:

(1) Must be a citizen of the United States of America;

(2) must be a resident of New Mexico for at least six months;

(3) must have a physical disability documented by receipt of Social Security Disability Benefits e.g. Social Security Disability Income, other federally issued benefits or a statement from a physician;

(4) must have applied for another appropriate and available residential modification community resource leaving the RAMP as the payer of last resort;

(5) Taxable or reportable income must be within two-hundred fifty percent of the most current federal poverty income eligibility guidelines for medicaid and children's health insurance program.

B. Application process: All completed applications must be returned, by United States mail, private carrier, or in person, with original signatures. Where providing an original signature is impossible or impractical, GCD staff may elect to accept an electronic or digital signature or a legally acceptable alternative, such as those accepted by the State of New Mexico and its agencies. GCD will accept the following types of applications:

(1) Regular applications containing all information needed for a decision on eligibility and need for service.

(2) Emergency applications may be submitted only by an independent living center or department of health developmental disabilities support division. The emergency must be such that an individual will likely be placed in an institutional setting within the next 30 days if action is not taken immediately.

C. Application review: All applications will be reviewed and evaluated by a review committee made up of GCD staff members, who will meet to determine which of the completed applications will be pre-approved to contract for good and services. The applications will be rated based on the information the applicant provides.

D. Review committee: The RAMP review committee will meet and determine which of the completed applications will be pre-approved to contract for goods and services.

E. Appeal process: If an applicant is denied services from RAMP, a written request for reconsideration may be made to the director of GCD and received within 30 calendar days from the date on the denial letter.

F. Construction contractor: (1) Qualifications: The contractor must:

(a) Verify that the contractor and any subcontractors utilized are licensed and bonded in the state of New Mexico.

(b) Demonstrate knowledge and have a work history that shows the ability to:

(i) Interpret the principles and practices of architecture; building codes and standards; building materials and construction methods; and structural,

mechanical, plumbing and electrical systems;

(ii) interpret architectural working drawings and specifications to ensure compliance with all laws, rules, and standards of the state of New Mexico, including the federal, state and local building codes;

(iii) understand and implement contracting practices and procedures, construction costs, estimating and knowledge of comparable costs to accomplish the adaptations;

(iv) incorporate architectural design, standards and technical data relating to design and construction; and

(v) interpret, implement and ensure that applicable guidelines are followed in all environmental adaptations when applicable to the client's needs.

(2) Responsibilities. The contractor is responsible for:

(a) Providing an itemized price quote to GCD staff within 10 calendar days from receipt of plans and scope of work;

(b) commencing work on a project within 10 calendar days of receipt of notice to proceed letter;

(c) attending RAMP project preliminary construction meetings with the client or client's representative and GCD staff;

(d) providing consultation to client or representative and subcontractors regarding RAMP modifications throughout the construction process;

(e) obtaining all necessary permits as required by local and state laws;

(f) meeting reasonable timelines for completion of RAMP projects;

(g) completing all modifications within four weeks. A waiver of the time period must be sought from GCD if extraordinary circumstances prevent the contractor from meeting this requirement. Issues surrounding extraordinary circumstances resolution may occur in person, via US mail, fax or electronic mail;

(h) completing all project work to GCD satisfaction;

(i) Participating in project meetings which can occur in person or via electronic media with GCD staff; and

(j) providing a minimum one-year written warranty of the work completed, including materials and labor to GCD and the client or the client's representative.

G. Reimbursement procedures:

(1) All RAMP service providers must maintain all records necessary to fully disclose the costs, service, quality and quantity of materials necessary for RAMP project. The records must be sufficiently detailed to substantiate the date, project name, and nature of services.

(2) Two business days prior to completion of work, contractor shall contact GCD staff. Upon completion, contractor shall submit written notice by electronic mail or fax stating project is complete and ready for final inspection and approval.

(3) Upon final approval contractor shall submit a completed GCD generated invoice with the following information:

(a) Governor's commission on disability purchase order number indicated;

(b) contractor's name and address;

(c) residential accessibility modifications program project name and address;

(d) original contract awarded amount;

(e) change order information, if any were approved;

(f) contractor to sign and date the invoice;

(g) must provide an invoice number; and

(h) addressed to the main office of GCD.

(4) Contractor must complete work to GCD satisfaction, withholding or denial of payment may occur if (a) the client or the client's representative files a written dispute to GCD regarding the quality of work completed and (b) GCD agrees with the complaint.

H. Report to governor's commission on disability commission: A project tracking spreadsheet will be provided to the commission at each commission meeting. An annual summary report will be provided to the commission at its annual meeting. The project tracking spreadsheet and annual summary report will contain the following information, but not limited to:

(1) Type of modification;

(2) location where the home modification took place;

(3) project budget; and

(4) the project construction start date; and

(5) the project completion date.

[9.4.20.22 NMAC; N, 12/27/2018]

9.4.20.23 [RESERVED]

HISTORY OF 9.4.20 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:

GCCH 72-1, Plan of Operation, filed 7/27/1972.

GCCH-83-1, Governor's Commission On Disability Rules, filed 1/5/1984.

GCCH-84-1, Governor's Commission On Disability Rules, filed 11/9/1984.

History of Repealed Material:

9.4.20 NMAC - Governor's Committee On Concerns Of The Handicapped By-Laws, filed 11/9/1984 was repealed and replaced by 9.4.20 NMAC - Governor's Commission On Disability Rules, effective 12/27/2018.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

The Human Services Department reviewed at its 10/24/2018 hearing, 8.200.400 NMAC, Medicaid Eligibility - General Recipient Rules, General Medicaid Eligibility (filed 9/14/2017). The Department has decided to repeal 8.200.400 NMAC (filed 9/14/2017) and replace it with 8.200.400 NMAC, Medicaid Eligibility - General Recipient Rules, General Medicaid Eligibility, adopted 12/10/2018 and effective 1/1/2019.

The Human Services Department reviewed at its 11/14/2018 hearing, 8.201.400 NMAC, Medicaid Eligibility - Medicaid Extension (Category 001, 003 and 004) (filed 6/11/2003). The Department has decided to repeal 8.201.400 NMAC (filed 6/11/2003) and replace it with 8.201.400 NMAC, Medicaid Eligibility -Medicaid Extension (Category 001, 003 and 004), adopted 12/10/2018 and effective 1/1/2019.

The Human Services Department reviewed at its 10/24/2018 hearing, 8.201.600 NMAC, Medicaid Eligibility - Medicaid Extension (Category 001, 003, and 004), Benefit Description (filed 9/2/2009). The Department has decided to repeal 8.201.600 NMAC (filed 9/2/2009) and replace it with 8.201.600 NMAC, Medicaid Eligibility - Medicaid Extension (Category 001, 003, and 004), Benefit Description, adopted 12/10/2018 and effective 1/1/2019.

The Human Services Department reviewed at its 11/14/2018 hearing, 8.215.400 NMAC, Medicaid Eligibility - Supplemental Security Income (SSI) Methodology (filed 9/3/2013). The Department has decided to repeal 8.215.400 NMAC (filed 9/3/2013) and replace it with 8.215.400 NMAC, Medicaid Eligibility - Supplemental Security Income (SSI) Methodology, adopted 12/10/2018 and effective 1/1/2019.

The Human Services Department reviewed at its 10/24/2018 hearing, 8.215.600 NMAC, Medicaid Eligibility - Supplemental Security Income (SSI) Methodology, Benefit Description (filed 9/3/2013). The Department has decided to repeal 8.215.600 NMAC (filed 9/3/2013) and replace it with 8.215.600 NMAC, Medicaid Eligibility - Supplemental Security Income (SSI) Methodology, Benefit Description, adopted 12/10/2018 and effective 1/01/2019.

The Human Services Department reviewed at its 10/24/2018 hearing, 8.231.600 NMAC, Medicaid Eligibility - Infants of Mothers Who Are Medicaid or Medical Assistance Program Eligible, Benefit Description (filed 9/14/2017). The Department has decided to repeal 8.231.600 NMAC (filed 9/14/2017) and replace it with 8.231.600 NMAC, Medicaid Eligibility - Infants of Mothers Who Are Medicaid or Medical Assistance Program Eligible, Benefit Description, adopted 12/10/2018 and effective 1/1/2019.

The Human Services Department reviewed at its 10/24/2018 hearing, 8.242.600 NMAC, Medical Assistance Program Eligibility - Qualified Disabled Individuals Whose Income Exceeds QMB and SLIMB, Benefit Description (filed 12/2/2013). The Department has decided to repeal 8.242.600 NMAC (filed 12/2/2013) and replace it with 8.242.600 NMAC, Medical Assistance Program Eligibility - Qualified Disabled Individuals Whose Income Exceeds QMB and SLIMB, Benefit Description, adopted 12/10/2018 and effective 1/1/2019.

The Human Services Department reviewed at its 10/24/2018 hearing, 8.243.400 NMAC, Medicaid Eligibility - Working Disabled Individuals (WDI) (Category 043), Recipient Policies (filed 12/13/2000). The Department has decided to repeal 8.243.400 NMAC (filed 12/13/2000) and replace it with 8.243.400 NMAC, Medicaid Eligibility - Working Disabled Individuals (WDI) (Category 043), Recipient Policies, adopted 12/10/2018 and effective 1/1/2019.

The Human Services Department reviewed at its 10/24/2018 hearing, 8.243.600 NMAC, Medicaid Eligibility - Working Disabled Individuals (WDI) (Category 043), Benefit Description (filed 12/13/2000). The Department has decided to repeal 8.243.600 NMAC (filed 12/13/2000) and replace it with 8.243.600 NMAC, Medicaid Eligibility - Working Disabled Individuals (WDI) (Category 043), Benefit Description, adopted 12/10/2018 and effective 1/1/2019.

The Human Services Department reviewed at its 10/24/2018 hearing, 8.245.600 NMAC, Medicaid Eligibility - Specified Low Income Medicare Beneficiaries (SLIMB) (Category 045), Benefit Description (filed 11/16/2009). The Department has decided to repeal 8.245.600 NMAC (filed 11/16/2009) and replace it with 8.245.600 NMAC, Medicaid Eligibility - Specified Low Income Medicare Beneficiaries (SLIMB) (Category 045), Benefit Description, adopted 12/10/2018 and effective 1/1/2019.

The Human Services Department reviewed at its 10/24/2018 hearing, 8.249.600 NMAC, Medical Assistance Program Eligibility - Refugee Medical Assistance (RMA) Program, Benefit Description (filed 12/2/2013). The Department has decided to repeal 8.249.600 NMAC (filed 12/2/2013) and replace it with 8.249.600 NMAC, Medical Assistance Program Eligibility - Refugee Medical Assistance (RMA) Program, Benefit Description, adopted 12/10/2018 and effective 1/1/2019.

The Human Services Department reviewed at its 10/24/2018 hearing, 8.250.600 NMAC, Medicaid Eligibility - Qualified Individuals Whose Income Exceeds QMB and SLIMB (Category 045), Benefit Description (filed 11/16/2009). The Department has decided to repeal

8.250.600 NMAC (filed 11/16/2009) and replace it with 8.250.600 NMAC, Medicaid Eligibility - Qualified Individuals Whose Income Exceeds QMB and SLIMB (Category 045), Benefit Description, adopted 12/10/2018 and effective 1/1/2019.

The Human Services Department reviewed at its 10/24/2018 hearing, 8.252.600 NMAC, Medical Assistance Program Eligibility - Breast and Cervical Cancer Program, Benefit Description (filed 12/2/2013). The Department has decided to repeal 8.252.600 NMAC (filed 12/2/2013) and replace it with 8.252.600 NMAC, Medicaid Eligibility - Qualified Individuals Whose Income Exceeds QMB and SLIMB (Category 045), Benefit Description, adopted 12/10/2018 and effective 1/1/2019.

The Human Services Department reviewed at its 10/24/2018 hearing, 8.280.400 NMAC, Medicaid Eligibility - Program of All Inclusive Care for the Elderly (PACE), Recipient Policies (filed 11/15/2006). The Department has decided to repeal 8.280.400 NMAC (filed 11/15/2006) and replace it with 8.280.400 NMAC, Medicaid Eligibility - Program of All Inclusive Care for the Elderly (PACE), Recipient Policies, adopted 12/10/2018 and effective 1/1/2019.

The Human Services Department reviewed at its 10/24/2018 hearing, 8.280.600 NMAC, Medicaid Eligibility - Program of All Inclusive Care for the Elderly (PACE), Benefit Description (filed 11/15/0006). The Department has decided to repeal 8.280.600 NMAC (filed 11/15/2006) and replace it with 8.280.600 NMAC, Medicaid Eligibility - Program of All Inclusive Care for the Elderly (PACE), Benefit Description, adopted 12/10/2018 and effective 1/1/2019.

The Human Services Department reviewed at its 11/14/2018 hearing, 8.281.400 NMAC, Medicaid Eligibility - Institutional Care (Categories 081, 083 and 084) (filed 6/13/2013). The Department has decided to repeal 8.281.400 NMAC (filed 6/13/2013) and replace it with 8.281.400 NMAC, Medicaid Eligibility - Institutional Care (Categories 081, 083 and 084), adopted 12/10/2018 and effective 1/1/2019.

The Human Services Department reviewed at its 10/24/2018 hearing, 8.281.600 NMAC, Medicaid Eligibility - Insitutional Care (Categories 081, 083 and 084), Benefit Description (filed 3/13/2009). The Department has decided to repeal 8.281.600 NMAC (3/13/2009) and replace it with 8.281.600 NMAC, Medicaid Eligibility - Insitutional Care (Categories 081, 083 and 084), Benefit Description, adopted 12/10/2018 and effective 1/1/2019

The Human Services Department reviewed at its 10/24/2018 hearing, 8.290.400 NMAC, Medicaid Eligibility - Home and Community -Based Services Waiver (Categories 090, 091, 092, 093, 094, 095 and 096), Recipient Policies (filed 4/16/2002). The Department has decided to repeal 8.290.400 NMAC filed (4/16/2002) and replace it with 8.290.400 NMAC, Medicaid Eligibility - Home and Community -Based Services Waiver (Categories 090, 091, 092, 093, 094, 095 and 096), Recipient Policies, adopted 12/10/2018 and effective 1/1/2019.

The Human Services Department reviewed at its 10/24/2018 hearing, 8.290.600 NMAC, Medicaid Eligibility - Home and Community -Based Services Waiver (Categories 090, 091, 092, 093, 094, 095 and 096), Benefit Description (filed 4/16/2002). The Department has decided to repeal 8.290.600 NMAC (4/16/2002) and replace it with 8.290.600 NMAC, Medicaid Eligibility - Home and Community -Based Services Waiver (Categories 090, 091, 092, 093, 094, 095 and 096), Benefit Description, adopted 12/10/2018 and effective 1/1/2019.

The Human Services Department reviewed at its 10/24/2018 hearing, 8.292.600 NMAC, Medicaid Eligibility - Parent Caretaker, Benefit Description (filed 12/17/2013). The Department has decided to repeal 8.292.600 NMAC (12/17/2013) and replace it with 8.292.600 NMAC, Medicaid Eligibility - Parent Caretaker, Benefit Description, adopted 12/10/2018 and effective 1/1/2019.

The Human Services Department reviewed at its 10/24/2018 hearing, 8.293.600 NMAC, Medicaid Eligibility - Pregnant Women, Benefit Description (filed 12/17/2013). The Department has decided to repeal 8.293.600 NMAC (12/17/2013) and replace it with 8.293.600 NMAC, Medicaid Eligibility - Pregnant Women, Benefit Description, adopted 12/10/2018 and effective 1/1/2019.

The Human Services Department reviewed at its 10/24/2018 hearing, 8.294.600 NMAC, Medicaid Eligibility - Pregnancy-Related Services, Benefit Description (filed 12/17/2013). The Department has decided to repeal 8.294.600 NMAC (12/17/2013) and replace it with 8.294.600 NMAC, Medicaid Eligibility - Pregnancy-Related Services, Benefit Description, adopted 12/10/2018 and effective 01/01/2019.

The Human Services Department reviewed at its 10/24/2018 hearing, 8.295.600 NMAC, Medicaid Eligibility - Children Under 19, Benefit Description (filed 12/17/2013). The Department has decided to repeal 8.295.600 NMAC (12/17/2013) and replace it with 8.295.600 NMAC, Medicaid Eligibility - Children Under 19, Benefit Description, adopted 12/10/2018 and effective 1/1/2019.

The Human Services Department reviewed at its 10/24/2018 hearing, 8.296.400 NMAC, Medicaid Eligibility - Other Adults, Recipient Requirements (filed 12/17/2013). The Department has decided to repeal 8.296.400 NMAC (12/17/2013) and replace it with 8.296.400 NMAC, Medicaid Eligibility - Other Adults, Recipient Requirements, adopted 12/10/2018 and effective 1/1/2019.

The Human Services Department reviewed at its 10/24/2018 hearing, 8.296.600 NMAC, Medicaid Eligibility - Other Adults, Benefit Description (filed 12/17/2013). The Department has decided to repeal 8.296.600 NMAC (12/17/2013) and replace it with 8.296.600 NMAC, Medicaid Eligibility - Other Adults, Benefit Description, adopted 12/10/2018 and effective 1/1/2019.

The Human Services Department reviewed at its 10/24/2018 hearing, 8.297.400 NMAC, Medicaid Eligibility - Loss of Parent Caretaker Medicaid Due to Spousal Support, Recipient Requirements (filed 12/17/2013). The Department has decided to repeal 8.297.400 NMAC (12/17/2013) and replace it with 8.297.400 NMAC, Medicaid Eligibility - Loss of Parent Caretaker Medicaid Due to Spousal Support, Recipient Requirements, adopted 12/10/2018 and effective 1/1/2019.

The Human Services Department reviewed at its 10/24/2018 hearing, 8.297.600 NMAC, Medicaid Eligibility - Loss of Parent Caretaker Medicaid Due to Spousal Support, Benefit Description (filed 12/17/2013). The Department has decided to repeal 8.297.600 NMAC (12/17/2013) and replace it with 8.297.600 NMAC, Medicaid Eligibility - Loss of Parent Caretaker Medicaid Due to Spousal Support, Benefit Description, adopted 12/10/2018 and effective 1/1/2019.

The Human Services Department reviewed at its 10/24/2018 hearing, 8.298.400 NMAC, Medicaid Eligibility - Loss of Parent Caretaker Medicaid Due to Earnings from Employment, Recipient Requirements (filed 12/17/2013). The Department has decided to repeal 8.298.400 NMAC (12/17/2013) and replace it with 8.298.400 NMAC, Medicaid Eligibility - Loss of Parent Caretaker Medicaid Due to Earnings from Employment, Recipient Requirements, adopted 12/10/2018 and effective 1/1/2019.

The Human Services Department reviewed at its 10/24/2018 hearing, 8.298.600 NMAC, Medicaid Eligibility - Loss of Parent Caretaker Medicaid Due to Earnings from Employment, Benefit Description (filed 12/17/2013). The Department has decided to repeal 8.298.600 NMAC (12/17/2013) and replace it with 8.298.600 NMAC, Medicaid Eligibility - Loss of Parent Caretaker Medicaid Due to Earnings from Employment, Benefit Description, adopted 12/10/2018 and effective 1/1/2019.

The Human Services Department reviewed at its 10/24/2018 hearing, 8.299.400 NMAC, Medicaid Eligibility - Family Planning Services, Recipient Requirements (filed 9/14/2017). The Department has decided to repeal 8.299.400 NMAC (9/14/2017) and replace it with 8.299.400 NMAC, Medicaid Eligibility - Family Planning Services, Recipient Requirements, adopted 12/10/2018 and effective 1/1/2019.

The Human Services Department reviewed at its 10/24/2018 hearing, 8.299.600 NMAC, Medicaid Eligibility - Family Planning Services, Benefit Description (filed 9/14/2017). The Department has decided to repeal 8.299.600 NMAC (9/14/2017) and replace it with 8.299.600 NMAC, Medicaid Eligibility - Family Planning Services, Benefit Description, adopted 12/10/2018 and effective 1/1/2019.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 200 MEDICAID ELIGIBILITY - GENERAL RECIPIENT RULES
PART 400 GENERAL MEDICAID ELIGIBILITY

8.200.400.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.200.400.1 NMAC - Rp, 8.200.400.1 NMAC, 1/1/2019]

8.200.400.2 SCOPE: The rule applies to the general public.
[8.200.400.2 NMAC - Rp, 8.200.400.2 NMAC, 1/1/2019]

8.200.400.3 STATUTORY AUTHORITY: The New Mexico medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See Section 27-1-12 et seq., NMSA 1978.
[8.200.400.3 NMAC - Rp, 8.200.400.3 NMAC, 1/1/2019]

8.200.400.4 DURATION: Permanent.
[8.200.400.4 NMAC - Rp, 8.200.400.4 NMAC, 1/1/2019]

8.200.400.5 EFFECTIVE DATE: January 1, 2019, or upon a later approval date by the federal centers for medicare and medicaid services (CMS), unless a later date is cited at the end of the section.
[8.200.400.5 NMAC - Rp, 8.200.400.5 NMAC, 1/1/2019]

8.200.400.6 OBJECTIVE: The objective of this rule is to provide specific instructions when determining eligibility for the medicaid program and other health care programs. Generally, applicable eligibility rules are detailed in the medical assistance division (MAD) eligibility policy manual, specifically 8.200.400 NMAC, *General Medicaid Eligibility*. Processes for establishing and maintaining MAD eligibility are detailed in the income support division (ISD) general provisions 8.100 NMAC, *General Provisions for Public Assistance Programs*.
[8.200.400.6 NMAC - Rp, 8.200.400.6 NMAC, 1/1/2019]

8.200.400.7 DEFINITIONS: [**RESERVED**]

8.200.400.8 [RESERVED]
[8.200.400.8 NMAC - Rp, 8.200.400.8 NMAC, 1/1/2019]

8.200.400.9 GENERAL MEDICAID ELIGIBILITY: Medicaid services are jointly financed by the federal government and the state of New Mexico and are administered by medical assistance division (MAD).

A. Within broad federal regulations, New Mexico determines categories of eligible recipients, eligibility requirements, types and range of services, levels of provider reimbursement and managed care capitation, and administrative and operating procedures.

B. New Mexico administers medical assistance programs using waivers of the Social Security Act for comparability of services, rules for income and resources and freedom of choice of provider.

C. Payments for medical and behavioral health services, durable equipment and supplies are made directly to service providers, not to the medicaid eligible recipient.

D. This chapter describes the New Mexico categories of medicaid and medical assistance programs eligibility. Each medicaid and medical assistance program includes detailed eligibility requirements which are organized into the following three chapter types:

(1) recipient requirements (.400);

(2) income and resources standards (.500); and

(3) benefit description (.600).

[8.200.400.9 NMAC - Rp, 8.200.400.9 NMAC, 1/1/2019]

8.200.400.10 BASIS FOR DEFINING GROUP - MEDICAID CATEGORIES:

A. Except where noted, the HSD income support division (ISD) determines eligibility in the categories listed below:

(1) other adult (Category 100);

(2) parent caretaker (Category 200);

(3) pregnant women (Category 300);

(4) pregnancy-related services (Category 301);

(5) loss of parent caretaker due to earnings from employment or due to spousal support (Categories 027 and 028);

(6) newborn (Category 031);

(7) children under age 19 (Categories 400, 401, 402, 403, 420, and 421);

(8) children, youth, and families department medicaid (Categories 017, 037, 046, 04, 066, and 086); and

(9) family planning (Category 029).

B. Medicare savings program (MSP): MSP assists an eligible recipient with the cost of medicare.

(1) Medicare is the federal government program that provides health care coverage for individuals 65 or older; or under 65 who have a disability. Individuals under 65 who have a disability are subject to a waiting period of 24 months from the approval date of social security disability insurance (SSDI) benefits before they receive medicare coverage. Coverage under medicare is provided in four parts.

(a) Part A hospital coverage is usually free to beneficiaries when medicare taxes are paid while working.

(b) Part B medical coverage requires monthly premiums, co-insurance and deductibles to be paid by the beneficiary.

(c) Part C advantage plan allows a beneficiary to choose to receive all medicare health care services through a managed care organization.

(d) Part D provides prescription drug coverage.

(2) The following MSP programs can assist an eligible recipient with the cost of medicare.

(a) Qualified medicare beneficiaries (QMB) - Categories 041 and 044: QMB covers low income medicare beneficiaries who have or are conditionally eligible for medicare Part A. QMB benefits are limited to the following:

(i) cost for the monthly medicare Part B premium;

(ii) cost of medicare deductibles and coinsurance; and

(iii) cost for the monthly medicare Part A premium (for those enrolling conditionally).

(b) Specified low-income medicare beneficiaries (SLIMB) - Category 045: SLIMB medicaid covers low-income medicare beneficiaries who have medicare Part A. SLIMB is limited to the payment of the medicare Part B premium.

(c) Qualified individuals 1 (QI1s) - Category 042: QI1 medicaid covers low-income medicare beneficiaries who have medicare Part A. QI1 is limited to the payment of the medicare part B premium.

(d) Qualified disabled working individuals (QDI) - Category 050: QDI medicaid covers low income individuals who lose entitlement to free medicare Part A hospital coverage due to gainful employment. QDI is limited to the payment of the monthly Part A hospital premium.

(e) Medicare Part D prescription drug coverage - low income subsidy (LIS) - Category 048: LIS provides individuals enrolled in medicare Part D with a subsidy that helps pay for the cost of Part D prescription premiums, deductibles and co-payments. An eligible recipient receiving medicaid through QMB, SLMB or QI1 is automatically deemed eligible for LIS and need not apply. Other low-income medicare beneficiaries must meet an income and resource test and submit an application to determine if they qualify for LIS.

C. Supplemental security income (SSI) related medicaid:

(1) SSI - Categories 001, 003 and 004: Medicaid for individuals who are eligible for SSI. Eligibility for SSI is determined by the social security administration (SSA). This program provides cash assistance and medicaid for an eligible recipient who is:

(a) aged (Category 001);

(b) blind (Category 003); or

(c) disabled (Category 004).

(2) SSI medicaid extension - Categories 001, 003 and 004: MAD provides coverage for certain groups of applicants or eligible recipients who have received supplemental security income (SSI) benefits and who have lost the SSI benefits for specified reasons listed below and pursuant to 8.201.400 NMAC:

(a) the pickle amendment and 503 lead;

(b) early widow(er);

(c) disabled widow(er) and a disabled surviving divorced spouse;

(d) child insurance benefits, including disabled adult children (DAC);

(e) nonpayment SSI status (E01);

(f) revolving SSI payment status "ping-pongs"; and

(g) certain individuals who become ineligible for SSI cash benefits and, therefore, may receive up to two months of extended medicaid benefits while they apply for another MAD category of eligibility.

(3) Working disabled individuals (WDI) and medicare wait period - Category 074: There are two eligibility types:

(a) a disabled individual who is employed; or

(b) a disabled individual who has lost SSI medicaid due to receipt of SSDI and the individual does not yet qualify for medicare.

D. Long term care medicaid:

(1) medicaid for individuals who meet a nursing facility (NF) level of care (LOC), intermediate care facilities for the intellectually disabled (ICF-ID) LOC, or acute care in a hospital. SSI income methodology is used to determine eligibility. An eligible recipient must meet the SSA definition of aged (Category 081); blind (Category 083); or disabled (Category 084).

(2) Institutional care (IC) medicaid - Categories 081, 083 and 084: IC covers certain inpatient, comprehensive and institutional and nursing facility benefits.

(3) Program of all-inclusive care for the elderly (PACE) - Categories 081, 083 and 084: PACE uses an interdisciplinary team of health professionals to provide dual medicaid/medicare enrollees with coordinated care in a community setting. The PACE program is a unique three-way partnership between the federal government, the state, and the PACE organization. The PACE program is limited to specific geographic service area(s). Eligibility may be subject to a wait list for the following:

(a) the aged (Category 081);

(b) the blind (Category 083); or

(c) the disabled (Category 084).

(4) Home and community-based 1915 (c) waiver services (HCBS) - Categories 090, 091, 092, 093, 094, 095 and 096: A 1915(c) waiver allows for the provision of long term care services in home and community based settings. These programs serve a variety of targeted populations, such as people with mental illnesses, intellectual disabilities, or physical disabilities. Eligibility may be subject to a wait list.

(a) There are two HCBS delivery models:

(i) traditional agency delivery where HCBS are delivered and managed by a MAD enrolled agency; or

(ii) mi via self-directed where an eligible recipient, or his or her representative, has decision-making authority over certain services and takes direct responsibility to manage the eligible mi via recipient's services with the assistance of a system of available supports; self-direction of services allows an eligible mi via recipient to have the responsibility for managing all aspects of service delivery in a person-centered planning process.

(b) HCBS waiver programs include:

(i) elderly (Category 091), blind (Category 093) and disabled (Category 094);

(ii) medically fragile (Category 095);

(iii) developmental disabilities (Category 096); and

(iv) self-directed model for Categories 090, 091, 093, 094, 095, 096 and 092).

E. Emergency medical services for aliens (EMSA): EMSA medicaid covers certain noncitizens who either are undocumented or who do not meet the qualifying non-citizen criteria specified in 8.200.410 NMAC. Non-citizens must meet all eligibility criteria for one of the medicaid categories noted in 8.285.400 NMAC, except for citizenship or qualified non-citizen status. Medicaid eligibility for and coverage of services under EMSA are limited to the payment of emergency services from a medicaid provider.

F. Refugee medical assistance (RMA) - Categories 049 and 059: RMA offers health coverage to certain low income refugees during the first eight months from their date of entry to the United States (U.S.) when they do not

qualify for other medicaid categories of eligibility. A RMA eligible refugee recipient has access to a benefit package that parallels the full coverage medicaid benefit package. RMA is funded through a grant under Title IV of the Immigration and Nationality Act (INA). A RMA applicant who exceeds the RMA income standards may "spend-down" below the RMA income standards for Category 059 by subtracting incurred medical expenses after arrival into the U.S.

G. Breast and cervical cancer (BCC) - Category 052: BCC medicaid provides coverage to an eligible uninsured woman, under the age of 65 who has been screened and diagnosed by the department of health (DOH) as having breast or cervical cancer to include pre-cancerous conditions. The screening criteria are set forth in the centers for disease control and prevention's national breast and cervical cancer early detection program (NBCCEDP). Eligibility is determined using DOH notification and without a separate medicaid application or determination of eligibility.

[8.200.400.10 NMAC - Rp, 8.200.400.10 NMAC, 1/1/2019]

8.200.400.11 PRESUMPTIVE ELIGIBILITY FOR BREAST AND CERVICAL CANCER: PE provides immediate access to health services when an individual appears to be eligible for Category 052.

A. Breast and cervical cancer (BCC) (Category 052): PE provides temporary medicaid coverage for an uninsured woman, under the age of 65 who has been screened and diagnosed by the DOH as having breast or cervical cancer to include pre-cancerous conditions. Only one PE period is allowed per calendar year.

B. PE is determined by a qualified entity certified by HSD. Qualified entities may include community and rural health centers, hospitals, physician offices, local health departments, family planning agencies and schools.

C. The PE period begins on the date the provider determines presumptive eligibility and terminates at the end of the following month.

D. Providers shall notify the MAD claims processing contractor of the determination within 24-hours of the PE determination.

E. For continued medicaid eligibility beyond the PE period, a completed and signed application for medicaid must be submitted to HSD/ISD. An eligible PE provider must submit the application to ISD within 10 calendar days from the receipt of the application.

[8.200.400.11 NMAC - Rp, 8.200.400.11 NMAC, 1/1/2019]

8.200.400.12 12 MONTHS CONTINUOUS ELIGIBILITY FOR CHILDREN (42 CFR 435.926):

A. HSD provides continuous eligibility for the period specified in Subsection B of 8.200.400.14 NMAC for an individual who is:

(1) Under age 19 and

(2) Eligible and enrolled for mandatory or optional coverage under the State plan.

B. The continuous eligibility period is 12 months. The continuous eligibility period begins on the effective date of the individual's eligibility or most recent redetermination or renewal of eligibility.

C. A child's eligibility may not be terminated during a continuous eligibility period, regardless of any changes in circumstances, unless:

(1) The child attains the maximum age of 19;

(2) The child or child's representative requests a voluntary termination of eligibility;

(3) The child ceases to be a resident of New Mexico;

(4) The agency determines that eligibility was erroneously granted at the most recent determination, redetermination or renewal of eligibility because of agency error or fraud, abuse, or perjury attributed to the child or the child's representative; or

(5) The child dies.

[8.200.400.12 NMAC - Rp, 8.200.400.12 NMAC, 1/1/2019]

8.200.400.13 AUTHORIZED REPRESENTATIVE: HSD must permit applicants and beneficiaries to designate an individual or organization to act responsibly on their behalf in assisting with the individual's application and renewal of eligibility and other ongoing communications.

A. Such a designation must be in writing including the applicant's signature, and must be permitted at the time of application and at other times. Legal documentation of authority to act on behalf of an applicant or beneficiary under state law, such as a court order establishing legal guardianship or a power of attorney, shall serve in the place of written authorization by the applicant or beneficiary.

B. Representatives may be authorized to:

(1) sign an application on the applicant's behalf;

(2) complete and submit a renewal form;

(3) receive copies of the applicant or beneficiary's notices and other communications from the agency; and

(4) act on behalf of the applicant or beneficiary in all other matters with the agency.

C. The power to act as an authorized representative is valid until the applicant or beneficiary modifies the authorization or notifies the agency that the representative is no longer authorized to act on his or her behalf, or the authorized representative informs the agency that he or she is no longer acting in such capacity, or there is a change in the legal authority upon which the individual's or organization's authority was based. Such notice

must be in writing and should include the applicant or authorized representative's signature as appropriate.

D. The authorized representative is responsible for fulfilling all responsibilities encompassed within the scope of the authorized representation to the same extent as the individual he or she represents, and must agree to maintain, or be legally bound to maintain, the confidentiality of any information regarding the applicant or beneficiary provided by the agency.

E. As a condition of serving as an authorized representative, a provider, staff member or volunteer of an organization must sign an agreement that he or she will adhere to the regulations relating to confidentiality (relating to the prohibition against reassignment of provider claims as appropriate for a health facility or an organization acting on the facility's behalf), as well as other relevant state and federal laws concerning conflicts of interest and confidentiality of information (42 CFR 435.923). [8.200.400.13 NMAC - Rp, 8.200.400.13 NMAC, 1/1/2019]

8.200.400.14 RETROACTIVE MEDICAID:

A. HSD must make eligibility for medicaid effective no later than the first or up to the third month before the month of application if the individual:

(1) Requested coverage for months prior to the application month;

(2) received medicaid services, at any time during that period, of a type covered under the plan and;

(3) would have been eligible for medicaid at the time he or she received the services, if he or she had applied (or an authorized representative has applied for him or her) regardless of whether the individual is alive when application for medicaid is made.

B. Eligibility for medicaid is effective on the first day of the month if an individual was eligible at any time during that month.

C. Eligibility for each retroactive month is determined separately. Retroactive medicaid must be requested within 180 days of the date of the medicaid application.

D. Retroactive eligibility is limited to one month for most centennial care managed care members, as described in Subsection E of 8.200.400.14 NMAC. Retroactive eligibility is allowed for up to three months for individuals and categories as described in Subsection F of 8.200.400.14 NMAC. All retroactive periods are limited to one month prior to the application month when the individual or category would be enrolled into managed care for the application month or month prior.

E. Centennial care managed care members on one of the following medicaid categories of eligibility (COEs) during the month of application or month prior are limited to retroactive medicaid for one month prior to the application month for these categories:

(1) other adults (COE 100) with a federal poverty level (FPL) less than or equal to one hundred percent;

(2) other adults (COE 100) with an FPL greater than one hundred percent who applied prior to July 1, 2019;

(3) parent caretaker (COE 200);

(4) supplemental security income (SSI COEs 001, 003, and 004);

(5) SSI extensions (COEs 001, 003, and 004, e.g. 503s, disabled adult children, ping pongs, and early widower);

(6) working disabled individuals (WDI COE 074); and

(7) breast and cervical cancer (BCC COE 052)

(8) an incarcerated individual suspended from centennial care enrollment for the application month is limited to one month of retroactive medicaid for the month prior to the application month for the medicaid categories listed in Subsection E of 8.200.400.14 NMAC.

F. The following individuals or categories are allowed up to three months of retroactive medicaid:

(1) FFS individuals: Individuals not enrolled in managed care during the month of application or month prior are allowed up to three months of retroactive medicaid prior to the application month for the following categories:

(a) other adults (COE 100);

(b) parent caretaker (COE 200);

(c) SSI (COEs (001, 003, and 004);

(d) SSI extensions (COEs 001, 003, and 004, e.g. 503s, disabled adult children, ping pongs, and early widowers);

(e) WDI (COE 074);

(f) BCC (COE 052);

(2) pregnant women (COE 300);

(3) pregnancy-related services (COE 301);

(4) a woman who is pregnant on any medicaid category during the application month excluding categories that do not have retroactive medicaid per Subsection G of 8.200.400.14 NMAC.

(5) children under age 19 on any medicaid category, inclusive of the month a child turns age 19 during the application month, excluding categories that do not have retroactive medicaid per Subsection G of 8.200.400.14 NMAC;

(6) family planning (COE 029);

(7) specified low income medicare beneficiaries (SLIMB COE 045) and qualified individuals (QI1 COE 042);

(8) qualified disabled working individuals (QD COE 050);

(9) refugee (COE 049)

(10) children, youth and families department medicaid categories (COEs 017, 037, 046, 047, 066, and 086); and

(11) institutional care medicaid (COEs 081, 083, and 084) excluding the program of all-inclusive care for the elderly (PACE).

(12) an incarcerated individual suspended during the application month who is FFS, pregnant, or eligible under one of the categories listed in Subsection F of 8.200.400.14 NMAC is allowed up to three months of retroactive medicaid prior to the application month.

G. The following categories do not have retroactive medicaid:

(1) emergency medical services for aliens (EMSA COE 085). EMSA provides coverage for emergency services, which may be provided prior to the application month, but is not considered retroactive medicaid. Eligibility is determined in accordance with 8.285.400, 8.285.500, and 8.285.600 NMAC;

(2) home and community based-services waivers (COEs 091, 093, 094, 095, and 096);

(3) other adults (COE 100) with an FPL greater than one hundred percent who apply on or after July 1, 2019 are subject to a premium. Individuals who have a premium requirement are determined prospectively eligible for the other adults category.

(4) PACE (COEs 081, 083, and 084);

(5) qualified medicare beneficiaries (COEs 041 and 044); and

(6) transitional medicaid (COEs 027 and 028).

H. Newborns (COE 031) are deemed to have applied and been found eligible for the newborn category of eligibility from birth through the month of the child's first birthday. This applies in instances where the labor and delivery services were furnished prior to the date of the application and covered by medicaid based on the mother applying for up to three months of retroactive eligibility.

[8.200.400.14 NMAC - Rp, 8.200.400.14 NMAC, 1/1/2019]

8.200.400.15 NMAC [RESERVED]

8.200.400.16 NMAC [RESERVED]

HISTORY OF 8.200.400 NMAC: The material in this part was derived from that previously filed with the State Records Center:
8 NMAC 4.MAD.400, Recipient Policies, Recipient Rights and Responsibilities, filed 12/30/1994.

History of Repealed Material:
8.200.400 NMAC, General Medicaid Eligibility, filed 6/15/2001 - Repealed effective 1/1/2014.
8.200.400 NMAC, General Medicaid Eligibility, filed 12/2/2013 - Repealed effective 10/1/2017.
8.200.400 NMAC, General Medicaid Eligibility, filed 9/14/2017 - Repealed effective 1/1/2019.

NMAC History:
8.200.400 NMAC, General Medicaid Eligibility, filed 12/2/2013 was replaced by 8.200.400 NMAC, General Medicaid Eligibility effective 10/1/2017.
8.200.400 NMAC, General Medicaid Eligibility, filed 9/14/2017 was replaced by 8.200.400 NMAC, General Medicaid Eligibility effective 1/1/2019.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 201 MEDICAID ELIGIBILITY - MEDICAID EXTENSION (CATEGORY 001, 003 and 004)
PART 400 RECIPIENT POLICIES

8.201.400.1 ISSUING AGENCY: New Mexico Human Services Department.
[8.201.400.1 NMAC - Rp, 8.201.400.1 NMAC, 1/1/2019]

8.201.400.2 SCOPE: The rule applies to the general public.
[8.201.400.2 NMAC - Rp, 8.201.400.2 NMAC, 1/1/2019]

8.201.400.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended and by the state human services department pursuant to state statute. See Sections 27-2-12 *et seq*., NMSA 1978 (Repl. Pamp. 1991).
[8.201.400.3 NMAC - Rp, 8.201.400.3 NMAC, 1/1/2019]

8.201.400.4 DURATION: Permanent.
[8.201.400.4 NMAC - Rp, 8.201.400.4 NMAC, 1/1/2019]

8.201.400.5 EFFECTIVE DATE: January 1, 2019, unless a later date is cited at the end of the section.
[8.201.400.5 NMAC - Rp, 8.201.400.5 NMAC, 1/1/2019]

8.201.400.6 OBJECTIVE: The objective of these regulations is to provide eligibility policy and procedures for the medicaid program.
[8.201.400.6 NMAC - Rp, 8.201.400.6 NMAC, 1/1/2019]

8.201.400.7 DEFINITIONS: [**RESERVED**]

8.201.400.8 [**RESERVED**]

8.201.400.9 MEDICAID EXTENSION - CATEGORIES 001, 003 AND 004: Medicaid extension (categories 001, 003 and 004) provides coverage for certain groups of individuals who have lost eligibility for supplemental security income (SSI) for specified reasons.
[8.201.400.9 NMAC - Rp, 8.201.400.9 NMAC, 1/1/2019]

8.201.400.10 BASIS FOR DEFINING THE GROUP: Medicaid provides coverage for the following groups of applicants/

recipients who have received supplemental security income (SSI) benefits and who have lost their SSI benefits for specified reasons.

A. Pickle and 503 lead cases:

(1) Individuals who were entitled to SSI benefits and who subsequently lose eligibility for SSI solely due to the cost-of-living increase (COLA) in Title II benefits are automatically extended medicaid effective the month after the termination of SSI. These cases are referred to as 503 leads. See Public Law 94-566, Section 503 (also known as the "Pickle Amendment").

(2) Individuals who lose SSI eligibility for any reason other than the COLA increases (Pickle cases) may be entitled to medicaid if the following conditions exist:

(a) the reason for loss of SSI no longer exists; and

(b) the adjusted income after applying the applicable income disregards is below the current SSI income ceiling federal benefit rate (FBR).

(3) Individuals who received both Title II and SSI benefits after April 1977 and who lost SSI eligibility, but would still be eligible for SSI if the Title II COLAs were deducted from countable income are eligible for medicaid extension. See Lynch V. Rank, 747 F.2d. 528 (9th Cir. 1984). These individuals must meet the requirements for SSI eligibility after the Title II COLAs are deducted.

(a) To determine the countable Title II income, deduct the Title II COLAs received after the last SSI eligibility period using the FBR table compared with the current SSI income ceiling. See 8.200.520 NMAC, Income Standards.

(b) The social security administration (SSA) office identifies applicants/recipients as "Pickle" or "503 lead" cases and the human services department (HSD) disseminates this information to the appropriate income support division (ISD) office. The income support division (ISD) worker approves the case effective the month after the SSI termination.

(c) After identification as a 503 lead or a Pickle case, the SSA office generates a notice to individuals advising them of their right to apply for medicaid.

B. Early widow(er)s:

(1) Widow(er)s between 60 and 64 years of age, who meet the following requirements are eligible for medicaid extension, (Public Law 100-203, which amended Section 1634D of the Social Security Act):

(a) current Title II recipients who were entitled to and received SSI benefits;

(b) subsequently lost eligibility for SSI due to initial receipt of, or increase in, early widow's or widower's benefits; and

(c) are not entitled to medicare part A, hospital insurance.

(2) Medicaid coverage is extended until an applicant/recipient either becomes eligible for the hospital insurance under medicare part A or reaches 65 years of age, whichever is earlier.

(3) The ISD worker disregards a Title II widow(er)'s benefit for the purpose of determining eligibility.

C. Child insurance benefits:

(1) Individuals who lose SSI eligibility after July 1, 1987 as a result of entitlement to or receipt of an increase in Title II benefits for disabled adult children (DACs) are eligible for medicaid extension. [Public Law 99-643, Section 6].

(2) The SSA office identifies DACs systematically and HSD alerts the appropriate ISD office to approve the case effective the month after the SSI termination.

(a) Title II DAC benefit is disregarded in determining eligibility.

(b) Title II benefits are awarded from the account(s) of the individual's parent(s) and, in most instances, can be identified by a claim suffix of "C" following the claim number;

D. Disabled widow(er)s and disabled surviving divorced spouses:

(1) Disabled widow(er)s and disabled surviving divorced spouses who lost SSI on or after January 1, 1991 due to receipt of Title II benefits resulting from the liberalization of the definition of disability. See Section 503 of OBRA 1990. To qualify for medicaid, these applicant/recipients must meet all of the following conditions:

(a) received SSI for the month prior to the month in which they began receiving the Title II benefits;

(b) would continue to be eligible for SSI if the amount of the Title II benefit were not counted as income; and

(c) are not entitled to medicare part A.

(2) These applicants/recipients lose eligibility for medicaid extension when they become entitled to medicare part A.

E. Nonpayment SSI status (E01): Non-institutionalized SSI recipients who lose SSI eligibility due to initial receipt of Title II benefits in an amount exactly equal to the current income ceiling of the SSI program are eligible for medicaid extension ("E01" pay status); medicaid can cover non-institutionalized individuals with a nonpayment SSI status. The ISD worker must verify that the following standards are met:

(1) individual does not reside in an institution. Individuals who appear on the computer system (SDX) in payment status "E01" with living arrangement (LA) code "D" are not eligible for medicaid extension. These individuals lost SSI eligibility because they became institutionalized and their remaining income exceeds the $30 SSI FBR for institutionalized individuals. The ISD worker must evaluate eligibility under institutional care medicaid categories 081, 083 or 084;

(2) individual appears on the system with payment status code "E01" status;

(3) individual has unearned income equal to the current SSI income ceiling; and

(4) individual's income comes from Title II benefits (source code "A" on the SDX).

F. Revolving SSI payment status "ping-pongs": Individuals whose payment status "ping-pongs" back and forth between E01 and C01 status are eligible for medicaid extension.

(1) Revolving SSI eligibility due to payment of medicare Part B premiums by medicaid: The SSI recipient starts to receive Title II benefits and is entitled to medicare. The recipient is then entitled to medicaid payment of the part B medicare premium. This results in a recalculation of the Title II benefits. The recalculated Title II benefit equals the exact amount of the SSI income ceiling (SSI FBR). SSI payment status changes to E01 and medicaid stops paying the Part B premium. Without medicaid payment of the Part B premium, the Title II and (SSI) benefits are recomputed and the individual is eligible for SSI payments (C01). The scenario repeats, resulting in the ping-pong effect. Individuals initially eligible for medicaid extension under E01 status lose eligibility when their income exceeds the SSI income ceiling.

(2) Avoidance of revolving eligibility status: To avoid this situation, at the applicant/recipient's request, he or she can be eligible for medicaid as a medicaid extension case though eligibility can ping-pong back and forth between SSI payment status (C01) and SSI nonpayment status (E01).

(3) Referral process: The SSA refers these individuals to HSD using the "E01-C01 medicaid extension referral form." The ISD worker enters these applicants/recipients on the eligibility computer system as medicaid extension eligibles. SSA has already established that these individuals meet all SSI criteria except that their Title II benefit equals the exact amount of the SSI income ceiling.

G. Recipients ineligible for SSI cash benefits:

(1) Certain recipients of SSI who become ineligible for cash benefits are automatically extended medicaid benefits for an additional two months following the month in which the SSI case was closed. If the state is paying the recipient's medicare premiums (buy-in), this benefit is also continued during the period of extended benefits.

(2) Applicants/recipients automatically eligible for two months extended medicaid and buy-in as former SSI recipients are limited to those who lost SSI cash benefit for the following reasons:

(a) E01-Eligible for benefits, but no payment is due based on the payment computation;

(b) N01-Non-pay recipient's countable income exceeds Title XVI limitations;

(c) N04-Non-pay non-excludable resources exceed Title XVI limitations;

(d) N05-Non-pay recipient's gross income from self-employment exceeds Title XVI limitations;

(e) N07-Non-pay recipient's disability ceased;

(f) N08-Non-pay recipient's blindness ceased;

(g) N12-Non-pay recipient voluntarily withdrew from the program;

(h) N14-Non-pay aged claim denied for age;

(i) N16-Non-pay disability claim denied. Applicant not disabled;

(j) N19-Non-pay recipient has voluntarily terminated participation in the SSI program;

(k) N27-Non-pay disability terminated due to substantial gainful activity (SGA);

(l) N30-Non-pay slight impairment-medical consideration alone, no visual impairment;

(m) N31-Non-pay capacity for SGA-customary past work, no visual impairment;

(n) N32-Non-pay capacity for SGA-other work, no visual impairment;

(o) N33-Non-pay engaging in SGA despite impairment, no visual impairment;

(p) N34-Non-pay impairment is no longer severe at time of adjudication and did not last 12 months, no visual impairment;

(q) N35-Non-pay impairment is severe at time of adjudication but not expected to last 12 months, no visual impairment;

(r) N41-Non-pay slight impairment-medical condition alone, visual impairment;

(s) N42-Non-pay capacity for SGA-customary work visual impairment;

(t) N43-Non-pay capacity for SGA-other work, visual impairment, or impairment disabling for a period of less than 12 months;

(u) N44-Non-pay engaging in SGA despite impairment, visual impairment.

(v) N45-Non-pay impairment no longer severe at the time of adjudication and did not last 12 months, visual impairment;

(w) N46-Non-pay impairment is severe at the time of adjudication but not expected to last 12 months, visual impairment;

(x) N51-Non-pay impairment does not meet or equal listing (disabled child under 18 only);

(y)
S07-Suspended-returned check for other than death, address, payee change, or death of representative payee;

(z)
S08-Suspended-representative payee development pending;

(aa)
S10-Suspended-adjudicative suspense (system generated);

(bb)
S21-Suspended-the recipient is presumptively disabled or blind and has received three months payments;

(cc)
T30-Terminated-received payments, but must be re-established to correct SSR;

(dd)
T31-Terminated-system generated termination (payment previously made). Recipient met denial or non-pay terminated criteria;

(ee)
T33-Terminated-manual termination (previous payment made).

(3) Ex-Parte Review: Individuals who lose SSI eligibility, who are automatically extended for two months, per one of the reasons in Subsection G of 8.201.400.10 NMAC, are automatically evaluated for another medicaid category of eligibility before their extension period expires. If determined eligible the new medicaid category begins the month following the two month extension period.
[8.201.400.10 NMAC - Rp, 8.201.400.10 NMAC, 1/1/2019]

8.201.400.11 GENERAL RECIPIENT REQUIREMENTS:
[8.201.400.11 NMAC - Rp, 8.201.400.11 NMAC, 1/1/2019]

8.201.400.12 ENUMERATION: An applicant/recipient must furnish his or her social security number in accordance with 8.200.410.10 NMAC.
[8.201.400.12 NMAC - Rp, 8.201.400.12 NMAC, 1/1/2019]

8.201.400.13 CITIZENSHIP: Refer to Medical Assistance Program Manual Section 8.200.410.11 NMAC.
[8.201.400.13 NMAC - Rp, 8.201.400.13 NMAC, 1/1/2019]

8.201.400.14 RESIDENCE: Applicants/recipients must be physically present in New Mexico and have demonstrated intent to remain in the state. If an applicant/recipient does not have the present mental capacity to declare intent, a parent, guardian, or adult child may assume responsibility for the declaration of intent. If an applicant/recipient does not have the present mental capacity to declare intent and there is no guardian or relative to assume responsibility for a declaration of intent, the state where the applicant/recipient is living is recognized as the state of residence. Temporary absence from the state does not prevent eligibility. A temporary absence exists when an applicant/recipient leaves the state for a specific purpose with a time-limited purpose and intends to return to New Mexico when that purpose has been accomplished. Applicants/recipients who are eligible for New Mexico medicaid are terminated if they move out of state.
[8.201.400.14 NMAC - Rp, 8.201.400.14 NMAC, 1/1/2019]

8.201.400.15 NONCONCURRENT RECEIPT OF ASSISTANCE: To be eligible for medicaid extension under the 503 leads and Pickle group, an applicant/recipient must have been eligible for, and have received, both Title II and SSI benefits concurrently in any month that he/she is currently receiving Title II benefits.
[8.201.400.15 NMAC - Rp, 8.201.400.15 NMAC, 1/1/2019]

8.201.400.16 SPECIAL RECIPIENT REQUIREMENTS: To be eligible for medicaid extension, an applicant/recipient must be aged, blind, or disabled as defined by the social security administration (SSA). This determination is made by SSA prior to applicable for medicaid extension.
[8.201.400.16 NMAC - Rp, 8.201.400.16 NMAC, 1/1/2019]

8.201.400.17 AGE: Applicants/recipients for medicaid extension must meet the age requirements as specified in 8.201.400.10 NMAC, Basis for Defining the Group.
[8.201.400.17 NMAC - Rp, 8.201.400.17 NMAC, 1/1/2019]

8.201.400.18 RECIPIENT RIGHTS AND RESPONSIBILITIES: An applicant/recipient is responsible for establishing his/her eligibility for medicaid. As part of this responsibility, the applicant/recipient must provide required information and documents or take the actions necessary to establish eligibility. Failure to do so must result in a decision that eligibility does not exist. An applicant/recipient must also grant HSD permission to contact other persons, agencies or sources of information which are necessary to establish eligibility.
[8.201.400.18 NMAC - Rp, 8.201.400.18 NMAC, 1/1/2019]

8.201.400.19 ASSIGNMENT OF MEDICAL SUPPORT: Refer to Medical Assistance Program Manual Subsection F of 8.200.420.12 NMAC.
[8.201.400.19 NMAC - Rp, 8.201.400.19 NMAC, 1/1/2019]

8.201.400.20 REPORTING REQUIREMENTS: Medicaid applicant/recipients must report any change in circumstances which may affect eligibility to the local income support division (ISD) office within 10 days of the change.
[8.201.400.20 NMAC - Rp, 8.201.400.20 NMAC, 1/1/2019]

HISTORY OF 8.201.400 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:
ISD 370.0000, Procedures for Retroactive Supplemental Security Income (SSI) Medicaid and Medicaid Extension, filed 5/26/1980.
ISD 370.0000, Procedures for Retroactive Supplemental Security Income (SSI) Medicaid and Medicaid Extension, filed 1/26/1982.

MAD Rule 370.0000, Procedures for Retroactive Supplemental Security Income (SSI) Medicaid and Medicaid Extension, filed 12/1/1987.
MAD Rule 870, Retroactive Medicaid Coverage, filed 1/31/1990.
MAD Rule 870, Retroactive Medicaid Coverage, filed 3/11/1992.
MAD Rule 870, Retroactive Medicaid Coverage, filed 11/16/1994.
MAD Rule 372.0000, Medicaid Extension, 12/1/1987.
MAD Rule 872, Medicaid Extension, filed 1/31/1990.
MAD Rule 872, Medicaid Extension, filed 3/11/1992.
MAD Rule 872, Medicaid Extension, filed 8/20/1992.
MAD Rule 872, Medicaid Extension, filed 9/26/1994.

History of Repealed Material:
MAD Rule 872, Medicaid Extension, filed 9/26/1994 - Repealed effective 2/1/1995.
8.201.400 NMAC - Recipent Policies, filed 6/11/2203 - Repealed effective 1/1/2019.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 201 MEDICAID ELIGIBILITY - MEDICAID EXTENSION (CATEGORY 001, 003 and 004)
PART 600 BENEFIT DESCRIPTION

8.201.600.1 ISSUING AGENCY: New Mexico Human Services Department.
[8.201.600.1 NMAC - Rp, 8.201.600.1 NMAC, 1/1/2019]

8.201.600.2 SCOPE: The rule applies to the general public.
[8.201.600.2 NMAC - Rp, 8.201.600.2 NMAC, 1/1/2019]

8.201.600.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended and by the state human services department pursuant to state statute. See Section 27-2-12 et seq. NMSA 1978 (Repl. Pamp. 1991).
[8.201.600.3 NMAC - Rp, 8.201.600.3 NMAC, 1/1/2019]

8.201.600.4 DURATION: Permanent.
[8.201.600.4 NMAC - Rp, 8.201.600.4 NMAC, 1/1/2019]

8.201.600.5 EFFECTIVE DATE: January 1, 2019, or upon a later approval date by the federal centers for medicare and medicaid services (CMS), unless a later date is cited at the end of the section.
[8.201.600.5 NMAC - Rp, 8.201.600.5 NMAC, 1/1/2019]

8.201.600.6 OBJECTIVE: The objective of these regulations is to provide eligibility policy and procedures for the medicaid program.
[8.201.600.6 NMAC - Rp, 8.201.600.6 NMAC, 1/1/2019]

8.201.600.7 DEFINITIONS: [**RESERVED**]

8.201.600.8 [**RESERVED**]

8.201.600.9 BENEFIT DESCRIPTION: Applicants/recipients of medicaid extension receive the full range of medicaid-covered services.
[8.201.600.9 NMAC - Rp, 8.201.600.9 NMAC, 1/1/2019]

8.201.600.10 BENEFIT DETERMINATION: Application for the medicaid extension is made on the assistance application form. Applications must be acted on and notice sent to the applicant of the action taken within 45 days after the date of application. 503 lead cases, disabled adult child (DACs), and ping-pongs nonpayment SSI status (E01), SSI child cases, and SSI extension cases do not require a separate application for initial processing.
[8.201.600.10 NMAC - Rp, 8.201.600.10 NMAC, 1/1/2019]

8.201.600.11 INITIAL BENEFITS: When an eligibility determination is made, notice of the approval or denial is sent to the applicant. If the application is denied, this notice includes the reason for the denial and an explanation of rights to an administrative hearing.
[8.201.600.11 NMAC - Rp, 8.201.600.11 NMAC, 1/1/2019]

8.201.600.12 ONGOING BENEFITS: A periodic review is completed at least every 12 months.
[8.201.600.12 NMAC - Rp, 8.201.600.12 NMAC, 1/1/2019]

8.201.600.13 SSI EXTENSION RETROACTIVE BENEFIT COVERAGE: Retroactive medicaid coverage is provided in accordance with 8.200.400.14 NMAC.
[8.201.600.13 NMAC - Rp, 8.201.600.13 NMAC, 1/1/2019]

8.201.600.14 CHANGES IN ELIGIBILITY: If a recipient becomes ineligible, advance notice of the closure is sent by the ISD worker. If a recipient dies, the case is closed effective the following month.
[8.201.600.14 NMAC - Rp, 8.201.600.14 NMAC, 1/1/2019]

HISTORY OF 8.201.600 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:
ISD 370.0000, Procedures for Retroactive Supplemental Security Income (SSI) Medicaid and Medicaid Extension, filed 5/26/1980.
ISD 370.0000, Procedures for Retroactive Supplemental Security Income (SSI) Medicaid and Medicaid Extension, filed 1/26/1982.
MAD Rule 370.0000, Procedures for Retroactive Supplemental Security Income (SSI) Medicaid and Medicaid Extension, filed 12/1/1987.
MAD Rule 870, Retroactive Medicaid Coverage, filed 1/31/1990.
MAD Rule 870, Retroactive Medicaid

Coverage, filed 3/11/1992.
MAD Rule 870, Retroactive Medicaid Coverage, filed 11/16/1994.
MAD Rule 372.0000, Medicaid Extension, 12/1/1987.
MAD Rule 872, Medicaid Extension, filed 1/31/1990.
MAD Rule 872, Medicaid Extension, filed 3/11/1992.
MAD Rule 872, Medicaid Extension, filed 8/20/1992.
MAD Rule 872, Medicaid Extension, filed 9/26/1994.

History of Repealed Material:
MAD Rule 872, Medicaid Extension, filed 9/26/1994 - Repealed effective 2/1/1995.
8.201.600 NMAC - Medicaid Eligibility - Medical Extension - Benefit Description filed 9/2/2009 - Repealed effective 1/1/2019.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 215 MEDICAID ELIGIBILITY - SUPPLEMENTAL SECURITY INCOME (SSI) METHODOLOGY
PART 400 RECIPIENT POLICIES

8.215.400.1 ISSUING AGENCY: New Mexico Human Services Department.
[8.215.400.1 NMAC - Rp, 8.215.400.1 NMAC, 1/1/2019]

8.215.400.2 SCOPE: The rule applies to the general public.
[8.215.400.2 NMAC - Rp, 8.215.400.2 NMAC, 1/1/2019]

8.215.400.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended and by the state human services department pursuant to state statute. See Section 27-2-12 *et seq*., NMSA 1978 (Repl. Pamp. 1991).
[8.215.400.3 NMAC - Rp, 8.215.400.3 NMAC, 1/1/2019]

8.215.400.4 DURATION: Permanent.
[8.215.400.4 NMAC - Rp, 8.215.400.4 NMAC, 1/1/2019]

8.215.400.5 EFFECTIVE DATE: January 1, 2019, unless a later date is cited at the end of the section.
[8.215.400.5 NMAC - Rp, 8.215.400.5 NMAC, 1/1/2019]

8.215.400.6 OBJECTIVE: The objective of these regulations is to provide eligibility policy and procedures for the medicaid program.
[8.215.400.6 NMAC - Rp, 8.215.400.6 NMAC, 1/1/2019]

8.215.400.7 DEFINITIONS: [**RESERVED**]
[8.215.400.7 NMAC - Rp, 8.215.400.7 NMAC, 1/1/2019]

8.215.400.8 [**RESERVED**]
[8.215.400.8 NMAC - Rp, 8.215.400.8 NMAC, 1/1/2019]

8.215.400.9 SUPPLEMENTAL SECURITY INCOME METHODOLOGY: All noninstitutionalized married couples who are eligible for supplemental security income (SSI) are treated as separate individuals for determining eligibility and benefit amounts, beginning the month after the month they begin living apart. In the case of an initial application or reinstatement following a period of ineligibility, each member of a married couple not living together is considered an individual as of the date of application or request for reinstatement, regardless of when the separation occurred. See *Title 8, Chapter 281, Medicaid Eligibility - Institutional Care* (*Categories 081, 083 and 084*), for information on separation caused by the institutionalization of one member of a married couple.
[8.215.400.9 NMAC - Rp, 8.215.400.9 NMAC, 1/1/2019]

8.215.400.10 SUPPLEMENTAL SECURITY INCOME (Categories 001, 003, and 004):

A. The human services department (HSD) has an agreement under Section 1634 of the Social Security Act with the social security administration (SSA) for SSA to make medicaid eligibility determinations. Supplemental security income (SSI) recipients (categories 001, 003, and 004) who receive an SSI cash payment or are Section 1619(b) recipients automatically have medicaid eligibility unless they fail to meet the assignment of rights or third party liability requirements; or HSD has determined ineligibility under the medicaid trust provision.

B. Section 1619(b) recipients: To qualify for continuing medicaid coverage, a 1619(b) individual must:

(1) have been eligible for an SSI cash payment for at least one month; and

(2) still meet the disability requirement; and

(3) still meet all other non-disability SSI requirements; and

(4) need medicaid benefits to continue to work; and

(5) have gross earnings that are insufficient to replace SSI, medicaid and publicly funded attendant care services.
[8.215.400.9 NMAC - N, 1/1/2019]

HISTORY OF 8.215.400 NMAC:
Pre NMAC History: The material in this part was derived from that previously filed with the State Records Center.
MAD Rule 860, SSI Methodology for Computation of Countable Resources and Income, filed 3/7/1989.
MAD Rule 860, SSI Methodology for Computation of Countable Resources and Income, filed 3/21/1990.
MAD Rule 860, SSI Methodology for Computation of Countable Resources and Income, filed 4/24/1991.
MAD Rule 860, SSI Methodology for Computation of Countable Resources and Income, filed 6/19/1992.

MAD Rule 861, Resources - SSI Methodology for Computation of Countable Resources and Income, filed 3/18/1993.
MAD Rule 861, Resources - SSI Methodology for Computation of Countable Resources and Income, filed 12/29/1994.
MAD Rule 862, Income - SSI Methodology for Computation of Countable Resources and Income, filed 3/18/1993.
MAD Rule 864, Potential Income or Resources - SSI Methodology for Computation of Countable Resources and Income, filed 3/18/1993.
MAD Rule 866, Deeming Income, filed 11/16/1994.

History of Repealed Material:
MAD Rule 860, SSI Methodology for Computation of Countable Resources and Income, filed 6/19/1992 - Repealed effective 2/1/1995.
MAD Rule 861, Resources - SSI Methodology for Computation of Countable Resources and Income, filed 12/29/1994 - Repealed effective 2/1/1995.
MAD Rule 862, Income - SSI Methodology for Computation of Countable Resources and Income, filed 3/18/1993 - Repealed effective 2/1/1995.
MAD Rule 864, Potential Income or Resources - SSI Methodology for Computation of Countable Resources and Income, filed 3/18/1993 - Repealed effective 2/1/1995.
MAD Rule 866, Deeming Income, filed 11/16/1994 - Repealed effective 2/1/1995.
8.215.400 NMAC - Recipient Policies, filed 9/3/2013 - Repealed effective 1/1/2019.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 215 MEDICAID ELIGIBILITY - SUPPLEMENTAL SECURITY INCOME (SSI) METHODOLOGY
PART 600 BENEFIT DESCRIPTION

8.215.600.1 ISSUING AGENCY: New Mexico Human Services Department.
[8.215.600.1 NMAC - Rp, 8.215.600.1 NMAC, 1/1/2019]

8.215.600.2 SCOPE: The rule applies to the general public.
[8.215.600.2 NMAC - Rp, 8.215.600.2 NMAC, 1/1/2019]

8.215.600.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended and by the state human services department pursuant to state statute. See Section 27-2-12 et seq. NMSA 1978 (Repl. Pamp. 1991).
[8.215.600.3 NMAC - Rp, 8.215.600.3 NMAC, 1/1/2019]

8.215.600.4 DURATION: Permanent.
[8.215.600.4 NMAC - Rp, 8.215.600.4 NMAC, 1/1/2019]

8.215.600.5 EFFECTIVE DATE: January 1, 2019, or upon a later approval date by the federal centers for medicare and medicaid services (CMS), unless a later date is cited at the end of the section.
[8.215.600.5 NMAC - Rp, 8.215.600.5 NMAC, 1/1/2019]

8.215.600.6 OBJECTIVE: The objective of these regulations is to provide eligibility policy and procedures for the medicaid program.
[8.215.600.6 NMAC - Rp, 8.215.600.6 NMAC, 1/1/2019]

8.215.600.7 DEFINITIONS: [**RESERVED**]

8.215.600.8 [**RESERVED**]

8.215.600.9 GENERAL BENEFIT COVERAGE: Medicaid coverage for services based on determinations made using the SSI methodology varies based on the category of eligibility. For applicants/recipients who are eligible for SSI, full medicaid coverage for services is available. If applicants/recipients are eligible for medicare coverage, medicaid covers medicare premium amounts.
[8.215.600.9 NMAC - Rp, 8.215.600.9 NMAC, 1/1/2019]

8.215.600.10 SSI RETROACTIVE BENEFIT COVERAGE: Retroactive medicaid coverage is provided in accordance with 8.200.400.14 NMAC.
[8.215.600.10 NMAC - Rp, 8.215.600.10 NMAC, 1/1/2019]

8.215.600.11 CHANGES IN ELIGIBILITY: A case is closed, with provision of advance notice when the recipient becomes ineligible. If a recipient dies, the case is closed the following month.
[8.215.600.11 NMAC - Rp, 8.215.600.11 NMAC, 1/1/2019]

HISTORY OF 8.215.600 NMAC:
Pre NMAC History: The material in this part was derived from that previously filed with the State Records Center.
MAD Rule 860, SSI Methodology for Computation of Countable Resources and Income, filed 3/7/1989.
MAD Rule 860, SSI Methodology for Computation of Countable Resources and Income, filed 3/21/1990.
MAD Rule 860, SSI Methodology for Computation of Countable Resources and Income, filed 4/24/1991.
MAD Rule 860, SSI Methodology for Computation of Countable Resources and Income, filed 6/19/1992.
MAD Rule 861, Resources - SSI Methodology for Computation of Countable Resources and Income, filed 3/18/1993.

MAD Rule 861, Resources - SSI Methodology for Computation of Countable Resources and Income, filed 12/29/1994.
MAD Rule 862, Income - SSI Methodology for Computation of Countable Resources and Income, filed 3/18/1993.
MAD Rule 864, Potential Income or Resources - SSI Methodology for Computation of Countable Resources and Income, filed 3/18/1993.
MAD Rule 866, Deeming Income, filed 11/16/1994.

History of Repealed Material:
MAD Rule 860, SSI Methodology for Computation of Countable Resources and Income, filed 6/19/1992 - Repealed effective 2/1/1995.
MAD Rule 861, Resources - SSI Methodology for Computation of Countable Resources and Income, filed 12/29/1994 - Repealed effective 2/1/1995.
MAD Rule 862, Income - SSI Methodology for Computation of Countable Resources and Income, filed 3/18/1993- Repealed effective 2/1/1995.
MAD Rule 864, Potential Income or Resources - SSI Methodology for Computation of Countable Resources and Income, filed 3/18/1993 - Repealed effective 2/1/1995.
MAD Rule 866, Deeming Income, filed 11/16/1994 - Repealed effective 2/1/1995.
8.215.600 NMAC - Benefit Description filed 9/3/2013 - Repealed effective 1/1/2019.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 231 MEDICAID ELIGIBILITY - INFANTS OF MOTHERS WHO ARE MEDICAID OR MEDICAL ASSISTANCE PROGRAM ELIGIBLE
PART 600 BENEFIT DESCRIPTION

8.231.600.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.231.600.1 NMAC - Rp, 8.231.600.1 NMAC, 1/1/2019]

8.231.600.2 SCOPE: The rule applies to the general public.
[8.231.600.2 NMAC - Rp, 8.231.600.2 NMAC, 1/1/2019]

8.231.600.3 STATUTORY AUTHORITY: The New Mexico medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See Section 27-1-12 et seq., NMSA 1978.
[8.231.600.3 NMAC - Rp, 8.231.600.3 NMAC, 1/1/2019]

8.231.600.4 DURATION: Permanent.
[8.231.600.4 NMAC - Rp, 8.231.600.4 NMAC, 1/1/2019]

8.231.600.5 EFFECTIVE DATE: January 1, 2019, or upon a later approval date by the federal centers for medicare and medicaid services (CMS), unless a later date is cited at the end of the section.
[8.231.600.5 NMAC - Rp, 8.231.600.5 NMAC, 1/1/2019]

8.231.600.6 OBJECTIVE: The objective of this rule is to provide specific instructions when determining eligibility for the medicaid program and other health care programs. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapters located at 8.291.400 NMAC through 8.291.430 NMAC.
[8.231.600.6 NMAC - Rp, 8.231.600.6 NMAC, 1/1/2019]

8.231.600.7 DEFINITIONS: [RESERVED]

8.231.600.8 [RESERVED]
[8.231.600.8 NMAC - Rp, 8.231.600.8 NMAC, 1/1/2019]

8.231.600.9 BENEFIT DESCRIPTION: An applicant or recipient who is eligible for medicaid under this category is eligible to receive the full range of medicaid services.
[8.231.600.9 NMAC - Rp, 8.231.600.9 NMAC, 1/1/2019]

8.231.600.10 BENEFIT DETERMINATION:

A. Medical service providers must give the name and case number of the New Mexico medicaid eligible mother and the name, birth date, sex of the newborn, and the name of the hospital where the birth occurred to local county income support division (ISD) office. Within three days after receipt of this information, the income support specialist (ISS):

(1) determines if the mother was eligible for New Mexico medicaid at the time of birth or if the birth and delivery was covered by emergency medical services to undocumented aliens (EMSA);

(2) registers the newborn for medicaid on the system; a signed application is not required;

(3) provides eligibility information to the hospital; and

(4) notifies the mother that a signed application is necessary to establish the newborn's eligibility for temporary assistance for needy families (TANF), if applicable.

B. Processing time limit: All applications must be processed within 45 days from the date of application. The time limit begins on the day the signed application is received. Applications must be acted upon and notice of approval, denial or delay sent out within the required time limit. The ISS explains the time limit and that the applicant may request an administrative hearing if the application pends longer than the time limit allows.
[8.231.600.10 NMAC - Rp, 8.231.600.10 NMAC, 1/1/2019]

8.231.600.11 ONGOING BENEFITS: A newborn remains eligible for assistance under Category 031 from birth through the month of the child's first birthday as long as the newborn remains in New Mexico.
[8.231.600.11 NMAC - Rp, 8.231.600.12 NMAC, 1/1/2019]

8.231.600.12 RETROACTIVE BENEFIT COVERAGE: Retroactive medicaid coverage is provided in accordance with Subsection H of 8.200.400.14 NMAC.
[8.231.600.12 NMAC - Rp, 8.231.600.13 NMAC, 1/1/2019]

8.231.600.13 CHANGE IN ELIGIBILITY: If the newborn is placed on MAD Category 400 or 420 and then loses eligibility for either of these categories, the newborn can still be eligible for Category 031 if he meets Category 031 requirements for the remainder of the 12 month period. A new application is not required
[8.231.600.13 NMAC - Rp, 8.231.600.14 NMAC, 1/1/2019]

8.231.600.14 PERIODIC REDETERMINATIONS OF ELIGIBILITY (42 CFR 435.117(d)): A redetermination of eligibility must be completed on behalf of the children described in this provision in accordance with 8.291.410.19 NMAC.
[8.231.600.14 NMAC - Rp, 8.231.600.14 NMAC, 1/1/2019]

8.231.600.15 ENUMERATION AND CITIZENSHIP:

A. HSD requires, as a condition of eligibility, that each individual (including children) seeking medicaid furnish each of his or her social security numbers (SSN) per paragraph (a) of 42 CFR 435.910 and 8.200.410.10 NMAC. HSD will request an SSN at renewal if not already provided.

B. Newborns who were initially eligible for medicaid as deemed newborns are considered to have provided satisfactory documentation of citizenship, identity, and age.
[8.231.600.15 NMAC - Rp, 8.231.600.15 NMAC, 1/1/2019]

HISTORY OF 8.231.600 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:
ISD 290.1000, Medical Assistance for Woman and Children, filed 11/13/1984.
ISD FA 830, Medical Assistance for Woman and Children and AFDC Related Groups, filed 2/10/1988.
MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups, filed 8/11/1988.
MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups, filed 9/8/1988.
MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups, filed 9/30/1988.
MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups, filed 12/1/1988.
MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups, filed 3/31/1989.
MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups, filed 6/8/1989.
MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups, filed 12/28/1989.
MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups, filed 12/29/1989.
MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups, filed 3/1/1991.
MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups, filed 6/5/1992.

History of Repealed Material:
MAD Rule 830, Medical Assistance for Women and Children and AFDC - Related Groups, filed 6/5/1992 - Repealed effective 2/1/1995.
8.231.600 NMAC, Benefit Description, filed 12/10/2007 - Repealed 1/1/2014.
8.231.600 NMAC, Benefit Description, filed 12/2/2013 - Repealed effective 10/1/2017.
8.231.600 NMAC, Benefit Description, filed 9/14/2017 - Repealed effective 1/1/2019.

NMAC History:
8.231.600 NMAC, Benefit Description, filed 12/2/2013 was replaced by 8.231.600 NMAC, Benefit Description, effective 10/1/2017.
8.231.600 NMAC, Benefit Description, filed 9/14/2017 was replaced by 8.231.600 NMAC, Benefit Description, effective 1/1/2019.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 242 MEDICAL ASSISTANCE PROGRAM ELIGIBILITY - QUALIFIED DISABLED INDIVIDUALS WHOSE INCOME EXCEEDS QMB AND SLIMB
PART 600 BENEFIT DESCRIPTION

8.242.600.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.242.600.1 NMAC - Rp, 8.242.600.1 NMAC, 1/1/2019]

8.242.600.2 SCOPE: The rule applies to the general public.
[8.242.600.2 NMAC - Rp, 8.242.600.2 NMAC, 1/1/2019]

8.242.600.3 STATUTORY AUTHORITY: The New Mexico medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See Section 27-1-12 et seq., NMSA 1978.
[8.242.600.3 NMAC - Rp, 8.242.600.3 NMAC, 1/1/2019]

8.242.600.4 DURATION: Permanent.
[8.242.600.4 NMAC - Rp, 8.242.600.4 NMAC, 1/1/2019]

8.242.600.5 EFFECTIVE DATE: January 1, 2019, or upon a later approval date by the federal centers for medicare and medicaid services (CMS), unless a later date is cited at the end of the section.
[8.242.600.5 NMAC - Rp, 8.242.600.5 NMAC, 1/1/2019]

8.242.600.6 OBJECTIVE: The objective of this rule is to provide specific instructions when determining eligibility for the medicaid program and other health care programs. Generally, applicable eligibility rules are detailed in the medical assistance division (MAD) eligibility policy manual, specifically 8.200.400 NMAC, *General Medicaid Eligibility*. Processes for establishing and maintaining MAD eligibility are detailed in the income support division (ISD) general provisions 8.100 NMAC, *General Provisions for Public Assistance Programs*.
[8.242.600.6 NMAC - Rp, 8.242.600.6 NMAC, 1/1/2019]

8.242.600.7 DEFINITIONS: [**RESERVED**]

8.242.600.8 [RESERVED]
[8.242.600.8 NMAC - Rp, 8.242.600.8 NMAC, 1/1/2019]

8.242.600.9 BENEFIT DESCRIPTION: For Category 050, medicaid coverage is limited to payment of the medicare Part A premium. No medicaid card is issued.
[8.242.600.9 NMAC - Rp, 8.242.600.9 NMAC, 1/1/2019]

8.242.600.10 BENEFIT DETERMINATION: Application for Category 050 is made on the assistance application form. Applications must be acted on and notice of action taken must be sent to the applicant within 45 days of receipt of the application.
[8.242.600.10 NMAC - Rp, 8.242.600.10 NMAC, 1/1/2019]

8.242.600.11 INITIAL BENEFITS: The effective date of eligibility for qualified disabled working individuals (QD) is based on the date of application and the date on which all eligibility criteria, including enrollment for medicare Part A, are met. Verification of the effective date of medicare Part A enrollment must be obtained from the social security administration (SSA). When the eligibility determination is made, notice of the approval or denial is sent to the applicant. If denied, this notice includes the reason for the denial and an explanation of rights to a hearing.
[8.242.600.11 NMAC - Rp, 8.242.600.11 NMAC, 1/1/2019]

8.242.600.12 ONGOING BENEFITS: A redetermination of eligibility must be made every 12 months.
[8.242.600.12 NMAC - Rp, 8.242.600.12 NMAC, 1/1/2019]

8.242.600.13 RETROACTIVE BENEFIT COVERAGE: Retroactive medicaid coverage is provided in accordance with 8.200.400.14 NMAC.
[8.242.600.13 NMAC - Rp, 8.242.600.13 NMAC, 1/1/2019]

8.242.600.14 CHANGES IN ELIGIBILITY: The case is closed when an eligible recipient becomes ineligible and is notified of the ineligibility in an advance notice. The case is closed in the month following the death of an eligible recipient.
[8.242.600.14 NMAC - Rp, 8.242.600.14 NMAC, 1/1/2019]

HISTORY OF 8.242.600 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:
MAD Rule 842.00, Qualified Disabled Working Individuals, filed 10/11/1990.
MAD Rule 842, Qualified Disabled Working Individuals, filed 6/30/1992.
MAD Rule 842, Qualified Disabled Working Individuals, filed 9/26/1994.

History of Repealed Material:
MAD Rule 842, Qualified Disabled Working Individuals, filed 9/26/1994 - Repealed effective 2/1/1995.
8.242.600 NMAC, Benefit Description, filed 9/3/2013 - Repealed effective 1/1/2014.
8.242.600 NMAC, Benefit Description, filed 12/2/2013 - Repealed effective 1/1/2019.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 243 MEDICAID ELIGIBILITY - WORKING DISABLED INDIVIDUALS (WDI) (CATEGORY 043)
PART 400 RECIPIENT POLICIES

8.243.400.1 ISSUING AGENCY: Human Services Department.
[8.243.400.1 NMAC - Rp, 8.243.400.1 NMAC, 1/1/2019]

8.243.400.2 SCOPE: This rule applies to the general public.
[8.243.400.2 NMAC - Rp, 8.243.400.2 NMAC, 1/1/2019]

8.243.400.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended by the state human services department pursuant to state statute. See 27-2-12 et. seq., NMSA 1978 (Repl. Pamp. 1991).
[8.243.400.3 NMAC - Rp, 8.243.400.3 NMAC, 1/1/2019]

8.243.400.4 DURATION: Permanent.
[8.243.400.4 NMAC - Rp, 8.243.400.4 NMAC, 1/1/2019]

8.243.400.5 EFFECTIVE DATE: January 1, 2019, or upon a later approval date by the federal centers for medicare and medicaid services (CMS), unless a later date is cited at the end of the section.
[8.243.400.5 NMAC - Rp, 8.243.400.5 NMAC, 1/1/2019]

8.243.400.6 OBJECTIVE: The objective of these regulations is to provide eligibility policy and procedures for the medicaid program.
[8.243.400.6 NMAC - Rp, 8.243.400.6 NMAC, 1/1/2019]

8.243.400.7 DEFINITIONS: [**RESERVED**]

8.243.400.8 [**RESERVED**]

8.243.400.9 WORKING DISABLED INDIVIDUALS (WDI) - CATEGORY 043: The working disabled individuals program covers:

A. disabled individuals who are employed; or

B. disabled individuals who have lost eligibility for supplemental security income (SSI) and medicaid due to initial receipt of social security disability insurance (SSDI) and who are not yet qualified for medicare; this group is referred to as "medigap"; once the medigap individual begins receiving medicare, they must become employed, as defined in Paragraph (1) of Subsection C of 8.243.400.10 NMAC, to retain their eligibility for WDI.
[8.243.400.9 NMAC - Rp, 8.243.400.9 NMAC, 1/1/2019]

8.243.400.10 BASIS FOR DEFINING THE GROUP: Individuals eligible for medicaid coverage under the working disabled individuals program (WDI) must meet the following requirements:

A. must meet the social security administration disability criteria without regard to "substantial gainful activity", and

B. must have a recent attachment to the workforce.

C. Recent attachment to workforce defined: Medicaid for the working disabled individuals defines recent attachment to the workforce as either:

(1) having enough gross earnings in a quarter to meet social security administration's definition of a qualifying quarter, see 8.200.520.20 NMAC; or

(2) having lost SSI and medicaid due to the initial receipt of SSDI benefits, and being within the 24-month waiting period for medicare.
[8.243.400.10 NMAC - Rp, 8.243.400.10 NMAC, 1/1/2019]

8.243.400.11 GENERAL RECIPIENT REQUIREMENTS: [**RESERVED**]

8.243.400.12 ENUMERATION: To be eligible an individual must report his/her social security account number(s) to the human services department (HSD). If an individual does not have a valid social security number, he/she must apply for one as a condition of medicaid eligibility. Applications for social security numbers can be made by completing an application form, and providing proof of application to local Income support division (ISD) offices.
[8.243.400.12 NMAC - Rp, 8.243.400.12 NMAC, 1/1/2019]

8.243.400.13 CITIZENSHIP: To be eligible for medicaid, an individual must be:

A. a citizen of the United States; or

B. an alien who entered the United States prior to August 22, 1996, as one of the classes of aliens described in Subsection A of 8.200.410.11 NMAC, or an alien who entered the United States as a qualified alien on or after August 22, 1996, and who has met the five-year bar, or are exempt as listed in Subsection B of 8.200.410.11 NMAC.

C. Refer to 8.200.410.11 NMAC.
[8.243.400.13 NMAC - Rp, 8.243.400.13 NMAC, 1/1/2019]

8.243.400.14 RESIDENCE: To be eligible for medicaid, individuals must be living in New Mexico on the date of application or final determination of eligibility and have demonstrated intent to remain in the state.

A. Establishing residence: Residence in New Mexico is established by living in the state and carrying out the types of activities normally indicating residency, such as occupying a home, enrolling child(ren) in school, getting a state driver's license, or renting a post office box. An individual who is homeless is considered to have met the residence requirements if he/she intends to remain in the state.

B. Recipients receiving benefits out-of-state: Individuals who receive medical assistance in another state are considered residents of that state until the ISD staff receives verification from the other state agency indicating that it has been notified by an individual of the abandonment of residence in that state.

C. Abandonment: Residence is not abandoned by temporary absences. Temporary absences occur when recipients leave New Mexico for specific purposes with time-limited goals. Residence is considered abandoned when any of the following occurs:

(1) the individual leaves New Mexico and indicates that he/she intends to establish residence in another state;

(2) the individual leaves New Mexico for no specific purpose with no clear intention of returning;

(3) the individual leaves New Mexico and applies for financial, food or medical assistance in another state.
[8.243.400.14 NMAC - Rp, 8.243.400.14 NMAC, 1/1/2019]

8.243.400.15 NON-CONCURRENT RECEIPT OF ASSISTANCE: The individual may not be receiving assistance in another medicaid category with the exception of the qualified medicare beneficiaries (QMB) and specified low income medicare beneficiaries (SLIMB) programs. ISD staff will look at other categories of eligibility and make the appropriate eligibility determination, or referrals.
[8.243.400.15 NMAC - Rp, 8.243.400.15 NMAC, 1/1/2019]

8.243.400.16 AGE: The individual must be 18 years of age or older.

[8.243.400.16 NMAC - Rp, 8.243.400.16 NMAC, 1/1/2019]

8.243.400.17 DISABILITY: The individual must meet social security administration's disability or blindness criteria, without regard to "substantial gainful activity".
[8.243.400.17 NMAC - Rp, 8.243.400.17 NMAC, 1/1/2019]

8.243.400.18 RECIPIENT RIGHTS AND RESPONSIBILITIES: The individual is responsible for establishing his/her eligibility for medicaid. As part of this responsibility, the individual must provide required information and documents or take the actions necessary to establish eligibility. Failure to do so must result in a decision that eligibility does not exist. The individual must also grant the human services department (HSD) permission to contact other persons, agencies or sources of information which are necessary to establish eligibility.
[8.243.400.18 NMAC - Rp, 8.243.400.18 NMAC, 1/1/2019]

8.243.400.19 ASSIGNMENT OF MEDICAL SUPPORT: The individual must assign his/her right to medical support or other third party payments to the state.

A. Assignment of medical support rights occurs through the application for medicaid benefits.

B. Medicaid is not denied to an otherwise eligible individual solely because he/she cannot legally assign his/her own medical support rights and the party who is legally able to assign those rights refuses to assign or cooperate, as required by law.
[8.243.400.19 NMAC - Rp, 8.243.400.19 NMAC, 1/1/2019]

8.243.400.20 REPORTING REQUIREMENTS: An applicant/recipient is responsible to report changes affecting eligibility by the end of the calendar quarter in which the change took place.
[8.243.400.20 NMAC - Rp, 8.243.400.20 NMAC, 1/1/2019]

HISTORY OF 8.243.400 NMAC: [**RESERVED**]

History of Repealed Material:
8.243.400 NMAC - Recipient Policies, filed 12/13/2000 – Repealed effective 1/1/2019.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 243 MEDICAID ELIGIBILITY - WORKING DISABLED INDIVIDUALS (WDI) (CATEGORY 043)
PART 600 BENEFIT DESCRIPTION

8.243.600.1 ISSUING AGENCY: Human Services Department (HSD).
[8.243.600.1 NMAC - Rp, 8.243.600.1 NMAC, 1/1/2019]

8.243.600.2 SCOPE: This rule applies to the general public.
[8.243.600.2 NMAC - Rp, 8.243.600.2 NMAC, 1/1/2019]

8.243.600.3 STATUTORY AUTHORITY: The New Mexico medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See Section 27-1-12 *et seq*., NMSA 1978.
[8.243.600.3 NMAC - Rp, 8.243.600.3 NMAC, 1/1/2019]

8.243.600.4 DURATION: Permanent.
[8.243.600.4 NMAC - Rp, 8.243.600.4 NMAC, 1/1/2019]

8.243.600.5 EFFECTIVE DATE: January 1, 2019, or upon a later approval date by the federal centers for medicare and medicaid services (CMS), unless a later date is cited at the end of the section.
[8.243.600.5 NMAC - Rp, 8.243.600.5 NMAC, 1/1/2019]

8.243.600.6 OBJECTIVE: The objective of these rules is to provide eligibility policy and procedures for the medical assistance programs.
[8.243.600.6 NMAC - Rp, 8.243.600.6 NMAC, 1/1/2019]

8.243.600.7 DEFINITIONS: [**RESERVED**]

8.243.600.8 [RESERVED]
[8.243.600.8 NMAC - Rp, 8.243.600.8 NMAC, 1/1/2019]

8.243.600.9 GENERAL BENEFIT DESCRIPTION: An individual who meets a medical assistance programs (MAP) category of eligibility for the working disabled individual program (WDI) is eligible to receive full state plan benefits.
[8.243.600.9 NMAC - Rp, 8.243.600.9 NMAC, 1/1/2019]

8.243.600.10 BENEFIT DETERMINATION: Completed applications must be acted upon and notice of approval, denial, or delay sent out within 60 days of the date of application. Individuals will have time limits explained, and be informed of the date by which the application should be processed.
[8.243.600.10 NMAC - Rp, 8.243.600.10 NMAC, 1/1/2019]

8.243.600.11 INITIAL BENEFITS: Eligibility begins the month of approval. When an eligibility determination is made, notice of the approval or denial is sent to the individual. If the application is denied, this notice includes the individual's right to request a hearing.
[8.243.600.11 NMAC - Rp, 8.243.600.11 NMAC, 1/1/2019]

8.243.600.12 ONGOING BENEFITS: A re-determination of MAP eligibility is made every 12 months or at such time the MAP eligible recipient begins receiving medicare benefits.
[8.243.600.12 NMAC - Rp, 8.243.600.12 NMAC, 1/1/2019]

8.243.600.13 RETROACTIVE BENEFIT COVERAGE: Retroactive medicaid coverage is provided in accordance with 8.200.400.14 NMAC.
[8.243.600.13 NMAC - Rp, 8.243.600.13 NMAC, 1/1/2019]

8.243.600.14 CHANGES IN ELIGIBILITY: A case is closed, with provision of advance notice, when the MAP eligible recipient becomes ineligible. If a MAP eligible recipient dies, the case is closed the following month.
[8.243.600.14 NMAC - Rp, 8.243.600.14 NMAC, 1/1/2019]

HISTORY OF 8.243.600 NMAC:
[**RESERVED**]

History of Repealed Material:
8.243.600 NMAC - Medicaid Eligibility - Working Disabled Individuals (WDI) (Category 043) - Benefit Description, filed 12/13/2000 Repealed effective 1/1/2019.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 245 MEDICAID ELIGIBILITY - SPECIFIED LOW INCOME MEDICARE BENEFICIARIES (SLIMB) (CATEGORY 045)
PART 600 BENEFIT DESCRIPTION

8.245.600.1 ISSUING AGENCY: New Mexico Human Services Department.
[8.245.600.1 NMAC - Rp, 8.245.600.1 NMAC, 1/1/2019]

8.245.600.2 SCOPE: The rule applies to the general public.
[8.245.600.2 NMAC - Rp, 8.245.600.2 NMAC, 1/1/2019]

8.245.600.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended and by the state human services department pursuant to state statute. See Section 27-2-12 *et seq*., NMSA 1978 (Repl. Pamp. 1991).
[8.245.600.3 NMAC - Rp, 8.245.600.3 NMAC, 1/1/2019]

8.245.600.4 DURATION: Permanent.
[8.245.600.4 NMAC - Rp, 8.245.600.4 NMAC, 1/1/2019]

8.245.600.5 EFFECTIVE DATE: January 1, 2019, or upon a later approval date by the federal centers for medicare and medicaid services (CMS), unless a later date is cited at the end of the section.
[8.245.600.5 NMAC - Rp, 8.245.600.5 NMAC, 1/1/2019]

8.245.600.6 OBJECTIVE: The objective of these regulations is to provide eligibility policy and procedures for the medicaid program.
[8.245.600.6 NMAC - Rp, 8.245.600.6 NMAC, 1/1/2019]

8.245.600.7 DEFINITIONS:
[**RESERVED**]

8.245.600.8 [RESERVED]
[8.245.600.8 NMAC - Rp, 8.245.600.8 NMAC, 1/1/2019]

8.245.600.9 BENEFIT DESCRIPTION: Most individuals 65 or older receive free medicare part A. Those who do not receive free part A can voluntarily enroll for hospital insurance coverage and pay the monthly premium. Medicaid does not pay the medicare part A monthly premium for this category of recipients. Voluntary enrollees for premium/conditional medicare part A must enroll for supplementary medical insurance, medicare part B, and pay that premium also. After an application for SLIMB benefits is approved, medicaid begins to pay the medicare part B premium. Applicants/recipients eligible for medicaid coverage under another medicaid category may also be eligible for SLIMB. SLIMB eligibility allows the state to receive federal matching funding for the purchase of medicare part B. Since payment of the medicare part B premium is the only benefit, no medicaid card is issued and there is no interaction with the medicaid claims processing contractor.
[8.245.600.9 NMAC - Rp, 8.245.600.9 NMAC, 1/1/2019]

8.245.600.10 BENEFIT DETERMINATION: Application for SLIMB is made on the assistance application form. Applications are acted on and notice of action taken is sent to the applicant within 45 days of the application. Determination of SLIMB eligibility for current recipients of medicaid is made without a separate application. Recipients of supplemental security income (SSI) or qualified medicare beneficiaries are not eligible for SLIMB.
[8.245.600.10 NMAC - Rp, 8.245.600.10 NMAC, 1/1/2019]

8.245.600.11 INITIAL BENEFITS: Eligibility begins the month the case is approved. When an eligibility determination is made, notice of the approval or denial is sent to the applicant. If the application is denied, this notice includes the recipient's right to request a hearing.
[8.245.600.11 NMAC - Rp, 8.245.600.11 NMAC, 1/1/2019]

8.245.600.12 ONGOING BENEFITS: A redetermination of eligibility is made every 12 months.
[8.245.600.12 NMAC - Rp, 8.245.600.12 NMAC, 1/1/2019]

8.245.600.13 RETROACTIVE BENEFIT COVERAGE: Retroactive medicaid coverage is provided in accordance with 8.200.400.14 NMAC.
[8.245.600.13 NMAC - Rp, 8.245.600.13 NMAC, 1/1/2019]

8.245.600.14 CHANGES IN ELIGIBILITY: A case is closed, with provision of advance notice,

when the recipient becomes ineligible. If a recipient dies, the case is closed the following month.
[8.245.600.14 NMAC - Rp, 8.245.600.14 NMAC, 1/1/2019]

HISTORY OF 8.245.600 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:
MAD Rule 843, Specified Low Income Medicare Beneficiaries, filed 9/26/1994.

History of Repealed Material:
MAD Rule 843, Specified Low Income Medicare Beneficiaries, filed 9/26/1994 - Repealed effective 2/1/1995.
8.245.600 NMAC - Specified Low Income Medicare Beneficiaries-Benefit Description, filed 11/16/2009 - Repealed effective 1/1/2019.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 249 MEDICAL ASSISTANCE PROGRAM ELIGIBILITY - REFUGEE MEDICALASSISTANCE (RMA) PROGRAM
PART 600 BENEFIT DESCRIPTION

8.249.600.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.249.600.1 NMAC - Rp, 8.249.600.1 NMAC, 1/1/2019]

8.249.600.2 SCOPE: The rule applies to the general public.
[8.249.600.2 NMAC - Rp, 8.249.600.2 NMAC, 1/1/2019]

8.249.600.3 STATUTORY AUTHORITY: The New Mexico medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See Section 27-1-12 *et seq*., NMSA 1978.
[8.249.600.3 NMAC - Rp, 8.249.600.3 NMAC, 1/1/2019]

8.249.600.4 DURATION: Permanent.
[8.249.600.4 NMAC - Rp, 8.249.600.4 NMAC, 1/1/2019]

8.249.600.5 EFFECTIVE DATE: January 1, 2019, or upon a later approval date by the federal centers for medicare and medicaid services (CMS), unless a later date is cited at the end of the section.
[8.249.600.5 NMAC - Rp, 8.249.600.5 NMAC, 1/1/2019]

8.249.600.6 OBJECTIVE: The objective of this rule is to provide specific instructions when determining eligibility for the medicaid program and other health care programs. Generally, applicable eligibility rules are detailed in the medical assistance division (MAD) eligibility policy manual, specifically 8.200.400 NMAC, *General Medicaid Eligibility*. Processes for establishing and maintaining MAD eligibility are detailed in the income support division (ISD) general provisions 8.100 NMAC, *General Provisions for Public Assistance Programs*.
[8.249.600.6 NMAC - Rp, 8.249.600.6 NMAC, 1/1/2019]

8.249.600.7 DEFINITIONS: [**RESERVED**]

8.249.600.8 [RESERVED]
[8.249.600.8 NMAC – Rp, 8.249.600.8 NMAC, 1/1/2019]

8.249.600.9 BENEFIT DESCRIPTION: Refugee medical assistance (RMA) offers health coverage for refugees within the first eight months from their date of entry to the United States, when they do not qualify for medicaid. RMA eligible refugees have access to a benefit package that parallels the full coverage medicaid benefit package. This program is not funded by medicaid. RMA is funded through a grant under Title IV of the Immigration and Nationality Act. The purpose of this grant is to provide for the effective resettlement of refugees and to assist them to achieve economic self-sufficiency as quickly as possible. Refer to 8.100.100 NMAC.
[8.249.600.9 NMAC - Rp, 8.249.600.9 NMAC, 1/1/2019]

8.249.600.10 BENEFIT DETERMINATION: Application for refugee medical assistance is made on the assistance application form. The application is acted on and notice of the action sent to the applicant within 45 days of the date of application.
[8.249.600.10 NMAC - Rp, 8.249.600.10 NMAC, 1/1/2019]

8.249.600.11 INITIAL BENEFITS:

A. Approval or denial of application: After the eligibility determination is made, the income support specialist (ISS) sends notice to the applicant or applicant group. The denial notice contains information on the reason for the denial and explanation of appeal rights to the applicant(s).

B. Date of eligibility: Eligibility starts with the first day of the month of application after all eligibility requirements are met. The eight-month period begins with the month the refugee enters the United States, as documented by the immigration and naturalization service (INS) (form I-94). For cases involving children born in the United States, the child's eligibility period expires when the refugee parent who arrived last in the United States has been in this country for eight months.
[8.249.600.11 NMAC - Rp, 8.249.600.11 NMAC, 1/1/2019]

8.249.600.12 ONGOING BENEFITS: No periodic review is required, since coverage is limited to a maximum of eight months from the date of entry into the United States.
[8.249.600.12 NMAC - Rp, 8.249.600.12 NMAC, 1/1/2019]

8.249.600.13 RETROACTIVE BENEFIT COVERAGE: Retroactive medicaid coverage is provided in accordance with 8.200.400.14 NMAC.
[8.249.600.13 NMAC - Rp, 8.249.600.13 NMAC, 1/1/2019]

8.249.600.14 CASE CLOSURES: Cases are closed when refugee medical assistance recipients no longer meet eligibility standards or after the eight month eligibility period expires, whichever comes first.
[8.249.600.14 NMAC - Rp, 8.249.600.14 NMAC, 1/1/2019]

8.249.600.15 CHANGES AND REDETERMINATIONS OF ELIGIBILITY:

A. A re-determination of eligibility is not required.

B. Changes in income are not reportable. Reported income changes are not acted upon.

C. A refugee who received medicaid for seven or fewer months during the RMA period is eligible for RMA for any remaining months in the eight-month RMA period. Eligibility for RMA is determined without a new eligibility determination or application.

D. Residence changes must be reported within 10 days after the change for individuals placed in a public institution or those individuals moving out of New Mexico. Refer to 8.200.450 NMAC.
[8.249.600.15 NMAC – Rp, 8.249.600.15 NMAC, 1/1/2019]

HISTORY OF 8.249.600 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:
MAD Rule 822, Refugee Medical Assistance, filed 5/22/1992.

History of Repealed Material:
MAD Rule 822, Refugee Medical Assistance, filed 5/22/1992 - Repealed effective 2/1/1995.
8.249.600 NMAC, Benefit Description, filed 9/3/2013 - Repealed effective 1/1/2014.
8.249.600 NMAC - Benefit Description, filed 12/2/2013 - Repealed effective 1/1/2019.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 250 MEDICAID ELIGIBILITY - QUALIFIED INDIVIDUALS WHOSE INCOME EXCEEDS QMB AND SLIMB (CATEGORY 045)
PART 600 BENEFIT DESCRIPTION

8.250.600.1 ISSUING AGENCY: New Mexico Human Services Department.
[8.250.600.1 NMAC - Rp, 8.250.600.1 NMAC, 1/1/2019]

8.250.600.2 SCOPE: The rule applies to the general public.
[8.250.600.2 NMAC - Rp, 8.250.600.2 NMAC, 1/1/2019]

8.250.600.3 STATUTORY AUTHORITY: New Mexico Statutes Annotated, 1978, (Chapter 27, Articles 1 and 2) authorizes the state to administer the medicaid program. Section 4732 of the 1997 Balanced Budget Act creates a separate group of eligible individuals, to be known as qualified individuals 1 (QI1s), with income between one hundred twenty percent and one hundred thirty-five percent of the federal poverty level. The benefit is limited to the payment of the monthly medicare part B insurance premium. Funding is available under one hundred percent federal block grant money.
[8.250.600.3 NMAC - Rp, 8.250.600.3 NMAC, 1/1/2019]

8.250.600.4 DURATION: Permanent.
[8.250.600.4 NMAC - Rp, 8.250.600.4 NMAC, 1/1/2019]

8.250.600.5 EFFECTIVE DATE: January 1, 2019, or upon a later approval date by the federal centers for medicare and medicaid services (CMS), unless a later date is cited at the end of the section.
[8.250.600.5 NMAC - Rp, 8.250.600.5 NMAC, 1/1/2019]

8.250.600.6 OBJECTIVE: The objective of the qualified individuals 1 (QI1s) eligibility is for New Mexico medicaid to provide the payment of the monthly medicare part B insurance premium for individuals with income between one hundred twenty percent and one hundred thirty-five percent of the federal poverty level and who are not otherwise receiving medicaid under any other category of eligibility. Individuals will be served on a first come, first served basis, contingent upon availability of federal funds. Eligibility will be offered to individuals on a yearly basis. After 1998, individuals currently enrolled in the program will get the first opportunity to continue to receive benefits under this program.
[8.250.600.6 NMAC - Rp, 8.250.600.6 NMAC, 1/1/2019]

8.250.600.7 DEFINITIONS: [**RESERVED**]

8.250.600.8 [RESERVED]
[8.250.600.8 NMAC - Rp, 8.250.600.8 NMAC, 1/1/2019]

8.250.600.9 BENEFIT DESCRIPTION: Most individuals 65 or older receive free medicare part A. Those who do not receive free part A can voluntarily enroll for hospital insurance coverage and pay the monthly premium. Medicaid does not pay the medicare part A monthly premium for this category of recipients. Voluntary enrollees for premium/conditional medicare part A must enroll for supplementary medical insurance, medicare part B, and pay that premium also. After an application for QI benefits is approved, medicaid begins to pay the medicare part B premium. Applicants/recipients eligible for QI1

coverage under another medicaid category may not be eligible for QI1. QI1 eligibility is funded by limited block grant funding beginning in 1998 and ending when the congressional extension period expires. Since payment of the medicare part B premium is the only benefit, no medicaid card is issued.
[8.250.600.9 NMAC - Rp, 8.250.600.9 NMAC, 1/1/2019]

8.250.600.10 BENEFIT DETERMINATION: Application for QI1 is made on the assistance application form. Applications are acted on and notice of action taken is sent to the applicant within 45 days of the application.
[8.250.600.10 NMAC - Rp, 8.250.600.10 NMAC, 1/1/2019]

8.250.600.11 INITIAL BENEFITS: Eligibility begins the month the case is approved. When an eligibility determination is made, notice of the approval or denial is sent to the applicant. If the application is denied, this notice includes the recipient's right to request a hearing.
[8.250.600.11 NMAC - Rp, 8.250.600.11 NMAC, 1/1/2019]

8.250.600.12 ONGOING BENEFITS: A redetermination of eligibility is made every 12 months.
[8.250.600.12 NMAC - Rp, 8.250.600.12 NMAC, 1/1/2019]

8.250.600.13 RETROACTIVE BENEFIT COVERAGE: Retroactive medicaid coverage is provided in accordance with 8.200.400.14 NMAC.
[8.250.600.13 NMAC - Rp, 8.250.600.13 NMAC, 1/1/2019]

8.250.600.14 CHANGES IN ELIGIBILITY: A case is closed, with provision of advance notice, when the recipient becomes ineligible. If a recipient dies, the case is closed effective the following month.
[8.250.600.14 NMAC - Rp, 8.250.600.14 NMAC, 1/1/2019]

HISTORY OF 8.250.600 NMAC:
[**RESERVED**]

History of Repealed Material:
8.250.600 NMAC - Benefit Description, filed 11/16/2009 - Repealed effective 1/1/2019.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 252 MEDICAL ASSISTANCE PROGRAM ELIGIBILITY - BREAST AND CERVICAL CANCER PROGRAM
PART 600 BENEFIT DESCRIPTION

8.252.600.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.252.600.1 NMAC - Rp, 8.252.600.1 NMAC, 1/1/2019]

8.252.600.2 SCOPE: This rule applies to the general public.
[8.252.600.2 NMAC - Rp, 8.252.600.2 NMAC, 1/1/2019]

8.252.600.3 STATUTORY AUTHORITY: The New Mexico medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See Section 27-1-12 *et seq*., NMSA 1978.
[8.252.600.3 NMAC - Rp, 8.252.600.3 NMAC, 1/1/2019]

8.252.600.4 DURATION: Permanent.
[8.252.600.4 NMAC - Rp, 8.252.600.4 NMAC, 1/1/2019]

8.252.600.5 EFFECTIVE DATE: January 1, 2019, or upon a later approval date by the federal centers for medicare and medicaid services (CMS), unless a later date is cited at the end of the section.
[8.252.600.5 NMAC - Rp, 8.252.600.5 NMAC, 1/1/2019]

8.252.600.6 OBJECTIVE: The objective of this rule is to provide specific instructions when determining eligibility for the medicaid program and other health care programs. Generally, applicable eligibility rules are detailed in the medical assistance division (MAD) eligibility policy manual, specifically 8.200.400 NMAC, *General Medicaid Eligibility*. Processes for establishing and maintaining MAD eligibility are detailed in the income support division (ISD) general provisions 8.100 NMAC, *General Provisions for Public Assistance Programs*.
[8.252.600.6 NMAC - Rp, 8.252.600.6 NMAC, 1/1/2019]

8.252.600.7 DEFINITIONS:
[**RESERVED**]

8.252.600.8 [RESERVED]
[8.252.600.8 NMAC – Rp, 8.252.600.8 NMAC, 1/1/2019]

8.252.600.9 GENERAL BENEFIT DESCRIPTION: A woman who is determined eligible for medicaid coverage under the breast and cervical cancer program (Category 052) can receive the full range of medicaid covered.
[8.252.600.9 NMAC - Rp, 8.252.600.9 NMAC, 1/1/2019]

8.252.600.10 BENEFIT DETERMINATION: Completed applications must be acted upon and notice of approval, denial, or delay sent out within 45 days of the date of application. The applicant will have time limits explained, and be informed of the date by which the application should be processed.
[8.252.600.10 NMAC - Rp, 8.252.600.10 NMAC, 1/1/2019]

8.252.600.11 INITIAL BENEFITS: Eligibility is always prospective and begins the month of application. When an eligibility determination is made, notice of the approval or denial is sent to the applicant. If the application is denied, the notice shall include reason(s) for denial and the applicant's right to request a fair hearing.
[8.252.600.11 NMAC - Rp, 8.252.600.11 NMAC, 1/1/2019]

8.252.600.12 ONGOING BENEFITS: An eligible recipient is responsible to report changes affecting eligibility within 10 calendar days from the date on which the change took place. Changes in eligibility status will be effective the first day of the following month. A redetermination of eligibility is made every 12 months.
[8.252.600.12 NMAC - Rp, 8.252.600.12 NMAC, 1/1/2019]

8.252.600.13 RETROACTIVE BENEFIT COVERAGE: Retroactive medicaid coverage is provided in accordance with 8.200.400.14 NMAC.
[8.252.600.13 NMAC - Rp, 8.252.600.13 NMAC, 1/1/2019]

8.252.600.14 CHANGES IN ELIGIBILITY: A recipient's eligibility ends when medical assistance division (MAD) receives information from the treating physician or from the recipient that her course of treatment is completed. A case is closed, with provision of advance notice, when the recipient becomes ineligible. The case is closed the month following the death of an eligible recipient.
[8.252.600.14 NMAC - Rp, 8.252.600.14 NMAC, 1/1/2019]

HISTORY OF 8.252.600 NMAC:

History of Repealed Material:
8.252.600 NMAC, Benefit Description, filed 6-14-02 - Repealed effective 1/1/2014.
8.252.600 NMAC, Benefit Description, filed 12/2/2013 - Repealed effective 1/1/2019.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 280 MEDICAID ELIGIBILITY - PROGRAM OF ALL INCLUSIVE CARE FOR THE ELDERLY (PACE)
PART 400 RECIPIENT POLICIES

8.280.400.1 ISSUING AGENCY: New Mexico Human Services Department.
[8.280.400.1 NMAC - Rp, 8.280.400.1 NMAC, 1/1/2019]

8.280.400.2 SCOPE: The rule applies to the general public.
[8.280.400.2 NMAC - Rp, 8.280.400.2 NMAC, 1/1/2019]

8.280.400.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended and by the state human services department pursuant to state statute. See Section 27-2-12 *et seq*., NMSA 1978 (Repl. Pamp. 1991).
[8.280.400.3 NMAC - Rp, 8.280.400.3 NMAC, 1/1/2019]

8.280.400.4 DURATION: Permanent.
[8.280.400.4 NMAC - Rp, 8.280.400.4 NMAC, 1/1/2019]

8.280.400.5 EFFECTIVE DATE: January 1, 2019, or upon a later approval date by the federal centers for medicare and medicaid services (CMS), unless a later date is cited at the end of the section.
[8.280.400.5 NMAC - Rp, 8.280.400.5 NMAC, 1/1/2019]

8.280.400.6 OBJECTIVE: The objective of these regulations is to provide eligibility policy and procedures for the medicaid program.
[8.280.400.6 NMAC - Rp, 8.280.400.6 NMAC, 1/1/2019]

8.280.400.7 DEFINITIONS: [**RESERVED**]

8.280.400.8 [**RESERVED**]

8.280.400.9 PROGRAM OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE) - CATEGORIES 081, 083, AND 084: Certain populations meeting financial, non-financial, and medical criteria can receive acute and long-term care services in the community. These services are funded by medicaid on a capitated basis.
[8.280.400.9 NMAC - Rp, 8.280.400.9 NMAC, 1/1/2019]

8.280.400.10 BASIS FOR DEFINING THE GROUP: Applicants/recipients must live in certain designated zip codes within New Mexico. A PACE recipient cannot concurrently receive other medicaid home and community-based services. A PACE recipient may be placed in a qualifying nursing facility upon a medical doctor's orders and continue to participate in PACE. Upon disenrollment from PACE, a former PACE recipient may receive institutional care (IC) medicaid services as long as the individual meets all IC medicaid eligibility requirements. PACE recipients can concurrently receive the qualified medicare beneficiaries program (QMB), the specified low income medicare beneficiaries program (SLIMB), or supplemental security income (SSI). For PACE applicants/recipients who receive SSI benefits no further verification of income, resources, citizenship, age, disability, or blindness is required.
[8.280.400.10 NMAC - Rp, 8.280.400.10 NMAC, 1/1/2019]

8.280.400.11 SPECIAL RECIPIENT REQUIREMENTS: Applicants/recipients must be 55 years of age or older. Applicants/recipients must be determined blind or disabled if under the age of 65 years.

A. To be considered blind, an applicant/recipient must have central visual acuity of 20/200 or less with corrective lenses or must

be considered blind for practical purposes. To be considered disabled, an applicant/recipient must be unable to engage in any substantial gainful activity, because of any medically determinable physical, developmental, or mental impairment which has lasted, or is expected to last, for a continuous period of at least 12 months. If a determination of blindness or disability has not been made, the income support division worker will submit medical reports to the disability determination unit.

B. Level of care requirements must be met in addition to all other requirements. An applicant/recipient must be eligible for institutional (nursing home) level of care as determined by the medical assistance division (MAD) utilization review contractor. An institutional level of care must be recommended for the applicant/recipient by a PACE physician licensed to practice medicine or osteopathy in the state of New Mexico. Institutions are defined as acute care hospitals, nursing facilities (either high NF or low NF) as defined by medicaid regulations) and intermediate care facilities for individuals with intellectual disabilities (ICF/IID). Level of care determinations are performed by the MAD utilization review contractor.

C. An interview is required at initial application in accordance with 8.281.400.11 NMAC.
[8.280.400.11 NMAC - Rp, 8.280.400.11 NMAC, 1/1/2019]

8.280.400.12 RECIPIENT RIGHTS AND RESPONSIBILITIES: An applicant/recipient is responsible for establishing his eligibility for medicaid. As part of this responsibility, the applicant/recipient must provide required information and documents or take the actions necessary to establish eligibility. Failure to do so must result in a decision that eligibility does not exist.
[8.280.400.12 NMAC - Rp, 8.280.400.12 NMAC, 1/1/2019]

8.280.400.13 REPORTING REQUIREMENTS: All changes that may affect eligibility must be reported within 10 calendar days of the date of the change in accordance with 8.200.430.18 NMAC.
[8.280.400.13 NMAC - Rp, 8.280.400.13 NMAC, 1/1/2019]

HISTORY OF 8.280.400 NMAC:

History of Repealed Material:
8 NMAC 4.PAC.400, Recipient Policies, filed 1/20/1998 - Repealed effective 12/1/2006.
8.280.400 NMAC - Recipient Policies, filed 11/15/2006 - Repealed effective 1/1/2019.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 280 MEDICAID ELIGIBILITY - PROGRAM OF ALL INCLUSIVE CARE FOR THE ELDERLY (PACE)
PART 600 BENEFIT DESCRIPTION

8.280.600.1 ISSUING AGENCY: New Mexico Human Services Department.
[8.280.600.1 NMAC - Rp, 8.280.600.1 NMAC, 1/1/2019]

8.280.600.2 SCOPE: The rule applies to the general public.
[8.280.600.2 NMAC - Rp, 8.280.600.2 NMAC, 1/1/2019]

8.280.600.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended and by the state human services department pursuant to state statute. See Section 27-2-12 *et seq*., NMSA 1978 (Repl. Pamp. 1991).
[8.280.600.3 NMAC - Rp, 8.280.600.3 NMAC, 1/1/2019]

8.280.600.4 DURATION: Permanent.
[8.280.600.4 NMAC - Rp, 8.280.600.4 NMAC, 1/1/2019]

8.280.600.5 EFFECTIVE DATE: January 1, 2019, or upon a later approval date by the federal centers for medicare and medicaid services (CMS), unless a later date is cited at the end of the section.
[8.280.600.5 NMAC - Rp, 8.280.600.5 NMAC, 1/1/2019]

8.280.600.6 OBJECTIVE: The objective of these regulations is to provide eligibility policy and procedures for the medicaid program.
[8.280.600.6 NMAC - Rp, 8.280.600.6 NMAC, 1/1/2019]

8.280.600.7 DEFINITIONS: [**RESERVED**]

8.280.600.8 [**RESERVED**]

8.280.600.9 BENEFIT DESCRIPTION: An applicant/recipient who is eligible for PACE is eligible for specified services available under the program. See specific program policy sections for covered services.
[8.280.600.9 NMAC - Rp, 8.280.600.9 NMAC, 1/1/2019]

8.280.600.10 BENEFIT DETERMINATION: Application for PACE is made using the HSD 100 application. Applications must be acted upon and notice of approval, denial, or delay sent out within 45 days of the date of application. The applicant/recipient may complete the form himself, or receive help from a relative, friend, guardian, or other designated representative. To avoid a conflict of interest, a PACE provider must not complete the application nor be a designated representative.
[8.280.600.10 NMAC - Rp, 8.280.600.10 NMAC, 1/1/2019]

8.280.600.11 INITIAL BENEFITS: An application for PACE can be approved when all factors of eligibility have been met and the individual is enrolled in the

program. The effective date for PACE enrollment is the first day of the calendar month following the signing of the enrollment agreement (if all financial, non-financial, and medical eligibility criteria are met and an approved level of care (LOC) is in place). Applicants determined to be ineligible for PACE are notified of the reason for the denial and provided with an explanation of appeal rights. Applicants determined to be eligible for PACE are notified of the approval.
[8.280.600.11 NMAC - Rp, 8.280.600.11 NMAC, 1/1/2019]

8.280.600.12 ONGOING BENEFITS:

A. A complete redetermination of eligibility must be performed annually by the income support division worker for each open case.

B. Level of care reviews are required to be completed at least annually. Level of care determinations for PACE are made by the utilization review contractor.
[8.280.600.12 NMAC - Rp, 8.280.600.12 NMAC, 1/1/2019]

8.280.600.13 RETROACTIVE BENEFITS: Retroactive coverage is not available in the PACE program.
[8.280.600.13 NMAC - Rp, 8.280.600.13 NMAC, 1/1/2019]

8.280.600.14 CHANGES IN ELIGIBILITY: If the recipient ceases to meet any of the eligibility criteria, the case is closed following provision of advance notice as appropriate. See 8.200.430 NMAC for information about notices and hearing rights.

A. Non-provision of PACE services: To be eligible for PACE, an applicant/recipient must receive PACE services. If PACE services are no longer being provided and are not expected to be provided for at least a full calendar month, the recipient is ineligible for the program and the case must be closed after appropriate notice is provided, unless an exception has been prior authorized by MAD.

B. Admission to an acute care or nursing facility: If a PACE recipient enters an acute care or nursing facility, he still remains eligible. A PACE recipient may be disenrolled from the program either voluntarily or involuntarily. If disenrollment occurs, a new application for institutional care medicaid is not required in the following circumstances: the former PACE recipient is in an acute care or nursing facility; he continues to meet all eligibility criteria for institutional care medicaid; or the periodic review on the PACE case is not due in either the month of disenrollment or the following month.

C. Reporting changes in circumstances: The primary responsibility for reporting changes in the recipient's circumstances rests with the recipient or representative. At the initial eligibility determination and all on-going eligibility redeterminations, the income support division (ISD) must explain the reporting responsibilities requirement to the applicant/recipient or representative and document that such explanation was given. In the event that PACE services should cease, the PACE provider must immediately notify the income support division office by telephone of that fact. The telephone call is to be followed by a written notice to the ISD.

D. Disenrollment: A PACE recipient loses medicaid eligibility under this program when he is either voluntarily or involuntarily disenrolled. The PACE provider must inform the ISD office when disenrollment occurs. A **one time only** reinstatement will be allowed if the individual continues to meet all financial, non-financial and medical eligibility criteria. Reinstatement is subject to availability of positions and redetermination of medicaid eligibility. A PACE recipient may voluntarily disenroll at any time. Involuntary disenrollment occurs when any of the following situations exist:

(1) recipient moves out of PACE service area;

(2) recipient is a person with decision-making capacity who consistently does not comply with the individual plan of care and poses a significant risk to self or others;

(3) recipient experiences a breakdown in the physician or team relationship such that the PACE provider ability to furnish services to either the recipients or other recipients is seriously impaired;

(4) recipient refuses services or is unwilling to meet conditions of participation as they appear in the enrollment agreement;

(5) recipient refuses to provide accurate financial information, provides false information or illegally transfers assets;

(6) recipient is out of the PACE service area for more than one calendar month (unless other arrangements have been made);

(7) recipient is enrolled in PACE that loses its contract or licenses which enables it to cover health care services;

(8) recipient fails to meet the financial or non-financial criteria; or

(9) recipient ceases to meet the level of care at any time.
[8.280.600.14 NMAC - Rp, 8.280.600.14 NMAC, 1/1/2019]

HISTORY OF 8.280.600 NMAC:

History of Repealed Material:
8 NMAC 4.PAC.600, Benefit Description, filed 1-20-98 - Repealed effective 12/1/2006.
8.280.600 NMAC - Benefit Description, filed 11/15/2006 - Repealed effective 1/1/2019.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 281 MEDICAID ELIGIBILITY - INSTITUTIONAL CARE (CATEGORIES 081, 083 and 084)
PART 400 RECIPIENT POLICIES

8.281.400.1 ISSUING AGENCY: New Mexico Human Services Department.
[8.281.400.1 NMAC - Rp, 8.281.400.1 NMAC, 1/1/2019]

8.281.400.2 SCOPE: The rule applies to the general public.
[8.281.400.2 NMAC - Rp, 8.281.400.2 NMAC, 1/1/2019]

8.281.400.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended and by the state human services department pursuant to state statute. See Section 27-2-12 *et seq*., NMSA 1978 (Repl. Pamp. 1991).
[8.281.400.3 NMAC - Rp, 8.281.400.3 NMAC, 1/1/2019]

8.281.400.4 DURATION: Permanent.
[8.281.400.4 NMAC - Rp, 8.281.400.4 NMAC, 1/1/2019]

8.281.400.5 EFFECTIVE DATE: January 1, 2019, unless a later date is cited at the end of a section.
[8.281.400.5 NMAC - Rp, 8.281.400.5 NMAC, 1/1/2019]

8.281.400.6 OBJECTIVE: The objective of these regulations is to provide eligibility policy and procedures for the medicaid program.
[8.281.400.6 NMAC - Rp, 8.281.400.6 NMAC, 1/1/2019]

8.281.400.7 DEFINITIONS: [**RESERVED**]

8.281.400.8 [**RESERVED**]

8.281.400.9 INSTITUTIONAL CARE MEDICAID CATEGORIES 081, 083 AND 084: The New Mexico medicaid program (medicaid) pays for services furnished to individuals who require institutional care and who meet all supplemental security income (SSI) eligibility criteria and whose monthly gross countable income is less than the maximum allowed amount for institutional care.
[8.281.400.9 NMAC - Rp, 8.281.400.9 NMAC, 1/1/2019]

8.281.400.10 BASIS FOR DEFINING THE GROUP: An applicant/recipient must require institutional care as certified by a physician licensed to practice medicine or osteopathy. The applicant/recipient must be institutionalized in a medicaid qualifying bed in a New Mexico medicaid approved institution or in a hospital administered under the authority of the US department of veterans affairs (VA). Medicaid approved "Institutions" are defined as acute care hospitals (ACHs), nursing facilities (NFs) and intermediate care facilities for individuals with intellectual disabilities (ICF/IID), swing beds and certified instate inpatient rehabilitation centers. Level of care (LOC) determinations for institutional care medicaid eligibility are made by the MAD utilization review (UR) contractor or a member's selected or assigned Managed Care Organization (MCO). Documentation of these determinations is provided to the institution by the UR contractor or MCO. For applicants/recipients in a hospital awaiting placement in NFs, confirmation letters are furnished by the MAD UR contractor for use by hospital staff. A level of care (LOC) is not required for acute care hospitals. Documentation of acute care hospitalization must be provided by the hospital to determine the eligibility period.
[8.281.400.10 NMAC - Rp, 8.281.400.10 NMAC, 1/1/2019]

8.281.400.11 INTERVIEW REQUIREMENTS:

A. Purpose and scope of interview: An interview is required at initial application for institutional care medicaid. The initial interview is an official and confidential discussion of household circumstances with the applicant. The interview is intended to provide the applicant with program information, and to supply the facts needed by the income support division (ISD) worker to make a reasonable eligibility determination. The interview is not simply to review the information on the application, but also to explore and clarify any unclear or incomplete information. The scope of the interview shall not extend beyond examination of the applicant's circumstances that are directly related to determining eligibility. The interview shall be held prior to disposition of the application.

B. Individuals interviewed: Applicants, including those who submit applications by mail, shall be interviewed via telephone with an ISD worker. When circumstances warrant or upon request of the applicant, the household may be interviewed in person at another place reasonably accessible and agreeable to both the applicant and the ISD worker. The applicant may bring any person he chooses to the interview.

C. Scheduling interviews: The interview on an initial application shall be scheduled within 10 working days, and, to the extent possible, at a time that is most convenient for the applicant.

D. Missed interviews: ISD shall notify a household that it missed its first interview appointment, and inform the household that it is responsible for rescheduling the missed interview. If the household contacts the caseworker within the 45-day application processing period, the caseworker shall schedule a second interview. When the applicant contacts ISD, either orally or in writing, the caseworker shall reschedule the interview as soon as possible thereafter within the

45 day processing period, without requiring the applicant to provide good
cause for missing the initial interview. If the applicant does not contact ISD or does not appear for the rescheduled interview, the application shall be denied on the 45th day (or the next work day) after the application was filed.
[8.281.400.11 NMAC - Rp, 8.281.400.11 NMAC, 1/1/2019]

8.281.400.12 ENUMERATION: An applicant/recipient must furnish his or her social security number in accordance with 8.200.410.10 NMAC.
[8.281.400.12 NMAC - Rp, 8.281.400.12 NMAC, 1/1/2019]

8.281.400.13 CITIZENSHIP: Refer to medical assistance program manual Section 8.200.410.11 NMAC.
[8.281.400.13 NMAC - Rp, 8.281.400.13 NMAC, 1/1/2019]

8.281.400.14 RESIDENCE:

A. Residence in the United States: An applicant/recipient must be residing in the United States at the time of approval. An applicant/recipient who leaves the United States for an entire calendar month loses eligibility. The applicant/recipient must re-establish his/her residence in the United States for at least 30 consecutive days before becoming eligible for any SSI-related medicaid program.

B. Residence in New Mexico: To be eligible for institutional care medicaid, an applicant/recipient must be physically present in New Mexico on the date of application or final determination of eligibility and must have demonstrated intent to remain in the state. If the individual does not have the present mental capacity to declare intent, the parent, guardian or adult child may assume responsibility for a declaration of intent. If the individual does not have the present mental capacity to declare intent and there is no guardian or relative to assume responsibility for a declaration of intent, the state where the person is living is recognized as the state of residence. A temporary absence from the state does not preclude eligibility. A temporary absence exists if the applicant/recipient leaves the state for a specific purpose with a time-limited goal and intends to return to New Mexico when the goal is accomplished.
[8.281.400.14 NMAC - Rp, 8.281.400.14 NMAC, 1/1/2019]

8.281.400.15 SPECIAL RECIPIENT REQUIREMENTS: To be eligible for institutional care medicaid, an applicant/recipient must be aged, blind, or disabled as defined by the social security administration (SSA). Recipients of institutional care medicaid in New Mexico are terminated from assistance if they are transferred to, or choose to move to, a long term care facility out-of-state. New Mexico medicaid does not cover NF services furnished to applicants/recipients in out-of-state facilities.
[8.281.400.15 NMAC - Rp, 8.281.400.15 NMAC, 1/1/2019]

8.281.400.16 AGED: To be considered aged, an applicant/recipient individmust be 65 years of age or older. Age is verified by the following:

A. decision from SSA regarding age;

B. acceptable documentary evidence including:

(1) birth certificate or delayed birth certificate;

(2) World War II ration books;

(3) baptismal records;

(4) marriage license or certificate;

(5) military discharge papers;

(6) insurance policies;

(7) Indian census records;

(8) dated newspaper clippings;

(9) voting registration;

(10) World War I registration;

(11) veterans administration records; or

(12) school census.
[8.281.400.16 NMAC - Rp, 8.281.400.16 NMAC, 1/1/2019]

8.281.400.17 BLIND: To be considered blind, an applicant/recipient must have central visual acuity of 20/200 or less with corrective lenses.

A. Documentation of blindness: An applicant/recipient must meet the SSA's definition of blindness. If he/she is receiving social security or supplemental security income (SSI) benefits based on the condition of blindness, verification of this factor can be accomplished through documents, such as award letters or benefit checks

B. Status of SSA determination: If it has not been determined whether an applicant/recipient meets SSA's definition of blindness or if only a temporary determination was made, the ISD worker must request a determination from the disability determination unit (DDU). Eligibility based on blindness cannot be considered to exist without a DDS determination.

C. Redetermination of blindness: A redetermination of blindness by the DDU is not required on a re-application following an applicant/recipient's termination from SSI/SSA or medicaid, if a permanent condition of blindness was previously established or the termination was based on a condition unrelated to blindness and there was no indication of possible improvement in an applicant/recipient's vision.

D. Remedial treatment: If the DDU recommends remedial medical treatment that carries no more than the usual risk or a reasonable plan for vocational training, an applicant/recipient must comply with the recommendation unless good cause for not doing so exists.
[8.281.400.17 NMAC - Rp, 8.281.400.17 NMAC, 1/1/2019]

8.281.400.18 DISABILITY: To be considered disabled, an applicant/recipient under 65 years of age is considered to have a qualifying disability if he/she is unable to engage in any substantial gainful activity because of any medically determinable physical, developmental, or mental impairment which has lasted, or is expected to last, for a continuous period of at least 12 months.

A. Documentation of disability: An applicant/recipient must meet the social security administration (SSA)'s definition of disability. If he/she is receiving social security or supplemental security income (SSI) benefits based on the condition of disability, verification of this factor can be accomplished through documents, such as award letters or benefit checks.

B. Status of SSA determination: If it has not been determined whether an applicant/recipient meets the SSA's definition of disability or if only a temporary determination was made, the ISS must request a determination from the DDU. Eligibility based on disability cannot be considered to exist without a DDS determination.

C. Redetermination of disability: A redetermination of disability by the DDU is not required on a re-application following an applicant/recipient's termination from SSI/SSA or medicaid, if a permanent condition of disability was previously established or the termination was based on a condition unrelated to disability and there was no indication of possible improvement in an applicant/recipient's physical condition.

D. Remedial treatment: If the DDU recommends remedial medical treatment that carries no more than the usual risk or a reasonable plan for vocational training, an applicant/recipient must comply with the recommendation unless good cause for not doing so exists.

[8.281.400.18 NMAC - Rp, 8.281.400.18 NMAC, 1/1/2019]

8.281.400.19 SSI STATUS: The ISD worker determines whether an applicant/recipient's SSI eligibility will continue while he/she is institutionalized.

A. Applicant/recipient currently eligible for SSI: If an applicant/recipient will not continue to be eligible for SSI while institutionalized, the ISD worker processes the application regardless of the fact that SSA will not terminate SSI benefits until the month following the month the applicant/recipient enters an institution.

B. Applicant not currently receiving SSI: If an applicant/recipient is not receiving SSI or has not applied for SSI before applying for medicaid and his/her gross income is less than $50, the ISD worker processes the application and refers the applicant to the SSA for determination of eligibility for SSI benefits. If an applicant's gross monthly income is $50 or more but not in excess of the maximum allowable income standard, the ISD worker determines eligibility for institutional care medicaid based on remaining financial and nonfinancial criteria.

[8.281.400.19 NMAC - Rp, 8.281.400.19 NMAC, 1/1/2019]

8.281.400.20 RECIPIENT RIGHTS AND RESPONSIBILITIES: An applicant/recipient is responsible for establishing his/her eligibility for medicaid. As part of this responsibility, the applicant/recipient must provide required information and documents or take the actions necessary to establish eligibility. Failure to do so must result in a decision that eligibility does not exist. An applicant/recipient must also grant the human services department (HSD) permission to contact other persons, agencies or sources of information, which are necessary to establish eligibility.

[8.281.400.20 NMAC - Rp, 8.281.400.20 NMAC, 1/1/2019]

8.281.400.21 RIGHT TO HEARING: An applicant/recipient residing in an institution can request an administrative hearing to dispute issues relating to the eligibility determination process at the time of the eligibility determination (see Section 8.200.430.12 NMAC, Right to Hearing).

[8.281.400.21 NMAC - Rp, 8.281.400.21 NMAC, 1/1/2019]

8.281.400.22 ASSIGNMENTS OF MEDICAL SUPPORT: Refer to medical assistance program manual Subsection F of Section 8.200.420.12 NMAC.

[8.281.400.22 NMAC - Rp, 8.281.400.22 NMAC, 1/1/2019]

8.281.400.23 REPORTING REQUIREMENTS: Medicaid recipients must report any change in circumstances, which may affect his/her eligibility to their local income support division (ISD) office within 10 days of the change in accordance with 8.200.430.18 NMAC.

[8.281.400.23 NMAC - Rp, 8.281.400.23 NMAC, 1/1/2019]

HISTORY OF 8.281.400 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:

ISD Rule 380.0000, Medical Assistance For Persons Requiring Institutional Care, filed 12/29/1983.

ISD Rule 380.0000, Medical Assistance For Persons Requiring Institutional Care, filed 8/11/1987.

MAD Rule 380.0000, Medical Assistance For Persons Requiring Institutional Care, filed 2/5/1988.

MAD Rule 380.0000, Medical Assistance For Persons Requiring Institutional Care, filed 2/25/1988.

MAD Rule 380.0000, Medical Assistance For Persons Requiring Institutional Care, filed 6/1/1988.

MAD Rule 380.0000, Medical Assistance For Persons Requiring Institutional Care, filed 1/31/1989.

MAD Rule 380.0000, Medical Assistance For Persons Requiring Institutional Care, filed 6/21/1989.

MAD Rule 880.0000, Medical Assistance For Persons Requiring Institutional Care, filed 3/21/1990.

MAD Rule 880, Medical Assistance For Persons Requiring Institutional Care, filed 5/3/1991.
MAD Rule 880, Medical Assistance For Persons Requiring Institutional Care, filed 6/12/1992.
MAD Rule 880, Medical Assistance For Persons Requiring Institutional Care, filed 11/16/191994.
MAD Rule 882, Resources - Medical Assistance For Persons Requiring Institutional Care, filed 3/9/1993.
MAD Rule 882, Resources - Medical Assistance For Persons Requiring Institutional Care, filed 11/16/191994.
MAD Rule 882, Resources, filed 12/29/191994.
MAD Rule 883, Income - Medical Assistance For Persons Requiring Institutional Care, filed 3/18/1993.
MAD Rule 883, Income - Medical Assistance For Persons Requiring Institutional Care, filed 11/16/191994.
MAD Rule 883, Income, filed 12/29/1994.
MAD Rule 885, Medical Care Credit, filed 11/16/1994.
MAD Rule 888, Medicare Catastrophic Coverage Act of 1988 Regarding Transfers of Assets, filed 3/10/1994.
MAD Rule 888, Transfers of Assets, filed 12/27/1994.
MAD Rule 889, Spousal Impoverishment, filed 8/17/1992.
MAD Rule 889, Spousal Impoverishment, filed 2/17/1994.

History of Repealed Material:
MAD Rule 880, Medical Assistance For Persons Requiring Institutional Care, filed 11/16/1994 - Repealed effective 2/1/191995.
MAD Rule 882, Resources, filed 12/29/1994 - Repealed effective 2/1/1995.
MAD Rule 883, Income, filed 12/29/1994 - Repealed effective 2/1/1995.
MAD Rule 885, Medical Care Credit, filed 11/16/1994 - Repealed effective 2/1/1995.
MAD Rule 888, Transfers of Assets, filed 12/27/1994 - Repealed effective 2/1/1995.
MAD Rule 889, Spousal Impoverishment, filed 2/17/1994 - Repealed effective 2/1/1995.
8.281.400 NMAC - Recipient Policies, filed 6/13/2003 - Repealed effective 1/1/2019.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 281 MEDICAID ELIGIBILITY - INSTITUTIONAL CARE (CATEGORIES 081, 083 and 084)
PART 600 BENEFIT DESCRIPTION

8.281.600.1 ISSUING AGENCY: New Mexico Human Services Department.
[8.281.600.1 NMAC - Rp, 8.281.600.1 NMAC, 1/1/2019]

8.281.600.2 SCOPE: The rule applies to the general public.
[8.281.600.2 NMAC - Rp, 8.281.600.2 NMAC, 1/1/2019]

8.281.600.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended and by the state human services department pursuant to state statute. See Section 27-2-12 *et seq*., NMSA 1978 (Repl. Pamp. 1991).
[8.281.600.3 NMAC - Rp, 8.281.600.3 NMAC, 1/1/2019]

8.281.600.4 DURATION: Permanent.
[8.281.600.4 NMAC - Rp, 8.281.600.4 NMAC, 1/1/2019]

8.281.600.5 EFFECTIVE DATE: January 1, 2019, or upon a later approval date by the federal centers for medicare and medicaid services (CMS), unless a later date is cited at the end of the section.
[8.281.600.5 NMAC - Rp, 8.281.600.5 NMAC, 1/1/2019]

8.281.600.6 OBJECTIVE: The objective of these regulations is to provide eligibility policy and procedures for the medicaid program.
[8.281.600.6 NMAC - Rp, 8.281.600.6 NMAC, 1/1/2019]

8.281.600.7 DEFINITIONS: [**RESERVED**]

8.281.600.8 [**RESERVED**]

8.281.600.9 BENEFIT DESCRIPTION: Applicant/recipient who is eligible for institutional care medicaid is eligible to receive the full range of medicaid-covered services, unless coverage is restricted due to transfer of asset penalties.
[8.281.600.9 NMAC - Rp, 8.281.600.9 NMAC, 1/1/2019]

8.281.600.10 BENEFIT DETERMINATION:

A. Application for institutional care medicaid is made using the HSD 100 application. Completed applications must be acted upon and notice of approval, denial, or delay sent out within 45 days from the date of registration. The income support division (ISD) worker explains time limits to the applicant and informs him or her of the date by which the application should be processed.

B. Representatives applying on behalf of individuals: If a representative makes application on behalf of an institutionalized individual, the representative is relied upon for information. The ISD worker sends all notices to the applicant/recipient in care of the representative. If the individual who makes an application is an employee of the institution, the ISD worker contacts the applicant's family or other involved individuals. The ISD worker focuses on the applicant/recipient's current circumstances and on past circumstances which may provide clues to existing or potential resources.
[8.281.600.10 NMAC - Rp, 8.281.600.10 NMAC, 1/1/2019]

8.281.600.11 INITIAL BENEFITS:

A. For an applicant/recipient who loses supplemental security income (SSI) eligibility after entering an institution, the institutional care medicaid application date is the first day of the month of SSI termination, or the month the application is received by the ISD worker, whichever is earlier.

B. Notice of determination: Applicants eligible for institutional care medicaid are notified of the approval and advised of the amount, if any, of the medical care credit. Applicants who are ineligible are notified of the denial and provided with an explanation of appeal rights.

[8.281.600.11 NMAC - Rp, 8.281.600.11 NMAC, 1/1/2019]

8.281.600.12 ONGOING BENEFITS: A complete redetermination of eligibility must be performed by the ISD worker for each open case at least annually.

A. Regular reviews: For each regular yearly review, the ISD worker must determine:

(1) whether medical care credit payments are up to date; an overdue balance may indicate a change in circumstances that is unreported, particularly where rental property is involved; and

(2) whether the deposit to the recipient's personal fund is consistently no more than the applicable personal needs allowance amount per month; a larger deposit may indicate an increase in income that is unreported or a previously unidentified source of income.

B. Level of care reviews are required to be completed at least annually. Level of care determinations are made by the utilization review contractor or a member's selected or assigned managed care organization.

[8.281.600.12 NMAC - Rp, 8.281.600.12 NMAC, 1/1/2019]

8.281.600.13 RETROACTIVE BENEFIT COVERAGE: Up to three months of retroactive medicaid coverage can be furnished to applicants who have received medicaid-covered services during the retroactive period and would have met applicable eligibility criteria had they applied during the three months prior to the month of application. Retroactive medicaid coverage is provided in accordance with 8.200.400.14 NMAC.

[8.281.600.13 NMAC - Rp, 8.281.600.13 NMAC, 1/1/2019]

8.281.600.14 CHANGES IN ELIGIBILITY:

A. The following procedures apply when an institutional care medicaid recipient leaves an institution:

(1) the recipient is notified in writing that his/her eligibility for institutional care medicaid has terminated;

(2) the institutional care medicaid case is closed;

(3) the recipient is screened for other medicaid program eligibility; or

(4) the recipient is referred to the social security administration for determination of eligibility for SSI benefits if appropriate; if a recipient dies in an institution, the case is closed the following month.

B. Discharge status: Discharge status continues after the utilization review (UR) contractor determines that there is no medical necessity for a high nursing facility (NF) or low NF placement. Discharge status does not apply to an acute care placement. After placement in discharge status, the recipient continues to be eligible for institutional care medicaid since he/she still requires institutional care.

(1) Abstract submission: Discharge status requires a new abstract be submitted at regular intervals. The institution must attach verification to the abstract that adequate placement has been and is being sought.

(2) Case closure: The ISD worker takes no action to close a case until the recipient is actually discharged from the institution. If the recipient is transferred from high NF to low NF, medicaid coverage is not interrupted, unless the recipient is ineligible for other reasons.

[8.281.600.14 NMAC - Rp, 8.281.600.14 NMAC, 1/1/2019]

HISTORY OF 8.281.600 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:

ISD Rule 380.0000, Medical Assistance for Persons Requiring Institutional Care, filed 12/29/1983.

ISD Rule 380.0000, Medical Assistance for Persons Requiring Institutional Care, filed 8/11/1987.

MAD Rule 380.0000, Medical Assistance for Persons Requiring Institutional Care, filed 2/5/1988.

MAD Rule 380.0000, Medical Assistance for Persons Requiring Institutional Care, filed 2/25/1988.

MAD Rule 380.0000, Medical Assistance for Persons Requiring Institutional Care, filed 6/1/1988.

MAD Rule 380.0000, Medical Assistance for Persons Requiring Institutional Care, filed 1/31/1989.

MAD Rule 380.0000, Medical Assistance for Persons Requiring Institutional Care, filed 6/21/1989.

MAD Rule 880.0000, Medical Assistance for Persons Requiring Institutional Care, filed 3/21/1990.

MAD Rule 880, Medical Assistance for Persons Requiring Institutional Care, filed 5/3/1991.

MAD Rule 880, Medical Assistance for Persons Requiring Institutional Care, filed 6/12/1992.

MAD Rule 880, Medical Assistance for Persons Requiring Institutional Care, filed 11/16/1994.

MAD Rule 882, Resources - Medical Assistance for Persons Requiring Institutional Care, filed 3/9/1993.

MAD Rule 882, Resources - Medical Assistance for Persons Requiring Institutional Care, filed 11/16/1994.

MAD Rule 882, Resources, filed 12/29/1994.

MAD Rule 883, Income - Medical Assistance for Persons Requiring Institutional Care, filed 3/18/1993.

MAD Rule 883, Income - Medical Assistance for Persons Requiring Institutional Care, filed 11/16/1994.
MAD Rule 883, Income, filed 12/29/1994.
MAD Rule 885, Medical Care Credit, filed 11/16/1994.
MAD Rule 888, Medicare Catastrophic Coverage Act of 1988 Regarding Transfers of Assets, filed 3/10/1994.
MAD Rule 888, Transfers of Assets, filed 12/27/1994.
MAD Rule 889, Spousal Impoverishment, filed 8/17/1992.
MAD Rule 889, Spousal Impoverishment, filed 2/17/1994.

History of Repealed Material:
MAD Rule 880, Medical Assistance for Persons Requiring Institutional Care, filed 11/16/1994 - Repealed effective 2/1/1995.
MAD Rule 882, Resources, filed 12/29/1994 - Repealed effective 2/1/1995.
MAD Rule 883, Income, filed 12/29/1994 - Repealed effective 2/1/1995.
MAD Rule 885, Medical Care Credit, filed 11/16/1994 - Repealed effective 2/1/1995.
MAD Rule 888, Transfers of Assets, filed 12/27/1994 - Repealed effective 2/1/1995.
MAD Rule 889, Spousal Impoverishment, filed 2/17/1994 - Repealed effective 2/1/1995.
8 NMAC 4.ICM.600, Benefit Description, filed 12/30/1994 - Repealed effective 4/1/2009.
8.281.600 NMAC – Benefit Description, filed 3/13/2009 - Repealed effective 1/1/2019.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 290 MEDICAID ELIGIBILITY - HOME AND COMMUNITY-BASED SERVICES WAIVER (CATEGORIES 090, 091, 092, 093, 094, 095 AND 096)
PART 400 RECIPIENT POLICIES

8.290.400.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.290.400.1 NMAC - Rp, 8.290.400.1 NMAC, 1/1/2019]

8.290.400.2 SCOPE: The rule applies to the general public.
[8.290.400.2 NMAC - Rp, 8.290.400.2 NMAC, 1/1/2019]

8.290.400.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended and by the state human services department pursuant to state statute. See Section 27-2-12 *et seq*., NMSA 1978.
[8.290.400.3 NMAC - Rp, 8.290.400.3 NMAC, 1/1/2019]

8.290.400.4 DURATION: Permanent.
[8.290.400.4 NMAC - Rp, 8.290.400.4 NMAC, 1/1/2019]

8.290.400.5 EFFECTIVE DATE: January 1, 2019, or upon a later approval date by the federal centers for medicare and medicaid services (CMS), unless a later date is cited at the end of the section.
[8.290.400.5 NMAC - Rp, 8.290.400.5 NMAC, 1/1/2019]

8.290.400.6 OBJECTIVE: The objective of this rule is to provide eligibility criteria for the medicaid program.
[8.290.400.6 NMAC - Rp, 8.290.400.6 NMAC, 1/1/2019]

8.290.400.7 DEFINITIONS:

A. Adaptive behavior: The effectiveness or degree with which individuals meet the standards of personal independence and social responsibility expected for their age and cultural group.

B. Comprehensive care plan (CCP): The comprehensive care plan of services that meets the member's physical, behavioral and long-term care needs in managed care.

C. Developmental disability: For the purposes of the developmental disabilities (DD) waiver, a developmental disability is limited to an intellectual disability or a specific related condition as defined by the department of health/ developmental disabilities supports division (DOH/DDSD) that is likely to continue indefinitely and results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living and economic self-sufficiency.

D. Developmental period: The time between birth and the 18th birthday.

E. Disability determination unit (DDU): The unit that determines disability as described in Section 8.200.420.11 NMAC.

F. General intellectual functioning: The results of one or more individually administered general intelligence tests developed for the purpose of assessing intellectual functioning.

G. Individual service plan (ISP): A treatment plan for an eligible recipient that includes the eligible recipient's needs, functional level, intermediate and long range goals, statement for achieving the goals and specifies responsibilities for the care needs. The plan determines the services allocated to the eligible recipient within program allowances.

H. Intermediate care facility for individuals with intellectual disabilities (ICF/IID): This term replaces all references to intermediate care facility for mental retardation (ICF/MR).

I. Intellectual disability (ID): Refers to significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period. Intellectual disability replaces all references to mental retardation.

J. Letter of allocation: Written notice to the applicant that they may proceed with the home and community-based services (HCBS) waiver application process.

K. Level of care: The level of institutional care needed by the eligible recipient.

L. Medically Fragile: For the purposes of the medically fragile waiver (MFW), medically fragile is a chronic physical condition, which results in a prolonged dependency on medical care for which daily skilled (nursing) intervention is medically necessary.

M. Primary Freedom of Choice (PFOC): The form included in the allocation packet that allows a registrant to confirm his or her interest in pursuing the opportunity to apply for community benefits.

N. Prospective: A period of time starting with the date of application going forward.

O. Restricted coverage: Medicaid eligibility without long term care services coverage.

P. Significantly subaverage intellectual functioning: IQ of 70 or below.

Q. Unduplicated recipient positions (UDR): Space available in a particular HCBS waiver program.

R. Waiver: Permission from the centers for medicare and medicaid services (CMS) to waive certain medicaid requirements in order for a state to furnish an array of home and community-based services to state-specified target group(s) of medicaid recipients who need a level of institutional care.

[8.290.400.7 NMAC - Rp, 8.290.400.7 NMAC, 1/1/2019]

8.290.400.8 [RESERVED]

8.290.400.9 HOME AND COMMUNITY-BASED SERVICES WAIVER - Category 091, 093, 094, 095, 096: The human services department (HSD) is the single state agency designated to administer the medicaid program in New Mexico. HSD is charged with developing and implementing the community benefit to elderly, blind, and disabled individuals who meet both financial and medical criteria for nursing facility (NF) level of care (categories 091, 093, and 094). The department of health (DOH) and HSD are charged with developing and implementing HCBS waivers to medicaid applicants/recipients who meet both financial and medical criteria for intermediate care facility for individuals with intellectual disabilities (ICF/IID) level of care, for medically fragile (category 095) and developmentally disabled (category 096) individuals. Provision of these services under a waiver allows applicants/recipients to receive the care required at home at less cost than in an institution. The services to be furnished under the waiver must be cost-effective. This means the aggregate cost of care must be an amount less than the cost of maintaining individuals in institutions at the appropriate level of care. The types of services for which recipients are eligible vary based on the individual waiver.

[8.290.400.9 NMAC - Rp, 8.290.400.9 NMAC, 1/1/2019]

8.290.400.10 BASIS FOR DEFINING THE GROUP: Eligibility for applicants/recipients who apply for waiver services is determined as if he or she were actually institutionalized, although this requirement has been waived. Entry into some of the waiver programs may be based upon the number of UDRs (i.e., slots) available. The individual waiver program manager notifies the income support division (ISD) when a UDR is available.

A. Elderly, blind, and disabled individuals (categories 091, 093, and 094): For applicants/recipients who are under age 65 to qualify as disabled or blind, disability or blindness must have been determined to exist by the social security administration or the DDU. To qualify as an elderly person, the applicant/recipient must be 65 years of age or older. Applicants/recipients must also meet both the financial and non-financial eligibility requirements and meet the medical level of care for nursing facility services.

B. Developmental disabilities (DD) waiver: The DD waiver identified as category 096 was approved effective July 1984, subject to renewal. DD waiver services are intended for eligible recipients who have developmental disabilities limited to intellectual disability (IID) or a specific related condition as determined by the DOH/DDSD. The developmental disability must reflect the person's need for a combination and sequence of special interdisciplinary or generic treatment or other supports and services that are lifelong or of extended duration and are individually planned and coordinated. The eligible recipient must also require the level of care provided in an intermediate care facility for individuals with developmental disabilities (ICF/IID), in accordance with Section 8.313.2 NMAC, and meet all other applicable financial and non-financial eligibility requirements.

(1) Intellectual disability: An individual is considered to have an intellectual disability if she/he has significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(2) Specific related condition: An individual is considered to have a specific related condition if she/he has a severe chronic disability, other than mental illness, that meets all of the following conditions:

(a) is attributable to:

(i) cerebral palsy or seizure disorder; or

(ii) is attributable to autistic disorder (as described in the fourth edition of the diagnostic and statistical manual of mental disorders); or

(iii) is attributable to chromosomal disorders (e.g. down), syndrome disorders, inborn errors of metabolism, or developmental disorders of the brain formation limited to the list in Paragraph (3) of Subsection B of 8.290.400.10 NMAC;

(b) results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with intellectual disability and requires treatment or services similar to individuals with ID;

(c) is manifested before the person reaches age 22 years;

(d) is likely to continue indefinitely; and

(e) results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living and economic self-sufficiency.

(3) List of chromosomal disorders (e.g., down) syndrome disorders, inborn errors of metabolism or developmental disorders of the bring formation.

(a) **chromosomal disorders:** autosomes: 4p-, trisomy 4p, trisomy 8, 5p-, 9p-, trisomy 9p, trisomy 9p mosaic, partial trisomy 10q, 13q-, ring 13, trisomy 13 (Patau), 18p-, 18q-, trisomy 18 (Edwards), Ttisomy 20p, G (21,22) monosomy/deletion, trisomy 21 (down), translocation 21 (down), "cat-eye" syndrome; Prader-Willi syndrome (15);

(i) x-linked intellectual disability: Allan syndrome; Atkin syndrome; Davis syndrome; Fitzsimmons syndrome; fragile x syndrome; fragile x phenotype (no fragile site); Gareis syndrome; glycerol kinase deficiency; Golabi syndrome; Homes syndrome; Juberg syndrome; Lujan syndrome; Renpenning syndrome; Schimke syndrome; Vasquez syndrome; nonspecific x-linked intellectual disability;

(ii) other x chromosome disorders: xo syndrome (Turner); xyy syndrome; xxy syndrome (Klinefelter); xxyy syndrome; xxxy syndrome; xxxx syndrome; xxxxy syndrome; xxxxx syndrome (penta-x);

(b) **syndrome disorders:**

(i) neurocutaneous disorders: ataxia-telangiectasia (Louis-Bar); basal cell nevus syndrome; dyskeratosis congenital; ectodermal dysplasia (hyperhidrotic type); ectromelia ichthyosis syndrome; focal dermal hypoplasia (Goltz); ichthyosis-hypogonadism syndrome, incontinentia pigmenti (Bloch-Sulzberger); Ito syndrome; Klippel-Trenauney syndrome; linear sebaceous nevus syndrome; multiple lentigines syndrome; neurofibromatosis (Type 1); poikiloderma (Rothmund-Thomsen); Pollitt syndrome; Sjogren-Larsen syndrome; Sturge-Weber syndrome; tuberous sclerosis; xeroderma pigmentosum;

(ii) **muscular disorders:** Becker muscular dystrophy; chondrodystrophic myotonia (Schwartz-Jampel); congenital muscular dystrophy; Duchenne muscular dystrophy; myotonic muscular dystrophy;

(iii) **ocular disorders:** Aniridia-Wilm's tumor syndrome; anophthalmia syndrome (x-linked); Leber amaurosis syndrome; Lowe syndrome; microphthalmia-corneal opacity-spasticity syndrome; Norrie syndrome; oculocerebral syndrome with hypopigmentation; retinal degeneration-trichomegaly syndrome; septo-optic dysplasia;

(iv) **craniofacial disorders:** a crocephaly-cleft lip-radial aplasia syndrome; acrocephalosyndactyly;type 1 (Apert); type 2 (Apert); type 3 (Saethre-Chotzen); type 6 (Pfeiffer); Carpenter syndrome with absent digits and cranial defects; Baller-Gerold syndrome; cephalopolysyndactyly (Greig) "cloverleaf-skull" syndrome; craniofacial dysostosis (Crouzon); craniotelencephalic dysplasia; multiple synostosis syndrome;

(v) **skeletal disorders:** acrodysostosis, CHILD syndrome; chondrodysplasia punctata (Conradi-Hunerman type); chondroectodermal dysplasia; Dyggve-Melchior-Clausen syndrome; frontometaphyseal dysplasia; hereditary osteodystrophy (Albright); hyperostosis (Lenz-Majewski); hypochondroplasia; Klippel-Feil syndrome; Nail-patella syndrome; osteopetrosis (Albers-Schonberg); pyknodysostosis; radial aplasia-thrombocytopenia syndrome; radial hypoplasia pancytopenia syndrome (Fanconi); Roberts-SC phocomelia syndrome;

(c) **inborn errors of metabolism:**

(i) **amino acid disorders:** phenylketonuria: phenylalanine hydroxylase (classical, Type 1); dihydropteridine reductase (type 4); dihydrobiopterin synthetase (type 5); histidinemia; gamma-glutamylcysteine synthetase deficiency; hyperlysinemia; lysinuric protein intolerance; hyperprolinemia; hydroxyprolinemia; sulfite oxidase deficiency; iminoglycinuria; branched-chain amino acid disorders: hypervalinemia; hyperleucine-isoleucinemia; maple-syrup urine disease; isovaleric academia, glutaric academia (type 2); 3-hydroxy-3-methylglutaryl CoA lyase deficiency; 3-kethothiolase deficiency;,biotin-dependent disorders: holocarboxylase

deficiency; biotinidase deficiency; propionic academia: type A; Type BC; methylmalonic academia: mutase type (mut+); cofactor affinity type (mut-); adenosylcobalamin synthetase type (cbl A); ATP: cobalamin adenosyltransferase type (cbl B), with homocystinuria, type 1 (cbl C), with homocystinuria, type 2 (cbl D); folate-dependent disorders: congenital defect of folate absorption; dihydrofolate reductase deficiency; methylene tetrahydrofolate reductase deficiency; homocystinuria; hypersarcosinemia; non-ketotic hyperglycinemia; hyper-beta-alaninemia; carnosinase deficiency; homocarnosinase deficiency; Hartnup disease; methionine malabsorption (oasthouse urine disease);

(ii) **carbohydrate disorders:** glycogen storage disorders: type 1, with hypoglycemia (von Gierke); type 2 (Pompe); galactosemia; fructose-1, 6-diphosphatase deficiency; pyruvic acid disorders: pyruvate dehydrogenase complex (Leigh); pyruvate carboxylase deficiency; mannosidosis; fucosidosis; aspartylglucosaminuria;

(iii) **mucopolysaccharide disorders:** alpha-L-iduronidase deficiency: Hurler type; Scheie type, Hurler-Scheie type; iduronate sulfatase deficiency (Hunter type); Heparan N-sulfatase deficiency (Sanfilippo 3A type); N-acetyl-alpha-D-glucosaminidase deficiency (Sanfilippo 3B type); Acetyl CoA; glucosaminide N-acetyltransferase deficiency (Sanfilippo 3C type); N-acetyl-alpha D-glucosaminide 6-sulfatase deficiency (Sanfilippo 3D type); beta-glucuronidase deficiency (Sly type);

(iv) **mucolipid disorders:** alpha-neuraminidase deficiency (type1); N-acetylglucosaminyl phosphotransferase deficiency: I-cell disease (Type 2); Pseudo-Hurler syndrome (type 3); mucolipidosis type 4;

(v) **urea cycle disorders:** carbamyl phosphate synthetase deficiency; ornithine transcarbamylase deficiency; argininosuccinic acid synthetase deficiency (citrullinemia); argininosuccinic acid (ASA) lyase deficiency; arginase deficiency (argininemia);

(vi) **nucleic acid disorders:** Lesch-Nyhan syndrome (HGPRTase deficiency); orotic aciduria; xeroderma pigmentosum (group A); DeSanctis-Cacchione syndrome;

(vii) **copper metabolism disorders:** Wilson disease; Menkes disease;

(viii) **mitochondrial disorders:** Kearns-Sayre syndrome; MELAS syndrome; MERRF syndrome; cytochrome c oxidase deficiency; other mitochondrial disorders;

(ix) **peroxisomal disorders:** Zellweger syndrome; adrenoleukodystrophy: neonatal (autosomal recessive); childhood (x-linked); infantile Refsum disease; hyperpipecolic academia; chondrodysplasia punctata (rhizomelic type);

(d) **developmental disorders of brain formation:**

(i) neural tube closure defects: anencephaly; spina bifida; encephalocele;

(ii) brain formation defects: Dandy-Walker malformation; holoprosencephaly; hydrocephalus: aqueductal stenosis; congenital x-linked type; Lissencephaly; pachygyria; polymicrogyria; schizencephaly;

(iii) cellular migration defects: abnormal layering of cortex; colpocephaly; heterotopias of gray matter; cortical microdysgenesis

(iv) intraneuronal defects: dendritic spine abnormalities; microtubule abnormalities;

(v) acquired brain defects: hydranencephaly; porencephaly; and

(vi) primary (idiopathic) microcephaly.

C. Medically fragile (MF) waiver: The medically fragile (MF) waiver identified as category 095 was established effective August, 1984 subject to renewal. Medically fragile is characterized by one or more of the following: a life threatening condition characterized by reasonable frequent periods of acute exacerbation which require frequent medical supervision, or physician consultation and which in the absence of such supervision or consultation would require hospitalization; a condition requiring frequent, time consuming administration of specialized treatments which are medically necessary; or dependence on medical technology such that without the technology a reasonable level of health could not be maintained; examples include but are not limited to ventilators, dialysis machines, enteral or parenteral nutrition support and supplemental oxygen. The eligible recipient must require the level of care provided in an ICF/IID, in accordance with 8.313.2 NMAC, and meet all other applicable financial and non-financial eligibility requirements and must have:

(1) a developmental disability, developmental delay, or be at risk for developmental delay as determined by the DDU, and

(2) a diagnosed medically fragile condition prior to the age of 22, defined as a chronic physical condition, which results in a prolonged dependency on medical care for which daily skilled (nursing) intervention is medically necessary, and which is characterized by one or more of the following:

(a) a life threatening condition characterized by reasonably frequent periods of acute exacerbation, which require frequent medical supervision or physician consultation and which, in the absence of such supervision or consultation, would require hospitalization;

(b) frequent, time-consuming administration of specialized treatments, which are medically necessary;

(c) dependency on medical technology such that without the technology a reasonable level of health could not be maintained; examples include, but are not limited to, ventilators, dialysis machines, enteral or parenteral nutrition support and continuous oxygen; and

(d) periods of acute exacerbation of a life-threatening condition, the need for extraordinary supervision or observation, frequent or time-consuming administration of specialized treatments, dependency on mechanical (life) support devices, and developmental delay or disability.

D. Acquired immunodeficiency syndrome (AIDS) and AIDS related condition (ARC) waiver: The acquired immunodeficiency syndrome (AIDS) and AIDS related condition waiver designated as category 090, was established effective July 1987, subject to renewal. The AIDS and AIDS related condition waiver stopped covering new individuals effective January 01, 2014 as the waiver was sunset and not renewed. Individuals already on the AIDS and AIDS related condition waiver are grandfathered and remain eligible as long as eligibility requirements are met.

E. Brain injury (BI): The brain injury category 092 stopped covering new individuals effective January 01, 2014. Individuals already on the brain injury category are grandfathered and remain eligible as long as eligibility requirements are met.

[8.290.400.10 NMAC - Rp, 8.290.400.10 NMAC, 1/1/2019]

8.290.400.11 GENERAL RECIPIENT REQUIREMENTS: Eligibility for the waiver programs is always prospective per 8.290.600.11 NMAC. Applicants/recipients must meet, or expect to meet, all non-financial eligibility criteria in the month for which determination of eligibility is made including any mandatory income or resources deemed to a minor child per 8.290.500.17 and 8.290.500.21 NMAC.

A. Enumeration: An applicant/recipient must furnish his social security number in accordance with 8.200.410.10 NMAC.

B. Citizenship: Refer to 8.200.410.11 NMAC for citizenship requirements.

C. Residence: To be eligible for medicaid, an applicant/recipient must be physically present in New Mexico on the date of application or final determination of eligibility and must have declared an intent to remain in the state. If the applicant/recipient does not have the present mental capacity to declare intent, the applicant's/recipient's representative may assume responsibility for the declaration of intent. If the applicant/recipient does not have the mental capacity to declare intent and there is no representative to assume this responsibility, the state where the applicant/recipient is living will be recognized as the state of residence. If waiver services are suspended because the recipient is temporarily absent from the state but is expected to return within 90 consecutive days at which time waiver services will resume, the medicaid case remains open. If waiver services are suspended for any other reason for 90 consecutive days, the medicaid case is closed after appropriate notice is provided to the recipient.

D. Non-concurrent receipt of assistance: HCBS waiver services furnish medicaid benefits to an applicant/recipient who qualifies both financially and medically for institutional care but who, with provision of waiver services, can receive the care he needs in the community at less cost to the medicaid program than the appropriate level of institutional care. Individuals receiving services under a HCBS waiver may not receive concurrent services under nursing facility (NF), ICF/IID, personal care or any other HCBS waiver.

(1) SSI recipients: Applicants receiving supplemental security income (SSI) benefits are categorically eligible for waiver services. No further verification of income, resources, citizenship, age, disability, or blindness is required. The applicant must, however, meet the level of care requirement. (An SSI recipient must meet the assignment of rights and TPL requirements and not be ineligible because of a trust).

(2) Married SSI couples: All married SSI couples where neither member is institutionalized in a medicaid-certified facility are treated as separate individuals for purposes of determining eligibility and benefit amounts beginning the month after the month they began living apart. See Section 8012 of the Omnibus Budget Reconciliation Act of 1989. In the case of an initial application, or reinstatement following a period of ineligibility, when members of a married couple are not living together on the date of application or date of request for reinstatement, each member of the couple is considered separately as of the date of application or request, regardless of how recently the separation occurred.

E. INTERVIEW REQUIREMENTS: An interview is required at initial application for all home and community-based waiver medical assistance programs in accordance with all of the requirements set forth at 8.281.400.11 NMAC.

[8.290.400.11 NMAC - Rp, 8.290.400.11 NMAC, 1/1/2019]

8.290.400.12 SPECIAL RECIPIENT REQUIREMENTS:

A. Age: To be considered elderly, an applicant/recipient must be 65 years of age or older. See Section 8.281.400.16 NMAC, AGE, for information on verification of age.

B. Blind: To be considered blind, an applicant/recipient must have central visual acuity of 20/200 or less with corrective lenses or must be considered blind for practical purposes. The ISD worker is responsible for submitting medical reports to the DDU, if necessary. See Section 8.281.400.17 NMAC, *Blind*,

For Information on documentation and verification of blindness.

C. Disability: To be considered disabled, an applicant/recipient must be unable to engage in any substantial gainful activity because of any medical determinable physical, developmental, or mental impairment, which has lasted, or is expected to last, for a continuous period of at least 12 months. The ISD worker is responsible for submitting medical reports to the DDU, if necessary. See Section 8.281.400.18 NMAC, *Disability*, for information on documentation and verification of disability.

D. Requires institutional care: An institutional level of care must be recommended for the applicant/recipient by a physician, nurse practitioner or a doctor of osteopathy, licensed to practice in the state of New Mexico. Institutions are defined as acute care hospitals, nursing facilities (either high NF or low NF as defined by medicaid regulations) and ICF/IID. Level of care reviews are completed by the medical assistance division (MAD) utilization review contractor or a member's selected or assigned managed care organization (MCO), as applicable to the applicant's HCBS program.

[8.290.400.12 NMAC - Rp, 8.290.400.12 NMAC, 1/1/2019]

8.290.400.13 RECIPIENT RIGHTS AND RESPONSIBILITIES: An applicant/recipient is responsible for establishing his eligibility for medicaid. As part of this responsibility, the applicant/recipient must provide required information and documents or take the actions necessary to establish eligibility. Failure to do so must result in a decision that eligibility does not exist. An applicant/recipient must also grant the human services department (HSD) permission to contact other persons, agencies or sources of information, which are necessary to establish eligibility. See 8.200.430 NMAC, *Recipient Rights And Responsibilities* for specific information.

[8.290.400.13 NMAC - Rp, 8.290.400.13 NMAC, 1/1/2019]

8.290.400.14 REPORTING REQUIREMENTS: A medicaid applicant/recipient, case manager, direct service provider or any other responsible party must report any changes in circumstances which may affect the applicant's/recipient's eligibility within 10 days of the date of the change to the county income support division (ISD) office. These changes include but are not limited to: changes in income, resources, living arrangements, or marital status. The ISD worker must evaluate the effect of the change and take any required action as soon as possible; however, the action must take effect no later than the end of the month following the month in which the change took place.

[8.290.400.14 NMAC - Rp, 8.290.400.14 NMAC, 1/1/2019]

HISTORY OF 8.290.400 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the Commission of Public Records-State Records Center and Archives:
MAD Rule 898, Transfers Of Assets, 12/29/1994.

History of Repealed Material:
8.290.400 NMAC - Recipient Policies, filed 4/16/2002 Repealed effective 1/1/2019.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 290 MEDICAID ELIGIBILITY - HOME AND COMMUNITY-BASED SERVICES WAIVER (CATEGORIES 090, 091, 092, 093, 094, 095 AND 096)
PART 600 BENEFIT DESCRIPTION

8.290.600.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.290.600.1 NMAC - Rp, 8.290.600.1 NMAC, 1/1/2019]

8.290.600.2 SCOPE: The rule applies to the general public.
[8.290.600.2 NMAC - Rp, 8.290.600.2 NMAC, 1/1/2019]

8.290.600.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended and by the state human services department pursuant to state statute. See Section 27-2-12 *et seq.*, NMSA 1978.
[8.290.600.3 NMAC - Rp, 8.290.600.3 NMAC, 1/1/2019]

8.290.600.4 DURATION: Permanent.
[8.290.600.4 NMAC - Rp, 8.290.600.4 NMAC, 1/1/2019]

8.290.600.5 EFFECTIVE DATE: January 1, 2019, or upon a later approval date by the federal centers for medicare and medicaid services (CMS), unless a later date is cited at the end of the section.
[8.290.600.5 NMAC - Rp, 8.290.600.5 NMAC, 1/1/2019]

8.290.600.6 OBJECTIVE: The objective of this rule is to provide eligibility criteria for the medical assistance division (MAD) programs.
[8.290.600.6 NMAC - Rp, 8.290.600.6 NMAC, 1/1/2019]

8.290.600.7 DEFINITIONS: See Section 8.290.400.7 NMAC.
[8.290.600.7 NMAC - Rp, 8.290.600.7 NMAC, 1/1/2019]

8.290.600.8 [RESERVED]

8.290.600.9 BENEFIT DESCRIPTION: Eligible recipients are eligible for specified services available under the particular waiver and ancillary services available under

the general medicaid program. See specific program policy sections for covered services.
[8.290.600.9 NMAC - Rp, 8.290.600.9 NMAC, 1/1/2019]

8.290.600.10 BENEFIT DETERMINATION: Application for the waiver programs is made using the HSD 100 application. Upon notification by the appropriate program manager that an unduplicated recipient (UDR) is available for waiver services, applicants are registered on the income support division (ISD) eligibility system. Applications must be acted upon and notice of approval, denial, or delay sent out within 45 calendar days from the date of application, or within 90 calendar days if a disability determination is required from the disability determination unit (DDU). The eligible recipients must assist in completing the application, may complete the form themselves, or may receive help from a relative, friend, guardian, or other designated representative.

A. Representatives applying on behalf of individuals: If a representative makes application on behalf of the eligible recipient, that representative will continue to be relied upon for information regarding the eligible recipient's circumstances. The ISD caseworker will send all notices to the eligible recipient in care of the representative.

B. Additional forms: The following forms are also required as part of the application process:

(1) the eligible recipient or representative must complete and sign the primary freedom of choice (PFOC) form at the time of allocation; and

(2) the eligible recipient or representative must sign the applicant's statement of understanding at the time waiver services are declined or terminated.

C. Additional information furnished during application: The ISD caseworker provides an explanation of the waiver programs, including, but not limited to, income and resource limits and possible alternatives, such as institutionalization. The ISD caseworker refers potentially eligible recipients to the social security administration to apply for supplemental security income (SSI) benefits. If a disability decision by the DDU is required, but has not been made, the ISD caseworker must follow established procedures to refer the case for evaluation.
[8.290.600.10 NMAC - Rp, 8.290.600.10 NMAC, 1/1/2019]

8.290.600.11 INITIAL BENEFITS:

A. The application process begins once the letter of allocation and the medicaid application for assistance are received by ISD. Once ISD has confirmed the applicant/recipient meets all eligibility criteria, the application can be approved effective the first month for which an approved level of care has been established. Medicaid eligibility covers acute and ancillary medicaid services that are effective immediately on the first day of the first month of medicaid eligibility. Home and community-based waiver services are prospective and are only available once the individual services plan (ISP) or comprehensive care plan (CCP) is approved and implemented. Following initial approval, waiver services must be provided when appropriate to eligible waiver recipients within 90 calendar days of approval. Medicaid eligibility under the waiver program is contingent on the receipt of waiver services. If an applicant/recipient is transitioning from one home and community-based services (HCBS) waiver program to another, ISD must be contacted to coordinate the start date based on the month the ISP or CCP is established for the new program. This is to ensure there is no interruption in services for the recipient.

B. Notice of determination: Applicants determined to be ineligible for waiver services are notified of the reason for the denial and provided with an explanation of appeal rights.

C. Applicants determined to be eligible for waiver services are notified of the approval.
[8.290.600.11 NMAC - Rp, 8.290.600.11 NMAC, 1/1/2019]

8.290.600.12 ONGOING BENEFITS:

A. A complete redetermination of eligibility must be performed annually by the ISD caseworker for each open case.

B. Level of care determinations are made by the utilization review contractor or a member's selected or assigned managed care organization, as applicable to the centennial care, community benefit program. Level of care reviews are required to be completed at least annually except for certain community benefit members whose chronic condition is not expected to improve. These individuals may be eligible for an ongoing nursing facility (NF) level of care (LOC). To qualify for ongoing NF LOC, the community benefit member must have met a NF LOC for the previous three years. The ongoing NF LOC status must be reviewed and approved annually by the managed care organization's medical director and must be supported in documentation by the member's physician. The complete criteria for an ongoing NF LOC can be found in the New Mexico medicaid nursing facility level of care criteria and instructions document.

C. 90 day reconsideration period: HSD will reconsider in a timely manner the waiver eligibility of an individual who is terminated for failure to submit the renewal form or necessary information, if the individual subsequently submits the renewal form within 90 days after the date of termination without requiring a new application per 42 CFR 435.916(C)(iii).
[8.290.600.12 NMAC - Rp, 8.290.600.12 NMAC, 1/1/2019]

8.290.600.13 RETROACTIVE BENEFITS: Eligibility for these categories is prospective so

retroactive coverage is not available in accordance with 8.200.400.14 NMAC.
[8.290.600.13 NMAC - Rp, 8.290.600.13 NMAC, 1/1/2019]

8.290.600.14 CHANGES IN ELIGIBILITY: If the eligible recipient ceases to meet any of the eligibility criteria, the case is closed following provision of advance notice as appropriate. See Section 8.200.430.9 NMAC and following subsections for information about notices and hearing rights.

A. Non-provision of waiver services: To continue to be eligible for waiver services, an eligible recipient must be receiving waiver services, early and periodic screening, diagnostic and treatment (EPSDT) benefits or managed care services, other than case management, (42 CFR Section 435.217). If at any time waiver services are no longer being provided (e.g., a suspension) and are not expected to be provided for 90 consecutive days, the recipient is **ineligible** for the waiver category and the case must be closed after appropriate notice is provided by the ISD caseworker.

B. Admission to a hospital, nursing facility, or intermediate care facility for individuals with intellectual disabilities (ICF-IID): If an eligible waiver recipient enters an acute care hospital, a nursing facility, or an ICF-IID and remains for more than 90 consecutive days, the waiver case must be closed and an application for institutional care medicaid (ICM) must be processed. The eligible recipient is not required to complete a new application if the periodic review on the waiver case is not due in either the month of entry into the institution or the following month. If the waiver recipient is institutionalized within less than 90 consecutive days and still receives waiver services within that time frame, the waiver case is not closed and an application for ICM need not be processed.

C. Reporting changes in circumstances: The primary responsibility for reporting changes in the eligible recipient's circumstances rests with the eligible recipient or his/her representative. At the initial eligibility determination and all on-going eligibility redeterminations, the ISD caseworker must explain the reporting responsibilities requirement to the eligible recipient or his/her representative and document that such explanation was given. In the event that waiver services cease to be provided, the case manager or the waiver program manager (or designee) must immediately notify the income support division office of that fact by telephone. The telephone call is to be followed by a written notice to the ISD caseworker.
[8.290.600.14 NMAC - Rp, 8.290.600.14 NMAC, 1/1/2019]

HISTORY OF 8.290.600 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the Commission of Public Records-State Records Center and Archives:
MAD Rule 898, Transfers Of Assets, 12/29/1994.

History of Repealed Material:
8.290.600 NMAC - Benefit Description, filed 4/12/2002 Repealed effective 1/1/2019.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 292 MEDICAID ELIGIBILITY - PARENT CARETAKER
PART 600 BENEFIT DESCRIPTION

8.292.600.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.292.600.1 NMAC - Rp, 8.292.600.1 NMAC, 1/1/2019]

8.292.600.2 SCOPE: The rule applies to the general public.
[8.292.600.2 NMAC - Rp, 8.292.600.2 NMAC, 1/1/2019]

8.292.600.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See Section 27-1-12 *et seq*., NMSA 1978.
[8.292.600.3 NMAC - Rp, 8.292.600.3 NMAC, 1/1/2019]

8.292.600.4 DURATION: Permanent.
[8.292.600.4 NMAC - Rp, 8.292.600.4 NMAC, 1/1/2019]

8.292.600.5 EFFECTIVE DATE: January 1, 2019, or upon a later approval date by the federal centers for medicare and medicaid services (CMS), unless a later date is cited at the end of the section.
[8.292.600.5 NMAC - Rp, 8.292.600.5 NMAC, 1/1/2019]

8.292.600.6 OBJECTIVE: The objective of this rule is to provide eligibility guidelines when determining eligibility for the medical assistance division (MAD) medicaid program and other health care programs it administers. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.
[8.292.600.6 NMAC - Rp, 8.292.600.6 NMAC, 1/1/2019]

8.292.600.7 DEFINITIONS: Refer to 8.291.400.7 NMAC.
[8.292.600.7 NMAC - Rp, 8.292.600.7 NMAC, 1/1/2019]

8.292.600.8 [RESERVED]
[8.292.600.8 NMAC - Rp, 8.292.600.8 NMAC, 1/1/2019]

8.292.600.9 BENEFIT DESCRIPTION: This medicaid category provides the full range of medicaid-covered services for individuals considered a parent caretaker.
[8.292.600.9 NMAC - Rp, 8.292.600.9 NMAC, 1/1/2019]

8.292.600.10 BENEFIT DETERMINATION: The HSD income support division (ISD) determines initial and ongoing eligibility. Refer to affordable care general provision chapters located at 8.291.400 through 8.291.430 NMAC for eligibility requirements. Retroactive medicaid coverage is provided in accordance with 8.200.400.14 NMAC.
[8.292.600.10 NMAC - Rp, 8.292.600.10 NMAC, 1/1/2019]

8.292.600.11 PERIODIC REDETERMINATIONS OF ELIGIBILITY:

A. A redetermination of eligibility is conducted in accordance with 8.291.410 NMAC.

B. All changes that may affect eligibility must be reported within 10 calendar days of the date of the change as detailed in 8.291.400 NMAC.
[8.292.600.11 NMAC - Rp, 8.292.600.11 NMAC, 1/1/2019]

HISTORY OF 8.292.600 NMAC:

History of Repealed Material:
8.292.600 NMAC, Benefit Description, filed 9/17/2013 - Duration expired 12/31/2013.
8.292.600 NMAC, Benefit Description, filed 12/17/2013 – Repeal effective 1/1/2019.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 293 MEDICAID ELIGIBILITY - PREGNANT WOMEN
PART 600 BENEFIT DESCRIPTION

8.293.600.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.293.600.1 NMAC - Rp, 8.293.600.1 NMAC, 1/1/2019]

8.293.600.2 SCOPE: The rule applies to the general public.
[8.293.600.2 NMAC - Rp, 8.293.600.2 NMAC, 1/1/2019]

8.293.600.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See Section 27-1-12 *et seq*., NMSA 1978.
[8.293.600.3 NMAC - Rp, 8.293.600.3 NMAC, 1/1/2019]

8.293.600.4 DURATION: Permanent.
[8.293.600.4 NMAC - Rp, 8.293.600.4 NMAC, 1/1/2019]

8.293.600.5 EFFECTIVE DATE: January 1, 2019, or upon a later approval date by the federal centers for medicare and medicaid services (CMS), unless a later date is cited at the end of the section.
[8.293.600.5 NMAC - Rp, 8.293.600.5 NMAC, 1/1/2019]

8.293.600.6 OBJECTIVE: The objective of this rule is to provide eligibility guidelines when determining eligibility for the medical assistance division (MAD) medicaid program and other health care programs it administers. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.
[8.293.600.6 NMAC - Rp, 8.293.600.6 NMAC, 1/1/2019]

8.293.600.7 DEFINITIONS: Refer to 8.291.400.7 NMAC.
[8.293.600.7 NMAC - Rp, 8.293.600.7 NMAC, 1/1/2019]

8.293.600.8 [RESERVED]
[8.293.600.8 NMAC - Rp, 8.293.600.8 NMAC, 1/1/2019]

8.293.600.9 BENEFIT DESCRIPTION: This category provides the full range of medicaid coverage for pregnant women.
[8.293.600.9 NMAC - Rp, 8.293.600.9 NMAC, 1/1/2019]

8.293.600.10 BENEFIT DETERMINATION: The HSD income support division (ISD) determines initial and ongoing eligibility. Refer to affordable care general provision chapters located at 8.291.400 through 8.291.430 NMAC for eligibility requirements. A woman eligible for pregnancy medicaid remains eligible throughout her pregnancy and for a 60 day postpartum period. The postpartum period begins on the date the pregnancy ends, extends 60 days, and then ends on the last day of the month in which the 60 day period ends per 42 CFR 435.4. Retroactive medicaid coverage is provided in accordance with 8.200.400.14 NMAC.
[8.293.600.10 NMAC - Rp, 8.293.600.10 NMAC, 1/1/2019]

8.293.600.11 REPORTING REQUIREMENTS: All changes that may affect eligibility must be reported within 10 calendar days of the date of the change as detailed in 8.291.400 NMAC.
[8.293.600.11 NMAC - Rp, 8.293.600.11 NMAC, 1/1/2019]

HISTORY OF 8.293.600 NMAC:

History of Repealed Material:
8.293.600 NMAC, Benefit Description, filed 9/17/2013 - Duration expired 12/31/2013.
8.293.600 NMAC, Benefit Description, filed 12/17/2013 - Repealed effective 1/1/2019.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 294 MEDICAID ELIGIBILITY - PREGNANCY-RELATED SERVICES
PART 600 BENEFIT DESCRIPTION

8.294.600.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.294.600.1 NMAC - Rp, 8.294.600.1 NMAC, 1/1/2019]

8.294.600.2 SCOPE: The rule applies to the general public.
[8.294.600.2 NMAC - Rp, 8.294.600.2 NMAC, 1/1/2019]

8.294.600.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See Section 27-1-12 *et seq*., NMSA 1978.
[8.294.600.3 NMAC - Rp, 8.294.600.3 NMAC, 1/1/2019]

8.294.600.4 DURATION: Permanent.
[8.294.600.4 NMAC - Rp, 8.294.600.4 NMAC, 1/1/2019]

8.294.600.5 EFFECTIVE DATE: January 1, 2019, or upon a later approval date by the federal centers for medicare and medicaid services (CMS), unless a later date is cited at the end of the section.
[8.294.600.5 NMAC - Rp, 8.294.600.5 NMAC, 1/1/2019]

8.294.600.6 OBJECTIVE: The objective of this rule is to provide eligibility guidelines when determining eligibility for the medical assistance division (MAD) medicaid program and other health care programs it administers. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.
[8.294.600.6 NMAC - Rp, 8.294.600.6 NMAC, 1/1/2019]

8.294.600.7 DEFINITIONS: Refer to 8.291.400.7 NMAC.
[8.294.600.7 NMAC - Rp, 8.294.600.7 NMAC, 1/1/2019]

8.294.600.8 [RESERVED]
[8.294.600.8 NMAC - Rp, 8.294.600.8 NMAC, 1/1/2019]

8.294.600.9 BENEFIT DESCRIPTION: This category provides medicaid services restricted to and related to pregnancy only. These services do not cover procedures, services, pharmaceuticals, or miscellaneous items which are not related to pregnancy.
[8.294.600.9 NMAC - Rp, 8.294.600.9 NMAC, 1/1/2019]

8.294.600.10 BENEFIT DETERMINATION: The HSD income support division (ISD) determines initial and ongoing eligibility. Refer to affordable care general provision chapters located at 8.291.400 through 8.291.430 NMAC for eligibility requirements. A woman eligible for pregnancy-related services remains eligible throughout her pregnancy and for a 60 day postpartum period. The postpartum period begins on the date the pregnancy ends, extends 60 days, and then ends on the last day of the month in which the 60 day period ends per 42 CFR 435.4. Retroactive medicaid coverage is provided in accordance with 8.200.400.14 NMAC.
[8.294.600.10 NMAC - Rp, 8.294.600.10 NMAC, 1/1/2019]

8.294.600.11 REPORTING REQUIREMENTS: All changes that may affect eligibility must be reported within 10 calendar days of the date of the change as detailed in 8.291.400 NMAC.
[8.292.600.11 NMAC - Rp, 8.294.600.11 NMAC, 1/1/2019]

HISTORY OF 8.294.600 NMAC:

History of Repealed Material:
8.294.600 NMAC, Benefit Description, filed 9/17/2013 - Duration expired 12/31/2013.
8.294.600 NMAC, Benefit Description, filed 12/17/2013 – Repealed effective 1/1/2019.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 295 MEDICAID ELIGIBILITY - CHILDREN UNDER 19
PART 600 BENEFIT DESCRIPTION

8.295.600.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.295.600.1 NMAC - Rp, 8.295.600.1 NMAC, 1/1/2019]

8.295.600.2 SCOPE: The rule applies to the general public.
[8.295.600.2 NMAC - Rp, 8.295.600.2 NMAC, 1/1/2019]

8.295.600.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX and XXI of the Social Security Act as amended or by state statute. See Section 27-1-12 *et seq*., NMSA 1978.
[8.295.600.3 NMAC - Rp, 8.295.600.3 NMAC, 1/1/2019]

8.295.600.4 DURATION: Permanent.
[8.295.600.4 NMAC - Rp, 8.295.600.4 NMAC, 1/1/2019

8.295.600.5 EFFECTIVE DATE: January 1, 2019, or upon a later approval date by the federal centers for medicare and medicaid services (CMS), unless a later date is

cited at the end of the section.
[8.295.600.5 NMAC - Rp, 8.295.600.5 NMAC, 1/1/2019]

8.295.600.6 OBJECTIVE: The objective of this rule is to provide eligibility guidelines when determining eligibility for the medical assistance division (MAD) medicaid program and other health care programs it administers. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.
[8.295.600.6 NMAC - Rp, 8.295.600.6 NMAC, 1/1/2019]

8.295.600.7 DEFINITIONS: Refer to 8.291.400.7 NMAC.
[8.295.600.7 NMAC - Rp, 8.295.600.7 NMAC, 1/1/2019]

8.295.600.8 [RESERVED]
[8.295.600.8 NMAC - Rp, 8.295.600.8 NMAC, 1/1/2019]

8.295.600.9 BENEFIT DESCRIPTION: This category provides full range of medicaid-covered services for eligible children.

A. An eligible child age five and under, whose budget group's countable income is less than two hundred forty percent of the federal poverty level (FPL) guidelines, receives the full range of medicaid services.

B. An eligible child age six through 18, whose budget group's countable income is less than one hundred ninety percent of the FPL guidelines, receives the full range of medicaid services.

C. An eligible child age five and under, whose budget group's countable income is greater than two hundred forty percent but less than three hundred percent of the FPL guidelines receives the full range of medicaid services.

D. An eligible recipient child age six through 18, whose budget group's countable income is greater than one hundred ninety percent but less than two hundred forty percent of the FPL guidelines, receives the full range of medicaid services.
[8.295.600.9 NMAC - Rp, 8.295.600.9 NMAC, 1/1/2019]

8.295.600.10 BENEFIT DETERMINATION: The HSD income support division determines initial and ongoing eligibility. Refer to affordable care general provision chapters located at 8.291.400 through 8.291.430 NMAC for eligibility requirements. Retroactive medicaid coverage is provided in accordance with 8.200.400.14 NMAC.
[8.295.600.10 NMAC - Rp, 8.295.600.10 NMAC, 1/1/2019]

8.295.600.11 PERIODIC REDETERMINATIONS OF ELIGIBILITY:

A. A redetermination of eligibility is made in accordance with 8.291.410 NMAC.

B. Continuous eligibility is applicable for medicaid eligible children. Refer to 8.291.400 NMAC.

C. All changes that may affect eligibility must be reported within 10 calendar days of the date of the change as detailed in 8.291.400 NMAC.
[8.295.600.11 NMAC - Rp, 8.295.600.11 NMAC, 1/1/2019]

HISTORY OF 8.295.600 NMAC:

History of Repealed Material:
8.295.600 NMAC, Benefit Description, filed 9/17/2013 - Duration expired 12/31/2013.
8.295.600 NMAC, Benefit Description, filed 12/17/2013 – Repealed effective 1/1/2019.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 296 MEDICAID ELIGIBILITY - OTHER ADULTS
PART 400 RECIPIENT REQUIREMENTS

8.296.400.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.296.400.1 NMAC - Rp, 8.296.400.1 NMAC, 1/1/2019]

8.296.400.2 SCOPE: The rule applies to the general public.
[8.296.400.2 NMAC - Rp, 8.296.400.2 NMAC, 1/1/2019]

8.296.400.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See Section 27-1-12 *et seq*., NMSA 1978.
[8.296.400.3 NMAC - Rp, 8.296.400.3 NMAC, 1/1/2019]

8.296.400.4 DURATION: Permanent.
[8.296.400.4 NMAC - Rp, 8.296.400.4 NMAC, 1/1/2019]

8.296.400.5 EFFECTIVE DATE: January 1, 2019, or upon a later approval date by the federal centers for medicare and medicaid services (CMS), unless a later date is cited at the end of the section.
[8.296.400.5 NMAC - Rp, 8.296.400.5 NMAC, 1/1/2019]

8.296.400.6 OBJECTIVE: The objective of this rule is to provide eligibility guidelines when determining eligibility for the medical assistance division (MAD) medicaid program and other health care programs it administers. Processes for establishing and maintaining this category of eligibility are found in

the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.
[8.296.400.6 NMAC - Rp, 8.296.400.6 NMAC, 1/1/2019]

8.296.400.7 DEFINITIONS: Refer to 8.291.400.7 NMAC.
[8.296.400.7 NMAC - Rp, 8.296.400.7 NMAC, 1/1/2019]

8.296.400.8 [RESERVED]
[8.296.400.8 NMAC - Rp, 8.296.400.8 NMAC, 1/1/2019]

8.296.400.9 WHO CAN BE A RECIPIENT: To be eligible, an individual must meet specific eligibility requirements:

A. is age 19 or older and under age 65;

B. is not pregnant;

C. are not entitled to or enrolled in part A or B medicare benefits;

D. meets ACA eligibility requirements pursuant to 8.291.400 through 8.291.430 NMAC; and

E. has household income that is at or below one hundred thirty-three percent of the federal poverty level (FPL) for the applicable family size. Individuals eligible for other adults with an FPL above one hundred percent on or after July 1, 2019, are subject to a premium and are enrolled prospectively into the other adults category. Native Americans are exempt from the premium requirement.
[8.296.400.9 NMAC - Rp, 8.296.400.9 NMAC, 1/1/2019]

8.296.400.10 OTHER ADULT ASSISTANCE UNIT AND BUDGET GROUP: To be considered in the other adult assistance unit, an individual must apply and be determined eligible. Individuals living with the other adult who meet criteria in 8.291.430 NMAC are included in the budget group.
[8.296.400.10 NMAC - Rp, 8.296.400.10 NMAC, 1/1/2019]

HISTORY OF 8.296.400 NMAC:
History of Repealed Material:
8.296.400 NMAC, Recipient Requirements, filed 9/17/2013 - Duration expired 12/31/2013.
8.296.400 NMAC, Recipient Requirements, filed 12/17/2013 - Repealed 1/1/2019.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 296 MEDICAID ELIGIBILITY - OTHER ADULTS
PART 600 BENEFIT DESCRIPTION

8.296.600.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.296.600.1 NMAC - Rp, 8.296.600.1 NMAC, 1/1/2019]

8.296.600.2 SCOPE: The rule applies to the general public.
[8.296.600.2 NMAC - Rp, 8.296.600.2 NMAC, 1/1/2019]

8.296.600.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See Section 27-1-12 *et seq*., NMSA 1978.
[8.296.600.3 NMAC - Rp, 8.296.600.3 NMAC, 1/1/2019]

8.296.600.4 DURATION: Permanent.
[8.296.600.4 NMAC - Rp, 8.296.600.4 NMAC, 1/1/2019]

8.296.600.5 EFFECTIVE DATE: January 1, 2019, or upon a later approval date by the federal centers for medicare and medicaid services (CMS), unless a later date is cited at the end of the section.
[8.296.600.5 NMAC - Rp, 8.296.600.5 NMAC, 1/1/2019]

8.296.600.6 OBJECTIVE: The objective of this rule is to provide eligibility guidelines when determining eligibility for the medical assistance division (MAD) medicaid program and other health care programs it administers. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.
[8.296.600.6 NMAC - Rp, 8.296.600.6 NMAC, 1/1/2019]

8.296.600.7 DEFINITIONS: Refer to 8.291.400.7 NMAC.
[8.296.600.7 NMAC - Rp, 8.296.600.7 NMAC, 1/1/2019]

8.296.600.8 [RESERVED]
[8.296.600.8 NMAC - Rp, 8.296.600.8 NMAC, 1/1/2019]

8.296.600.9 BENEFIT DESCRIPTION: This medicaid category provides alternative benefit plan services for individuals who meet other adult eligibility requirements. Refer to 8.309 NMAC.
[8.296.600.9 NMAC - Rp, 8.296.600.9 NMAC, 1/1/2019]

8.296.600.10 BENEFIT DETERMINATION: The HSD income support division (ISD) determines initial and ongoing eligibility. Refer to affordable care general provision chapters located at 8.291.400 through 8.291.430 NMAC for eligibility requirements. Retroactive medicaid coverage is provided in accordance with 8.200.400.14 NMAC.
[8.296.600.10 NMAC - Rp, 8.296.600.10 NMAC, 1/1/2019]

8.296.600.11 PERIODIC REDETERMINATIONS OF ELIGIBILITY:

A. A redetermination of eligibility is conducted in accordance with 8.291.410 NMAC.

B. All changes that may affect eligibility must be reported within 10 calendar days of the date of the change as detailed in 8.291.400 NMAC.

[8.292.600.11 NMAC - Rp, 8.296.600.11 NMAC, 1/1/2019]

HISTORY OF 8.296.600 NMAC:

History of Repealed Material:
8.296.600 NMAC, Benefit Description, filed 9/17/2013 - Duration expired 12/31/2013.
8.296.600 NMAC, Benefit Description, filed 12/17/2013 - Repealed effective 1/1/2019.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 297 MEDICAID ELIGIBILITY - LOSS OF PARENT CARETAKER MEDICAID DUE TO SPOUSAL SUPPORT
PART 400 RECIPIENT REQUIREMENTS

8.297.400.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.297.400.1 NMAC - Rp, 8.297.400.1 NMAC, 1/1/2019]

8.297.400.2 SCOPE: The rule applies to the general public.
[8.297.400.2 NMAC - Rp, 8.297.400.2 NMAC, 1/1/2019]

8.297.400.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See Section 27-1-12 et seq., NMSA 1978.
[8.297.400.3 NMAC - Rp, 8.297.400.3 NMAC, 1/1/2019]

8.297.400.4 DURATION: Permanent.
[8.297.400.4 NMAC - Rp, 8.297.400.4 NMAC, 1/1/2019]

8.297.400.5 EFFECTIVE DATE: January 1, 2019, or upon a later approval date by the federal centers for medicare and medicaid services (CMS), unless a later date is cited at the end of the section.
[8.297.400.5 NMAC - Rp, 8.297.400.5 NMAC, 1/1/2019]

8.297.400.6 OBJECTIVE: The objective of this rule is to provide eligibility guidelines when determining eligibility for the medical assistance division (MAD) medicaid program and other health care programs it administers. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.
[8.297.400.6 NMAC - Rp, 8.297.400.6 NMAC, 1/1/2019]

8.297.400.7 DEFINITIONS: Refer to 8.291.400.7 NMAC.
[8.297.400.7 NMAC - Rp, 8.297.400.7 NMAC, 1/1/2019]

8.297.400.8 [RESERVED]
[8.297.400.8 NMAC - Rp, 8.297.400.8 NMAC, 1/1/2019]

8.297.400.9 WHO CAN BE AN ELIGIBLE RECIPIENT: A four month transitional medical assistance (TMA) period is established following the loss of parent caretaker eligibility due to new or increased spousal support. TMA is the full medicaid coverage of last resort. A parent or caretaker is evaluated for other full medicaid coverage, including other adults, before being placed on the TMA category of eligibility. A parent or caretaker losing full medicaid coverage during any month(s) of his or her four month TMA period is automatically placed on the TMA category. Coverage under the TMA category ends after the four month TMA period expires. Only parent(s) and guardian(s) are placed on the TMA category. The medicaid eligibility of dependent children living in the home is extended to at least match the TMA period of parent(s) and guardian(s).

A. To be a medicaid eligible recipient, the assistance unit must have:

(1) received parent caretaker medicaid in at least one month of the six months prior to ineligibility for parent caretaker medicaid;

(2) lost parent caretaker medicaid wholly or in part due to new or increased spousal support;

(3) at least one medicaid eligible dependent child living in the home; and

(4) met the medicaid eligibility requirements pursuant to 8.291.400 through 8.291.430 NMAC.

B. An individual with a new TMA period beginning on or after July 1, 2019, is subject to a premium for eligibility months the individual is on TMA category 027. Native Americans are exempt from the premium requirement.

C. An applicant or an eligible recipient may have a qualified health plan.
[8.297.400.9 NMAC - Rp, 8.297.400.9 NMAC, 1/1/2019]

HISTORY OF 8.297.400 NMAC:

History of Repealed Material:
8.297.400 NMAC, Recipient Requirements, filed 9/17/2013 - Duration expired 12/31/2013.
8.297.400 NMAC, Recipient Requirements, filed 12/17/2013 - Repealed effective 1/1/2019.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 297 MEDICAID ELIGIBILITY - LOSS OF PARENT CARETAKER MEDICAID DUE TO SPOUSAL SUPPORT
PART 600 BENEFIT DESCRIPTION

8.297.600.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.297.600.1 NMAC - Rp, 8.297.600.1 NMAC, 1/1/2019]

8.297.600.2 SCOPE: The rule applies to the general public.
[8.297.600.2 NMAC - Rp, 8.297.600.2 NMAC, 1/1/2019]

8.297.600.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See Section 27-1-12 *et seq*., NMSA 1978.
[8.297.600.3 NMAC - Rp, 8.297.600.3 NMAC, 1/1/2019]

8.297.600.4 DURATION: Permanent.
[8.297.600.4 NMAC - Rp, 8.297.600.4 NMAC, 1/1/2019]

8.297.600.5 EFFECTIVE DATE: January 1, 2019, or upon a later approval date by the federal centers for medicare and medicaid services (CMS), unless a later date is cited at the end of the section.
[8.297.600.5 NMAC - Rp, 8.297.600.5 NMAC, 1/1/2019]

8.297.600.6 OBJECTIVE: The objective of this rule is to provide eligibility guidelines when determining eligibility for the medical assistance division (MAD) medicaid program and other health care programs it administers. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.
[8.297.600.6 NMAC - Rp, 8.297.600.6 NMAC, 1/1/2019]

8.297.600.7 DEFINITIONS: Refer to 8.291.400.7 NMAC.
[8.297.600.7 NMAC - Rp, 8.297.600.7 NMAC, 1/1/2019]

8.297.600.8 [RESERVED]
[8.297.600.8 NMAC - Rp, 8.297.600.8 NMAC, 1/1/2019]

8.297.600.9 BENEFIT DESCRIPTION: A medicaid eligible recipient under this category is eligible to receive the full range of medicaid covered services.
[8.297.600.9 NMAC - Rp, 8.297.600.9 NMAC, 1/1/2019]

8.297.600.10 BENEFIT DETERMINATION: The HSD income support division (ISD) determines initial and ongoing eligibility.
[8.297.600.10 NMAC - Rp, 8.297.600.10 NMAC, 1/1/2019]

8.297.600.11 PERIODIC REDETERMINATIONS OF ELIGIBILITY:

A. A four month period of eligibility following parent caretaker medicaid is established without a new application. At the end of the four month period of eligibility a beneficiary is evaluated for other medicaid coverage in accordance with 8.291.410.19 NMAC. Retroactive medicaid coverage is not provided in accordance with 8.200.400.14 NMAC.

B. All changes that may affect eligibility must be reported within 10 calendar days of the date of the change as detailed in 8.291.400 NMAC.
[8.297.600.11 NMAC - Rp, 8.297.600.11 NMAC, 1/1/2019]

HISTORY OF 8.297.600 NMAC:

History of Repealed Material:
8.297.600 NMAC, Benefit Description, filed 9/17/2013 - Duration expired 12/31/2013.
8.297.600 NMAC, Benefit Description, filed 12/17/2013 - Repealed effective 12/17/2013.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 298 MEDICAID ELIGIBILITY - LOSS OF PARENT CARETAKER MEDICAID DUE TO EARNINGS FROM EMPLOYMENT
PART 400 RECIPIENT REQUIREMENTS

8.298.400.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.298.400.1 NMAC - Rp, 8.298.400.1 NMAC, 1/1/2019]

8.298.400.2 SCOPE: The rule applies to the general public.
[8.298.400.2 NMAC - Rp, 8.298.400.2 NMAC, 1/1/2019]

8.298.400.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See Section 27-1-12 *et seq*., NMSA 1978.
[8.298.400.3 NMAC - Rp, 8.298.400.3 NMAC, 1/1/2019]

8.298.400.4 DURATION: Permanent.
[8.298.400.4 NMAC - Rp, 8.298.400.4 NMAC, 1/1/2019]

8.298.400.5 EFFECTIVE DATE: January 1, 2019, or upon a later approval date by the federal centers for medicare and medicaid services (CMS), unless a later date is cited at the end of the section.

[8.298.400.5 NMAC - Rp, 8.298.400.5 NMAC, 1/1/2019]

8.298.400.6 OBJECTIVE: The objective of this rule is to provide eligibility guidelines when determining eligibility for the medical assistance division (MAD) medicaid program and other health care programs it administers. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.
[8.298.400.6 NMAC - Rp, 8.298.400.6 NMAC, 1/1/2019]

8.298.400.7 DEFINITIONS: Refer to 8.291.400.7 NMAC.
[8.298.400.7 NMAC - Rp, 8.298.400.7 NMAC, 1/1/2019]

8.298.400.8 [RESERVED]
[8.298.400.8 NMAC - Rp, 8.298.400.8 NMAC, 1/1/2019]

8.298.400.9 WHO CAN BE AN ELIGIBLE RECIPIENT: A 12 month transitional medical assistance (TMA) period is established following the loss of parent caretaker eligibility due to new or increased earnings. TMA is the full medicaid coverage of last resort. A parent or caretaker is evaluated for other full medicaid coverage, including other adults, before being placed on the TMA category of eligibility. A parent or caretaker losing full medicaid coverage during any month(s) of his or her 12 month TMA period is automatically placed on the TMA category. Coverage under the TMA category ends after the 12 month TMA period expires. Only parent(s) and guardian(s) are placed on the TMA category. The medicaid eligibility of dependent children living in the home is extended to at least match the TMA period of parent(s) and guardian(s).

A. To be a medicaid eligible recipient, the assistance unit must have:

(1) received parent caretaker medicaid in at least one month of the six months prior to ineligibility for parent caretaker medicaid;

(2) lost parent caretaker medicaid wholly or in part due to new or increased earnings;

(3) at least one medicaid eligible dependent child living in the home; and

(4) met the medicaid eligibility requirements pursuant to 8.291.400 through 8.291.430 NMAC.

B. An individual with a new TMA period beginning on or after July 1, 2019, is subject to a premium for eligibility months the individual is on TMA category 028. Native Americans are exempt from the premium requirement.

C. An applicant or an eligible recipient may have a qualified health plan.
[8.298.400.9 NMAC - Rp, 8.298.400.9 NMAC, 1/1/2019]

HISTORY OF 8.298.400 NMAC:

History of Repealed Material:
8.298.400 NMAC, Recipient Requirements, filed 9/17/2013 - Duration expired 12/31/2013.
8.298.400 NMAC, Recipient Requirements, filed 12/17/2013 - Repealed effective 1/1/2019.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 298 MEDICAID ELIGIBILITY - LOSS OF PARENT CARETAKER MEDICAID DUE TO EARNINGS FROM EMPLOYMENT
PART 600 BENEFIT DESCRIPTION

8.298.600.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.298.600.1 NMAC - Rp, 8.298.600.1 NMAC, 1/1/2019]

8.298.600.2 SCOPE: The rule applies to the general public.
[8.298.600.2 NMAC - Rp, 8.298.600.2 NMAC, 1/1/2019]

8.298.600.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See Section 27-1-12 *et seq*., NMSA 1978.
[8.298.600.3 NMAC - Rp, 8.298.600.3 NMAC, 1/1/2019]

8.298.600.4 DURATION: Permanent.
[8.298.600.4 NMAC - Rp, 8.298.600.4 NMAC, 1/1/2019]

8.298.600.5 EFFECTIVE DATE: January 1, 2019, or upon a later approval date by the federal centers for medicare and medicaid services (CMS), unless a later date is cited at the end of the section.
[8.298.600.5 NMAC - Rp, 8.298.600.5 NMAC, 1/1/2019]

8.298.600.6 OBJECTIVE: The objective of this rule is to provide eligibility guidelines when determining eligibility for the medical assistance division (MAD) medicaid program and other health care programs it administers. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.
[8.298.600.6 NMAC - Rp, 8.298.600.6 NMAC, 1/1/2019]

8.298.600.7 DEFINITIONS: Refer to 8.291.400.7 NMAC.
[8.298.600.7 NMAC - Rp, 8.298.600.7 NMAC, 1/1/2019]

8.298.600.8 [RESERVED]
[8.298.600.8 NMAC - Rp, 8.298.600.8 NMAC, 1/1/2019]

8.298.600.9 BENEFIT DESCRIPTION: A medicaid eligible recipient under this category is eligible to receive the full range of

medicaid covered services.
[8.298.600.9 NMAC - Rp, 8.298.600.9 NMAC, 1/1/2019]

8.298.600.10 BENEFIT DETERMINATION: The HSD income support division (ISD) determines initial and ongoing eligibility.
[8.298.600.10 NMAC - Rp, 8.298.600.10 NMAC, 1/1/2019]

8.298.600.11 PERIODIC REDETERMINATIONS OF ELIGIBILITY:

A. A 12 month period of eligibility following parent caretaker medicaid is established without a new application. At the end of the 12 month period of eligibility a beneficiary is evaluated for other medicaid coverage in accordance with 8.291.410.19 NMAC. Retroactive medicaid coverage is not provided in accordance with 8.200.400.14 NMAC.

B. All changes that may affect eligibility must be reported within 10 calendar days from the date of the change as detailed in 8.291.400 NMAC.
[8.298.600.11 NMAC - Rp, 8.298.600.11 NMAC, 1/1/2019]

HISTORY OF 8.298.600 NMAC:

History of Repealed Material:
8.298.600 NMAC, Benefit Description, filed 9/17/2013 - Duration expired 12/31/2013.
8.298.600 NMAC, Benefit Description, filed 12/17/2013 - Repealed effective 1/1/2019.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 299 MEDICAID ELIGIBILITY - FAMILY PLANNING SERVICES
PART 400 RECIPIENT REQUIREMENTS

8.299.400.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.299.400.1 NMAC - Rp, 8.299.400.1 NMAC, 1/1/2019]

8.299.400.2 SCOPE: The rule applies to the general public.
[8.299.400.2 NMAC - Rp, 8.299.400.2 NMAC, 1/1/2019]

8.299.400.3 STATUTORY AUTHORITY: The New Mexico medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See Section 27-1-12 *et seq*., NMSA 1978.
[8.299.400.3 NMAC - Rp, 8.299.400.3 NMAC, 1/1/2019]

8.299.400.4 DURATION: Permanent.
[8.299.400.4 NMAC - Rp, 8.299.400.4 NMAC, 1/1/2019]

8.299.400.5 EFFECTIVE DATE: January 1, 2019, or upon a later approval date by the federal centers for medicare and medicaid services (CMS), unless a later date is cited at the end of the section.
[8.299.400.5 NMAC - Rp, 8.299.400.5 NMAC, 1/1/2019]

8.299.400.6 OBJECTIVE: The objective of this rule is to provide specific instructions when determining eligibility for the medicaid program and other health care programs. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.
[8.299.400.6 NMAC - Rp, 8.299.400.6 NMAC, 1/1/2019]

8.299.400.7 DEFINITIONS: [RESERVED]

8.299.400.8 [RESERVED]
[8.299.400.7 NMAC - Rp, 8.299.400.8 NMAC, 1/1/2019]

8.299.400.9 WHO CAN BE A RECIPIENT (42 CFR 435.214): HSD provides medicaid limited to family planning and family planning related services to individuals (of any gender) who:

A. are under the age of 51 and do not have other health insurance; or

B. who are under the age of 65 who have only medicare coverage and no other health insurance; and

C. who are not pregnant; and

D. meet the general recipient requirements found at 8.291.410 NMAC; and

E. meet the income eligibility requirements found at Subsection B of 8.299.500.10 NMAC.
[8.299.400.9 NMAC - Rp, 8.299.400.9 NMAC, 1/1/2019]

8.299.400.10 BASIS FOR DEFINING THE GROUP: At time of application, an applicant or recipient and the department shall identify everyone who is to be considered for inclusion in the assistance unit and budget group as defined in 8.291.430 NMAC.
[8.299.400.10 NMAC - Rp, 8.299.400.10 NMAC, 1/1/2019]

HISTORY OF 8.299.400 NMAC: [RESERVED]

History of Repealed Material:
8.299.400 NMAC - Recipient Requirements, filed 9/14/2017 - Repealed effective 1/1/2019.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 299 MEDICAID ELIGIBILITY - FAMILY PLANNING SERVICES
PART 600 BENEFIT DESCRIPTION

8.299.600.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.299.600.1 NMAC – Rp, 8.299.600.1 NMAC, 1/1/2019]

8.299.600.2 SCOPE: The rule applies to the general public.
[8.299.600.2 NMAC - Rp, 8.299.600.2 NMAC, 1/1/2019]

8.299.600.3 STATUTORY AUTHORITY: The New Mexico medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See Section 27-1-12 *et seq*., NMSA 1978.
[8.299.600.3 NMAC - Rp, 8.299.600.3 NMAC, 1/1/2019]

8.299.600.4 DURATION: Permanent.
[8.299.600.4 NMAC - Rp, 8.299.600.4 NMAC, 1/1/2019]

8.299.600.5 EFFECTIVE DATE: January 1, 2019, or upon a later approval date by the federal centers for medicare and medicaid services (CMS), unless a later date is cited at the end of the section.
[8.299.600.5 NMAC - Rp, 8.299.600.5 NMAC, 1/1/2019]

8.299.600.6 OBJECTIVE: The objective of this rule is to provide specific instructions when determining eligibility for the medicaid program and other health care programs. Processes for establishing and maintaining this category of eligibility are found in the affordable care general provision chapter located at 8.291.400 NMAC through 8.291.430 NMAC.
[8.299.600.6 NMAC - Rp, 8.299.600.6 NMAC, 1/1/2019]

8.299.600.7 DEFINITIONS: [RESERVED]

8.299.600.8 [RESERVED]

8.299.600.9 BENEFIT DESCRIPTION: This category provides a limited range of medicaid-covered services for family planning and family planning-related services for both men and women.
[8.299.600.9 NMAC - Rp, 8.299.600.9 NMAC, 1/1/2019]

8.299.600.10 BENEFIT DETERMINATION: The HSD income support division (ISD) determines initial and ongoing eligibility. Refer to affordable care general provision chapters located at 8.291.400 through 8.291.430 NMAC for eligibility requirements. Retroactive medicaid coverage is provided in accordance with 8.200.400.14 NMAC.
[8.299.600.10 NMAC - Rp, 8.299.600.10 NMAC, 1/1/2019]

8.299.600.11 PERIODIC REDETERMINATIONS OF ELIGIBILITY:

A. A redetermination of eligibility is conducted in accordance with 8.291.410 NMAC.

B. All changes that may affect eligibility must be reported within 10 calendar days of the date of the change as detailed in 8.291.400 NMAC.
[8.299.600.11 NMAC - Rp, 8.299.600.11 NMAC, 1/1/2019]

HISTORY OF 8.299.600 NMAC: [RESERVED]

History of Repealed Material: 8.299.600 NMAC - Benefit Description, filed 9/14/2017 - Repealed effective 1/1/2019.

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.302.2 NMAC, Sections 7 and 10, effective 1/1/2019.

8.302.2.7 DEFINITIONS:

A. "Authorized representative" means the individual designated to represent and act on behalf of the eligible recipient or member's behalf. The member or authorized representative must provide formal documentation authorizing the named individual or individuals to access the identified case information for a specified purpose and time frame. An authorized representative may be an attorney representing a person or household, a person acting under the authority of a valid power of attorney, a guardian, or any other individual or individuals designated in writing by the eligible recipient or member.

B. "Eligible recipient" means an individual who has met a medical assistance program (MAP) category of eligibility and receives his or her medical assistance division (MAD) services through the fee-for-service (FFS) program.

C. "Member" means a MAP eligible recipient and who receives his or her MAD services through a HSD contracted managed care organization (MCO).

D. "Co-payment" means a fixed dollar amount that a medicaid recipient must pay directly to a provider for a service, visit or item. A co-payment is to be [~~paid~~] charged at the time of service or receipt of the item.
[8.302.2.7 NMAC – Rp, 8.302.7 NMAC, 10/1/2017; A, 1/1/2019]

8.302.2.10 BILLING INFORMATION:

A. Billing for services: MAD only makes payment to a provider or to the following individuals or organizations for services:

(1) a government agency or third party with a court order, based on a valid provider payment assignment; see 42 CFR Section 447.10(d)(e); or

(2) a business agent, such as billing service or accounting firm that provides statements and receives payment in the name of the provider; the agent's compensation must be related to the cost of processing the claims and not based on a percentage of the amount that is billed or collected or dependent upon collection of the payment.

B. Billing for services from group practitioners or employers of practitioners: MAD may make payments to a group practice and to an employer of an individual practitioner if the practitioner is required to turn over his fees to the employer as a condition of employment. See 42 CFR 447.10(g) (2) (3). MAD may make payments to a facility where the services are furnished or to a foundation, plan, or similar organization operating as an organized health care delivery system if the facility, foundation, plan, or organization is required by contract to submit claims for an individual practitioner.

C. Billing for referral services: A referring provider must submit to the provider receiving the referral, specimen, image, or other record, all information necessary for the provider rendering the service to bill MAD within specified time limits. An eligible recipient or their authorized representative or MAD is not responsible for payment if the provider rendering the service fails to obtain this information from the referring provider. Ordering, referring, prescribing, rendering and attending providers must participate in a MCO or the MAD (FFS) program, or otherwise be identifiable as a participating, out-of-network, or in-network provider for services, as determined by MAD.

D. Hospital-based services: For services that are hospital based, the hospital must provide MAP recipient eligibility and billing information to providers of services within the hospital, including professional components, hospital emergency room (ER) physicians, hospital anesthesiologists, and other practitioners for whom the hospital performs admission, patient registration, or the patient intake process. An eligible recipient, member or his or her authorized representative, or MAD is not responsible for payment if the hospital-based provider does not obtain this information from the hospital as necessary to bill within the specified time limits.

E. Coordinated service contractors: Some MAD services are managed by a coordinated service contractor. Contracted services may include behavioral health services, dental services, physical health services, transportation, pharmacy or other benefits as designated by the MAD. The coordinated service contractor may be responsible for any or all aspects of program management, prior authorization, (UR), claims processing, and issuance of remittance advices and payments. A provider must submit claims to the appropriate coordinated service contractor as directed by MAD.

F. Reporting of service units: A provider must correctly report service units.

(1) For current procedural terminology (CPT) codes or healthcare common procedural coding system (HCPCS) codes that describe how units associated with time should be billed, providers are to follow those instructions.

(2) For CPT or HCPCS for services for which the provider is to bill 1 unit per 15 minute or per hour of service, the provider must follow the chart below when the time spent is not exactly 15 minutes or one hour.

time spent	**number of 15-minute units that may be billed**	**number of 1-hour units that may be billed**
Less than 8 minutes	0 *services that are in their entirety less than 8 minutes cannot be billed*.	0 *services that are in their entirety less than 8 minutes cannot be billed*
8 minutes through 22 minutes	1	.25
23 minutes through 37 minutes	2	.5
38 minutes through 52 minutes	3	.75
53 minutes through 67 minutes	4	1
68 minutes through 82 minutes	5	1.25
83 minutes through 97 minutes	6	1.5

(3) Only time spent directly working with an eligible recipient or member to deliver treatment services is counted toward the time codes.

(4) Total time spent delivering each service using a timed code must be recorded in the medical record of each eligible recipient or member. If services provided are appropriately described by using more than one CPT or HCPCS code within a single calendar day, then the total number of units that can be billed is limited to the total treatment time. Providers must assign the most units to the treatment that took the most time.

(5) The units for codes do not take precedence over centers for medicare and medicaid services (CMS) national correct coding initiative (NCCI).

(6) Anesthesia units must be billed according to 8.310.3 NMAC.

(7) Units billed by a home and community-based services waiver provider, a behavioral health provider, an early intervention provider, and all rehabilitation services providers must also follow the requirements of this section unless exceptions are specifically stated in published MAD program rules or provider billing instructions.

G. MAD [~~has established~~] requires co-payments [~~for specified groups of eligible recipients and members~~] for specific services under the medicaid managed care program. [~~Exemptions and limits apply to the collection of co-payments.~~] The rules for medicaid managed care co-payments, including the co-payment amounts, co-payment exemptions, provider responsibilities, and member rights and responsibilities, are detailed at 8.308.14 NMAC.

[~~(1) **Provider responsibilities for collection of co-payments:**~~

~~(a) The professional provider is responsible for collecting any applicable co-payments due for any outpatient visit or service provided, including a physician, other practitioner, clinic, urgent care, dental, outpatient therapy, or behavioral health session or visit.~~

~~(b) The hospital provider is responsible for collecting any applicable co-payments due for any inpatient services provided.~~

~~(c) The pharmacy is responsible for collecting any co-payments due for drug items dispensed.~~

~~(d) The provider may not deny covered care or services to an eligible recipient or member because of the eligible recipient or member's inability to pay the co-payment amount at the time of service. The eligible recipient or member remains liable for the co-payment. The provider may attempt to collect the co-payment amount at a later appointment or by billing the eligible recipient or member.~~

~~(e) After an eligible recipient or member's assistance unit has reached the maximum out-of-pocket cost sharing limit (five percent of the eligible recipient or member's family's income, calculated on a quarterly basis), a provider shall reimburse any co-payments that it has collected from the eligible recipient or member in excess of the maximum out-of-pocket co-payment limit. This includes anytime a provider receives a remittance advice indicating that the co-payment was not deducted from the reimbursement.~~

~~(f) A provider is required to report the co-payment amount charged on the CMS-1500, UB, or pharmacy claim form or their corresponding electronic billing transactions.~~

~~(g) When a co-payment is applied to a claim, a provider shall accept the amounts paid by MAD or the MCO plus the applicable co-payment as payment in full.~~

~~(h) A provider may not impose more than one type of co-payment for any service.~~

~~(2) **Provider to understand the application of co-payments:** The provider is responsible for understanding and applying the rules for co-payments, including when to contact the payer to determine if a co-payment is applicable for the service for the specific eligible recipient or member.~~

~~(a) Co-payments are not applied when one or more of the following conditions are met:~~

~~(i) the service is a medicare claim or medicare advantage claim, or follows other insurer payment, so the payment is therefore toward a deductible, co-insurance, or co-payment determined by the primary payer;~~

~~(ii) the eligible recipient or member is a native American;~~

~~(iii) the service is rendered by an Indian health service (IHS), tribal 638, or urban Indian facility regardless of the race of the eligible recipient or member;~~

~~(iv) the service is for an eligible recipient enrolled in hospice;~~

~~(v) the recipient is under age 21 and has only presumptive eligibility (PE) at the time of service;~~

~~(vi) the maximum family out-of-pocket cost sharing limit has been reached;~~

~~(vii) the service was rendered prior to any eligibility being established including when eligibility is retroactively established to the time period of the service;~~

~~(viii) the eligible recipient or member is in foster care or has an adoption category of eligibility;~~

~~(ix) the eligible recipient or member resides in a nursing facility or a facility for individuals with intellectual disabilities (IID), has a level of care determination or nursing facility care, or other residential care, or for community benefits, or for a home and community-based services waiver;~~

~~(x) the service is not for a MAP category of eligibility such as the department of health children's medical services program;~~

~~(xi) the service is a provider preventable condition or is solely to treat a provider preventable condition; or~~

~~(xii) the eligible recipient, member or service is exempt from co-payment as otherwise described in these rules.~~

~~(b) Co-payments are not applied when the services are one of the following:~~

~~(i) family planning services, procedures drugs, supplies, or devices;~~

~~(ii) preventive services (well child checks, vaccines, preventive dental cleanings/exams, periodic health exams) unless treatment is rendered; or~~

~~(iii) prenatal and postpartum care and deliveries, and prenatal drug items.~~

~~(3) **Payment of claims with applicable co-payments:**~~

~~(a) Payment to the provider will be reduced by the amount of an eligible recipient or member's applicable cost sharing obligation, regardless of whether the provider has collected the payment.~~

~~(b) A provider may not adopt a policy of waiving all MAD co-payments or use such a policy to promote his or her practice.~~

~~(4) **Children's health insurance program (CHIP) co-payment requirement:** Eligible recipients or members whose benefits are determined using criteria for CHIP are identified by their category of eligibility. The following co-

~~payments apply to CHIP eligible recipients or members:~~

~~**(a)** $2 per prescription; applies to prescription and non-prescription drug items;~~

~~**(b)** $5 per outpatient visit, including physician or other practitioner visits, therapy sessions, and behavioral health service sessions;~~

~~**(c)** $5 per dental visit, unless all the services are preventive services; and~~

~~**(d)** $25 per inpatient hospital admission unless the hospital is receiving the eligible recipient or member as a transfer from another hospital.~~

~~**(5) Working disabled individual's copayment requirements (WDI):** Eligible recipients or members whose benefits are determined using criteria for WDI are identified by their category of eligibility. The following co-payments apply to WDI eligible recipients or members:~~

~~**(a)** $3 per prescription; applies to prescription and non-prescription drug items;~~

~~**(b)** $7 per outpatient visit, including physician or other practitioner visits, therapy sessions, and behavioral health service sessions;~~

~~**(c)** $7 per dental visit, unless all the services are preventive services; and~~

~~**(d)** $30 per inpatient hospital admission unless the hospital is receiving the eligible recipient or member as a transfer from another hospital.~~]

H. Billing state gross receipts tax: For providers subject and registered to pay, gross receipts tax, the provider may include gross receipt tax in the billed amount when the tax applies to the item or service. The provider may only bill tax to the extent the tax is also charged to the general public. A provider may not include gross receipts tax in the billed amount when the provider is not obligated to pay gross receipts tax to the state.

[8.302.2.10 NMAC - Rp, 8.302.2.10 NMAC, 10/1/2017; A, 1/1/2019]

HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.311.3 NMAC, Sections 10, 12, 13 and 14, effective 1/1/2019.

8.311.3.10 GENERAL REIMBURSEMENT POLICY: The state of New Mexico human services department (hereinafter called the department) will reimburse inpatient hospital services rendered on or after October 1, 1989 in the following manner:

A. Covered inpatient services provided to eligible recipients admitted to in-state acute care hospitals and acute care units on or after October 1, 1989 will be reimbursed at a prospectively set rate, determined by the methodology set forth in 8.311.3.12 NMAC, unless the hospital or unit is classified into one of the prospective payment system (PPS) exempt categories outlined in Subsection C through D below.

B. Covered inpatient services provided to eligible recipients admitted to acute care hospitals and acute care units within hospitals located out-of-state or in border areas (Mexico excluded) will be reimbursed at a prospectively set rate as described in Paragraph (16) of Subsection C of 8.311.12 NMAC, unless the hospital or unit is classified into one of the prospective payment system (PPS) exempt categories outlined in Subsections C through D below or at a negotiated rate not to exceed the rate paid by federal programs such as medicare. Negotiation of rates will only be allowed when the department determines that the hospital provides a unique service required by an eligible recipient.

C. Inpatient services provided in rehabilitation and specialty hospitals and medicare PPS-exempt distinct part units within hospitals will be reimbursed using the provisions and principles of reimbursement set forth in Public Law 97-248. This legislation, which was effective October 1, 1982, is commonly referred to as TEFRA (Tax Equity and Finance Reduction Act) and is described in 8.311.3.11 NMAC.

D. Indian health services hospitals will be reimbursed using a per diem rate established by the federal government.

E. New Mexico providers entering the medical assistance division (MAD) program will be reimbursed at the peer group median rate for the applicable peer group, until such time as a distinct rate can be established, unless the hospital meets the criteria for prospective payment exemption as described in Subsections C through D above.

F. All hospitals which meet the criteria in Subsection A of 8.311.3.13 NMAC will be eligible for a disproportionate share adjustment.

G. Effective for discharges on or after April 1, 1992, and in accordance with Section 4604 of the Omnibus Budget Reconciliation Act (OBRA) of 1990, the department provides for an outlier adjustment in payment amounts for medically necessary inpatient services involving exceptionally high costs or long lengths of stay for children who have not attained the age of six years in disproportionate share hospitals, and for infants under one year of age in all hospitals, and for individuals of any age in the state teaching hospital. The outlier adjustment for these cases is described in Subsection F of 8.311.3.12 NMAC.

H. MAD covered inpatient services provided in specialty hospitals will be reimbursed at an interim rate established by MAD to equal or closely approximate the final payment rates that apply under the cost settlement TEFRA principals. If a provider is not cost settled, the reimbursement rate will be at the provider's cost to charge ratio reported in the provider's most recently filed cost report prior to February 1, 2012. Otherwise, rates are established after considering

available cost to charge ratios, payment levels made by other payers, and MAD payment levels for services of similar cost, complexity and duration.

I. The reimbursement rates established by MAD using the reimbursement principles stated in 8.311.3 NMAC may be reduced or limited by budget availability at the department's discretion.

[8.311.3.10 NMAC - Rp, 8.311.3.10 NMAC, 6/1/2016; A, 1/1/2019]

8.311.3.12 PROSPECTIVE PAYMENT METHODOLOGY FOR HOSPITALS: Payment for all covered inpatient services rendered to eligible recipients admitted to acute care hospitals (other than those identified in Subsections C through D of 8.311.3.10 NMAC) on or after October 1, 1989 shall be made based on a prospective payment approach which compensates hospitals an amount per discharge for discharges classified according to the diagnosis related group (DRG) methodology. The prospective rates for each hospital's MAD discharges will be determined by the department in the manner described in the following subsections.

A. Services included in or excluded from the prospective payment rate:

(1) Prospective payment rates shall constitute payment in full for each MAD discharge. Hospitals may not separately bill the eligible recipient or the MAD program for medical services rendered during an inpatient stay, except as described below. Hospitals may submit a claim for payment only upon the final discharge of an eligible recipient or upon completion of the transfer of the eligible recipient to another acute care hospital.

(2) The prospective payment rate shall include all services provided to hospital inpatients. These services shall include all items and non-physician services furnished directly or indirectly to hospital inpatients, such as:

(a) laboratory services;

(b) pacemakers and other prosthetic devices, including lenses and artificial limbs, knees and hips;

(c) radiology services, including computed tomography (CT) or magnetic resonance imaging (MRI) scans furnished to an eligible recipient by a physician's office, other hospital or radiology clinic;

(d) transportation (including transportation by ambulance) to and from another hospital or freestanding facility to receive specialized diagnostic or therapeutic services.

(3) Services which may be billed separately include:

(a) ambulance service when the eligible recipient is transferred from one hospital to another and is admitted as an inpatient to the second hospital;

(b) physician services furnished to an individual eligible recipient.

B. Computation of DRG relative weights:

(1) Relative weights used for determining rates for cases paid by DRG under the state plan shall be derived, to the greatest extent possible, from New Mexico MAD hospital claim data. All such claims are included in the relative weight computation, except as described below.

(2) Hospital claim data for discharges occurring from January 1, 1985 through approximately the end of calendar year 1988 are included in the computation and prepared as follows:

(a) claims are edited to merge interim bills from the same discharge;

(b) all MAD inpatient discharges will be classified using the DRG methodology, a patient classification system that reflects clinically cohesive groupings of inpatient cases which consume similar amounts of hospital resources; claims are assigned to appropriate DRGs using DRG grouper software;

(c) claims included in the computation of DRG relative weights were restricted to those claims for cases to be included in the proposed PPS; claims for services provided in PPS-exempt hospitals or units (or for services otherwise exempt from the PPS) were not used to compute DRG relative weights.

(3) Charges for varying years are adjusted to represent a common year through application of inflation indices as described in Paragraph (8) of Subsection C of 8.311.3.12 NMAC.

(4) Initial relative weights are computed by calculation of the average MAD charge for each DRG category divided by the average charge for all DRGs.

(5) Where the New Mexico MAD-specific claims and charge data are insufficient to establish a stable relative weight, a relative weight is imported from other sources such as the CHAMPUS or medicare prospective payment systems. Weights obtained from external sources are normalized so that the overall case mix is 1.0.

(6) The relative weights computed as described above shall remain in effect until the next year. At that time, the relative weights will be recalculated using the DRG grouper version similar to the one in use by medicare.

C. Computation of hospital prospective payment rates:

(1) Rebasing of rates: Beginning October 1, 1997, the department discontinued the rebasing of rates every three years. Hospital rates in effect October 1, 1996 were updated by the most current market basket index (MBI) as determined by the centers for medicare and medicaid services (CMS) for rates effective October 1, 1997 and succeeding years. Thereafter, pursuant to budget availability and at the department's discretion, the application of the MBI inflation factor will be reviewed based

upon economic conditions and trends. A notice will be sent [~~out every October 1st,~~] annually, informing the provider [~~whether the MBI will be used for the upcoming year and what the percentage increase will be if the MBI or a percentage up to the MBI is authorized to be applied.~~] if an MBI increase or a percentage up to the MBI is planned for the year. Comments will be accepted by the department prior to making a final decision.

(2) Base year discharge and cost data:

(a) The state's fiscal agent will provide the department with MAD discharges for the provider's last fiscal year which falls in the calendar year prior to year one.

(b) The state's audit agent will provide MAD costs incurred, reported, audited, or desk audited for the same period.

(c) To calculate the total reimbursable inpatient operating costs from the cost and discharge data described above, the department will:

(i) exclude estimated outlier discharges and costs as described in Paragraph (4) of Subsection C of 8.311.3.12 NMAC;

(ii) exclude pass-through costs, as identified in the TEFRA provisions and further defined in Paragraph (3) of Subsection C of 8.311.3.12 NMAC below.

(3) Definition of excludable costs per discharge; reduction of excludable capital costs:

(a) The approach used by the department to define excludable costs parallels medicare's approach. Excludable costs are defined according to the PPS or TEFRA methodology and include such costs as those associated with capital, organ acquisition, and certified nurse anesthetists.

(b) The pass-through capital costs identified using TEFRA provisions will be reduced in a manner similar to that employed by the medicare PPS. For example, excludable capital costs for fiscal year 1989 will be reduced by fifteen percent as required by Section 4006 of the Omnibus Budget Reconciliation Act of 1987. However, any such reduction to pass-through capital costs will only apply to those costs incurred after October 1, 1989.

(4) Outlier adjustment factors: Hospital-specific outlier adjustment factors will be used to deduct outlier costs and cases from the total MAD inpatient operating costs and cases used in rate setting. These factors will be determined by using actual claim and cost data for outlier cases for the base year period. Only claims for cases to be paid by DRG will be included in the analysis used to determine this estimate. The definition of an outlier case can be found in Paragraph (1) of Subsection F of 8.311.3.12 NMAC.

(5) Calculation of base year operating cost per discharge: The total reimbursable inpatient operating cost (excluding pass-through costs and estimated outlier costs) is divided by the hospital's number of non-outlier MAD discharges to produce the base year operating cost per discharge. The base rate methodology is described below:

BYOR = OC/D

BYOR = base year operating cost per discharge

OC = total Title XIX inpatient operating cost for the base year, less excludable costs and estimated outlier costs

D = MAD discharges for the hospital's base year as provided by the department's fiscal agent, less estimated outlier cases

(6) Possible use of interim base year operating cost per discharge rate:

(a) If the fiscal agent and audit agent have not provided the department with a hospital's base year discharges and costs as of June 1 prior to year one, the department will develop an interim operating cost per discharge base rate. This rate will be developed according to the normal base rate methodology, but using costs and discharges for the fiscal year prior to the base year.

(b) When an interim rate is developed, the operating costs per discharge are first multiplied by an inflation index (as described in Paragraph (8) of Subsection C of 8.311.3.12 NMAC) to bring the costs to the midpoint of the base year. When the provider's actual base year costs and discharges become available, the department will calculate a final base year operating cost per discharge using the normal base rate methodology. The rate that is computed from the final base year operating costs per discharge will apply to all discharges in year one, retroactive to the effective date of the interim rate.

(7) Prohibition against substitution or rearrangement of base year cost reports:

(a) A hospital's base year cost reports cannot be substituted or rearranged once the department has determined that the actual cost submission is suitable. A submission shall be deemed suitable 180 calendar days from the date of the notice of proposed rate (NPR) issued by the state's intermediary in the absence of an appeal by the hospital to the intermediary and the state.

(b) In the event of such an appeal, the state must make a written determination on the merits of the appeal within 180 calendar days of receipt, although the state may make a determination to extend such period to a specified date as necessary. Once such an appeal has been determined, the resulting base cost will be effective retroactively to year one and will not be changed until subsequent rebasing of all hospitals has been completed.

(8) Application of inflation factors:

(a) The inflation factors used to update operating costs per discharge will

be identical to those established by congress and adopted for use by CMS to update medicare inpatient prospective payment rates. The medicare prospective payment update factor (MPPUF) is determined by CMS, usually on an annual basis, and may differ depending upon the hospital type (urban, large urban, or rural) as defined by CMS.

(b)

Each hospital's base year operating cost per discharge will be indexed up to the common point of December 31 falling prior to year one, using the applicable medicare prospective payment update factors (MPPUF) for that hospital for that period. That is, the inflation factors used will be identical to those established by congress and adopted for use by CMS to update medicare inpatient prospective payment rates, including any established differential for urban and rural hospitals. Then this value will be indexed using the applicable MPPUF corresponding to the period beginning October 1 (prior to year one) and ending with the midpoint of operating year one. For years two and three, the inflation factors will be the applicable MPPUF as specified by CMS.

(c)

For the period October 9, 1991, through September 30, 1992, an exception to (a) and (b) above was made. The inflation factor used to update rates for that period is half percent for urban hospitals and one and a half percent for rural hospitals.

(9) Case-mix adjustments for base year operating cost per discharge rate:

(a)

The department will adjust the operating cost per discharge rate to account for case-mix changes, based on the classification of inpatient hospital discharges according to the DRG methodology established and used by the medicare program.

(b)

For each DRG, the department determines a relative value (the DRG relative weight) which reflects the charges for hospital resources used for the DRG relative to the average charges of all hospital cases. The department's methodology for computing DRG relative weights was discussed earlier in Subsection B of 8.311.3.12 NMAC. Case-mix adjustments will be computed using the methodology described below.

(c)

Case-mix computation: Each base year, a hospital's case-mix index will be computed by the department and its fiscal agent as follows:

(i)

all MAD discharges are assigned to appropriate DRGs;

(ii)

the case-mix index is computed for each hospital by summing the products of the case frequency and its DRG weight and dividing this sum by the total number of title XIX cases at the hospital.

(d)

The case-mix adjustment is applied to the base year operating cost per discharge as described in Subparagraph (e) of Paragraph (10) of Subsection C of 8.311.3.12 NMAC below.

(10)

Limitations on operating cost prospective per discharge rates:

(a)

Limitations on operating cost prospective base rates will be imposed using a peer group methodology. Effective October 1, 1989, hospitals will be placed in one of six possible peer groups (teaching, referral, regional, low-volume regional, community and low-volume community) based on the following criteria: bed size, case-mix, services available, population served, location, trauma designation, teaching status, and low-volume (i.e. less than 150 MAD discharges per year.)

(b)

At the time of the next rebasing year following October 1, 1989, the criteria regarding low-volume utilization was dropped along with the low-volume peer groups, thus leaving four possible peer groups for assignment (teaching, referral, regional and community).

(c)

The department will determine the peer group assignment of each hospital, and appeal of such assignment will be allowed only as described in Paragraph (1) of Subsection D of 8.311.3.12 NMAC.

(d)

A ceiling on allowable operating costs will be set at one hundred ten percent of the median of costs for all hospitals in the peer group, after application of each hospital's case mix and indexing of the cost from the hospital's fiscal year end to a common point of December 31. These adjustments are made to equalize the status of each hospital for ceiling establishment purposes. The median shall be the midpoint of rates (or the average of the rates of the two hospitals closest to the midpoint).

(e)

The case-mix equalization for each hospital in a peer group will be calculated as follows:

PGR = BYOR/ CMI

PGR = hospital rate equalized for peer group comparison

BYOR = base year operating cost per discharge

CMI = case-mix index in the base year

(f)

The allowable operating cost per discharge rate (hospital-specific rate) will be the lower of:

(i)

the ceiling for the hospital's peer group; or

(ii)

the hospital rate resulting from the computation found in Subparagraph (e) of Paragraph (10) of Subsection C of 8.311.3.12 NMAC above.

(11)

Computation of prospective operating cost per discharge rate: The following formulas are used to determine the prospective operating cost per discharge rate for years one, two and three:

Year one

PDO1 = HSR x (1 + MPPUF)

PDO1 = per discharge operating cost rate for year one

HSR = the hospital-specific rate, which is the lower of the peer group ceiling or the hospital's rate, equalized for peer group comparison

MPPUF = the applicable medicare prospective payment update factor as described in Paragraph (8) of Subsection C of 8.311.3.12 NMAC

Year two

PDO2 = PDO1 x (1 + MPPUF)

PDO2 = per discharge operating cost rate for year two

PDO1 = per discharge operating cost rate for year one

MPPUF = the applicable medicare prospective payment update factor as described in Paragraph (8) of Subsection C of 8.311.3.12 NMAC

Year three

PDO3 = PDO2 x (1 + MPPUF)

PDO3 = per discharge operating cost rate for year three

PDO2 = per discharge operating cost rate for year two

MPPUF = the applicable medicare prospective payment update factor as described in Paragraph (8) of Subsection C of 8.311.3.12 NMAC.

(12) Computation of excludable cost per discharge rate: Total MAD excludable cost, as identified in TEFRA, with excludable capital costs reduced as indicated in Paragraph (3) of Subsection C of 8.311.3.12 NMAC, will be paid in the following manner:

(a) An excludable cost per discharge rate is computed using the following methodology:

ER = ECP/DCY

ER = excludable cost per discharge rate

ECP = excludable costs on the hospital's most recently settled cost report prior to the rate year, as determined by the audit agent.

DCY = MAD discharges for the calendar year prior to the rate year, as determined by the department's fiscal agent.

(b) The retrospective settlement will be determined based on a percentage of the actual allowable amount of MAD excludable costs incurred by a hospital during the hospital's fiscal year as determined by the department.

(13) Computation of prospective per discharge rate: The excludable cost per discharge, as described in Paragraph (12) of Subsection C of 8.311.3.12 NMAC above, will be added to the appropriate operating per discharge rates to determine the prospective rates.

(14) Effective dates of prospective rates: Rates were implemented October 1, 1989 and continue to be effective as of October 1 of each year for each hospital.

(15) Effect on prospective payment rates of a change of hospital ownership: When a hospital is sold or leased, no change is made to the hospital's per discharge rate as a result of the sale or lease transaction.

(16) Rate setting for border-area hospitals: Border-area hospitals will be reimbursed at median rate (including excludable cost pass-throughs) for the regional peer group.

D. Changes to prospective rates:

(1) Appeals: Hospitals may appeal for a change in the operating component of the prospective payment rate, including a change in peer group assignment, as applicable. For an appeal to be considered, the hospital must demonstrate in the appeal that:

(a) the following five requirements are satisfied:

(i) the hospital inpatient service mix for MAD admissions has changed due to a major change in scope of facilities and services provided by the hospital;

(ii) the change in scope of facilities and services has satisfied all regulatory and statutory requirements which may be applicable, such as facility licensure and certification requirements and any other facility or services requirements which might apply;

(iii) the expanded services were a) not available to eligible recipients in the area; or b) are now provided to eligible recipients by the hospital at a lower reimbursement rate than would be obtained in other hospitals providing the service;

(iv) the magnitude of the proposed (as appealed) prospective per discharge rate for the subsequent year will exceed one hundred five percent of the rate that would have otherwise been paid to the hospital;

(v) in addition to requirements Items (i) through (iv) above, appeals for rate adjustment will not be considered if cost changes are due to changes in hospital occupancy rate, collective bargaining actions, changes in hospital ownership or affiliation, or changes in levels of rates of increases of incurred cost items which were included in the base rate;

(b) the appeal must provide a specific recommendation(s) regarding the magnitude of alterations in the appellant's prospective rate per discharge and peer group reassignment, as applicable; in making its decision on any appeal, the department shall be limited to the following options:

(i) reject the appeal on the basis of a failure of the appellant to demonstrate necessary conditions and documentation for an appeal as specified in Subparagraph (a) of Paragraph (1) of Subsection D of 8.311.3.12 NMAC above; or

(ii) accept all of the specific recommendations, as stated in the appeal, in their entirety; or

(iii) adopt modified versions of the recommendations as stated in the appeal; or

(iv) reject all of the recommendations in the appeal;

(c) hospitals are limited to one appeal per year, which must be filed in writing with the MAD director by a duly authorized officer of the hospital no later than July 1 of each year; within 15 calendar days of the filing date, the department shall offer the appellant the opportunity for hearing of the appeal; if such a hearing is requested, it shall occur within 30 calendar days of the filing date; the department shall notify the appellant of the decision of the appeal in writing no later than September 15 of the year in which the appeal is filed.

E. Retroactive settlement:

(1) Retroactive settlement may occur in those cases in which no audited cost reports were available at the time of rate setting and an interim rate was used. Retroactive settlement will only occur in those cases where adjustments to interim rates are required. For year one, the department's audit agent will determine the difference between payments to the hospital under the interim operating cost per discharge rate and what these payments would have been under the final rate. The audit agent will report the amount of overpayment or underpayment for each facility within 90 calendar days of the effective date of the final rate. Retroactive settlements will be based on actual claims paid while the interim rate was in effect.

(2) **Underpayments:** In the event that the interim rate for year one is less than the final rate, the department will include the amount of underpayment in a subsequent payment to the facility within 30 calendar days of notification of underpayment.

(3) **Overpayments:** In the event that the interim rate exceeds the final rate, the following procedure will be implemented: the facility will have 30 calendar days from the date of notification of overpayment to submit the amount owed to the department in full. If the amount is not submitted on a timely basis, the department will begin withholding from future payments until the overpayment is satisfied in full.

(4) Retroactive settlements for excludable costs will be handled in the same manner as described above.

F. Special prospective payment provisions:

(1) Outlier cases:

(a) [~~Effective for discharges occurring on or after April 1, 1992, outlier~~] For other than the state teaching hospital, outlier cases are defined as those cases with medically necessary services exceeding $100,000 in billed charges, or those with medically necessary lengths of stay of 75 calendar days or more, when such services are provided to eligible children up to age six in disproportionate share hospitals, and to eligible infants under age one in all hospitals. For the state teaching hospital only, the outlier provisions are applied without regard to age of the recipient in cases with medically necessary services exceeding $125,000 in billed charges or those medically necessary lengths of stay of 75 calendar days or more. [~~These~~] All cases will be removed from the DRG payment system and paid at an amount equal to eighty-five percent of the hospital's standardized cost. Standardized costs are determined by multiplying the hospital's allowable billed charges by the hospital's cost-to-charge ratio as calculated from the hospital's most recent cost report.

(b) Utilization review will be performed on all outlier cases to determine the medical necessity of services rendered. Should this review determine non-medical necessity for all or part of the services, these services will be deducted from the billed amount prior to payment.

(2) Payment for transfer cases:

(a) All cases transferred from one acute care hospital to another will be monitored under a utilization review policy to ensure that the department does not pay for inappropriate transfers.

(b) The following methodology will be used to reimburse the transferring and discharging hospitals for appropriate transfers if both hospitals and any hospital units involved are included in the PPS.

(i) A hospital inpatient shall be considered "transferred" when an eligible recipient has been moved from one DRG acute inpatient facility to another DRG acute inpatient facility. Movement of an eligible recipient from one unit to another unit within the same hospital shall not constitute a transfer, unless the eligible recipient is being moved to a PPS exempt unit within the hospital.

(ii) The transferring hospital will be paid the lesser of standardized costs or the appropriate DRG payment amount. Should the stay in the transferring hospital qualify for an outlier payment, then the case will be paid as an outlier as described in Subsection F of 8.311.3.12 NMAC. Standardized costs are determined by multiplying the hospital's allowable billed charges by the hospital's cost-to-charge ratio.

(iii) The receiving hospital which ultimately discharges the eligible recipient will receive the full DRG payment amount, or, if applicable, any outlier payments associated with the case. All other hospitals which admitted and subsequently transferred the eligible recipient to another acute care hospital during a single spell of illness shall be considered transferring hospitals.

(c) If the transferring or discharge hospital or unit is exempt from the PPS, that hospital or unit will be reimbursed according to the method of payment applicable to the particular facility or unit.

(3) Payment for readmissions:

(a) Readmissions that occur within 24 hours of the previous discharge of an eligible recipient with the same or related diagnosis related group (DRG) will be considered part of the prior admission and not paid separately when the admissions are to the same hospital. When the second admission is to a different hospital, the claims may be reviewed to determine if the initial claim should be considered as a transfer.

(b) Readmissions occurring within 15 calendar days of prior acute care admission for a related condition may be reviewed to determine medical necessity and appropriateness of care. If it is determined that either or both admissions were unnecessary or inappropriate, payment for either or both admissions may be denied. Such review may be focused to exempt certain cases at the sole discretion of the department.

(4) Payment for inappropriate brief admissions: Hospital stays of up to two calendar days in length may be reviewed for medical necessity and appropriateness of care. (Discharges involving eligible recipient healthy mothers and healthy newborns are excluded from this review provision.) If it is determined that the inpatient stay was unnecessary or inappropriate, the prospective payment for the inpatient discharge will be denied. If the inpatient claim is denied, the hospital is permitted to resubmit an outpatient claim for the services rendered. Such review may be further focused to exempt certain cases at the sole discretion of the department.

(5) Payment for non-medically warranted days:

(a) Reimbursement for eligible recipients admitted to a hospital receiving services at an inappropriate level of care will be made at rates reflecting the level of care actually received. The number of days covered by the MAD program is determined based only upon medical necessity for an acute level of hospital care.

(b) When it is determined that an eligible recipient no longer requires acute-level care but does require a lower level of institutional care, and when placement in such care cannot be located, a DRG hospital will be reimbursed for "awaiting placement" days. Reimbursement will be made at the weighted average rate paid by the department in the preceding calendar year for the level of care needed. There is no limit on the number of covered "awaiting placement" days as long as those days are medically necessary. However, the hospital is encouraged to make every effort to secure appropriate placement for the eligible recipient as soon as possible. During "awaiting placement" days, no ancillary services will be paid, but medically necessary physician visits will be reimbursed.

(6) Indirect medical education (IME) adjustment: [~~Effective August 1, 1992~~] To help cover the cost of residency programs, each acute care hospital that qualifies as a teaching hospital will receive an IME payment adjustment, which covers the increased operating or patient care costs that are associated with approved intern and resident programs. The IME payment adjustment is subject to available state and federal funding, as determined by the department and shall not exceed any amounts specified in the *medicaid state plan*.

(a) In order to qualify as a teaching hospital and be deemed eligible for an IME adjustment, the hospital must:

(i) be licensed by the state of New Mexico; and

(ii) be reimbursed on a DRG basis under the plan; and

(iii) have 125 or more full-time equivalent (FTE) residents enrolled in approved teaching programs or operate a nationally-accredited primary care residency program.

(b) Determination of a hospital's eligibility for an IME adjustment will be done annually by the department, as of the first day of the provider's fiscal year. If a hospital meets the qualification for an IME adjustment after the start of its fiscal year, it will be deemed eligible for the IME adjustment beginning on the first day of the quarter after the date the qualification were met. A determination that a hospital qualifies as a teaching hospital for IME payments is not to be construed as the state teaching hospital with regard to DRG outlier payments or for GME payments.

(c) The IME payment will be calculated separately for regular medicaid and group VIII (the other adult group who are newly eligible for medicaid under the affordable care act).

[~~**(c)**~~] **(d)** The IME payment amount by population group is determined by multiplying DRG operating payments for each group, which are DRG payments and outlier payments, by the IME adjustment factor computed by the following formula:

$$1.89*((1+R)^{.405}-1)$$

where R equals the number of approved full-time equivalent (FTE) residents divided by the number of available beds (excluding nursery and neonatal bassinets). FTE residents are counted in accordance with 42 CFR 412.105(f), except that the limits on the total number of FTE residents in 42 CFR 412.10(f)(1)(iv) shall not apply, and at no time shall exceed 450 FTE residents. For purposes of this paragraph, DRG operating payments include the estimated average per discharge amount that would otherwise have been paid for MAD managed care enrollees if those persons had not been enrolled in managed care.

[~~**(d)**~~] **(e)** Quarterly IME payments will be made to qualifying hospitals at the end of each quarter. Prior to the end of each quarter, the provider will submit to the department's audit agent the information necessary to make the

calculation, i.e. number of beds, number of estimated residents for the quarter, and the MAD DRG amount. After review and adjustment, if necessary, the audit agent will notify the department of the amount due to/from the provider for the application quarter. Final settlement of the IME adjustment amount will be made through the cost report; that is, the number of beds, residents, and DRG amounts used in the quarterly calculation will be adjusted to the actual numbers shown on the provider's cost report for those quarters.

(7) Payment for direct graduate medical education (GME): [~~Subject to federal government approval of a corresponding amendment to the *medicaid state plan*, effective for~~] For services provided on or after July 1, 1998, payment to hospitals for GME expense is made on a prospective basis as described in this section. Payments will be made quarterly to qualifying hospitals, at a rate determined by the number of resident full-time-equivalents (FTEs) in the various categories defined below, who worked at the hospital during the preceding year, and subject to an upper limit on total payments. The GME payment is subject to available state and federal funding, as determined by the department, and shall not exceed any amounts specified in the *medicaid state plan*.

(a) To be counted for MAD reimbursement, a resident must be participating in an approved medical residency program, as defined by medicare in 42 CFR 413.75. With regard to categorizing residents, as described in Subparagraph (b) of Paragraph (9) below, the manner of counting and weighting resident FTEs will be the same as is used by medicare in 42 CFR 413.79 except that the number of FTE residents shall not be subject to the FTE resident cap described in 42 CFR 413.79(b)(2). Resident FTEs whose costs will be reimbursed by the department as a medical expense to a federally qualified health center are not eligible for reimbursement under this section. To qualify for MAD GME payments, a hospital must be licensed by the state of New Mexico, be currently enrolled as a MAD provider, and must have achieved a MAD inpatient utilization rate of five percent or greater during its most recently concluded hospital fiscal year. For the purposes of this section, the MAD inpatient utilization rate will be calculated as the ratio of New Mexico MAD eligible days, including inpatient days paid under MAD managed care arrangements, to total inpatient hospital days.

(b) Approved resident FTEs are categorized as follows for MAD GME payment:

(i) **Primary care/obstetrics resident:** Primary care is defined per 42 CFR 413.75(b).

(ii) **Rural health resident:** A resident is defined as participating in a designated rural health residency program. Residents enrolled in a designated rural health residency program will be counted as a rural health resident FTE for the entire duration of their residency, including those portions of their residency which may be served in a non-rural hospital or clinic. Should any resident meet the criteria for both rural health and primary care in this section, this resident will be counted as a rural health resident.

(iii) **Other approved resident:** Any resident not meeting the criteria in Items (i) or (ii), above.

(c) MAD GME payment amount per resident FTE:

(i) The annual MAD payment amount per resident FTE with state fiscal year 2017 is as follows:

Primary care/obstetrics resident: $41,000

Rural health resident: $52,000

Other resident: $50,000

(ii) The per resident amounts specified in Item (i) of Subparagraph (c) of Paragraph (9) of Subsection F of 8.311.3.11 NMAC will be inflated for state fiscal years beginning on or after July 1, 2017 using the annual inflation update factor described in Item (ii) of Subparagraph (d) of Paragraph (7) of Subsection F of 8.311.3.11 NMAC.

(d) Annual inflation update factor:

(i) Effective for state fiscal years 2000 and beyond, the department has updated the per resident GME amounts and the upper limit on GME payments for inflation, using the market basket forecast published in the CMS Dallas regional medical services letter issued for the quarter ending in March 1999 to determine the GME rates for state fiscal year 2000 (July 1, 1999 - June 30, 2000).

(ii) The department will use the market basket forecast shown for PPS hospitals that is applicable to the period during which the rates will be in effect. MAD will determine the percentage of funds available for GME payments to eligible hospitals.

(e) Annual upper limits on GME payments:

(i) Total annual MAD GME payments will be limited to $18,500,000 for state fiscal year 2017. This amount will be updated for inflation, beginning with state fiscal year 2018, in accordance with Subparagraph (d) of Paragraph (7) of Subsection F of 8.311.3.11 NMAC.

(ii) Total annual GME payments for residents in Category B.3, "Other," will be limited to the following percentages of the $18,500,000 total annual limit (as updated for inflation in accordance with Subparagraph (d) of Paragraph (7) of Subsection F of 8.311.3.11 NMAC):

state fiscal year 1999
58.3 percent

state fiscal year 2000

56.8 percent

state fiscal year 2001
53.3 percent

state fiscal year 2002
50.7 percent

state fiscal year 2003
48.0 percent

state fiscal year 2004
45.5 percent

state fiscal year 2005
43.0 percent

state fiscal year 2006
40.4 percent

state fiscal year 2017 and thereafter
no limit

(f)

Allocation Methodology: The result of the GME payment calculation will be allocated between regular medicaid and group VIII (the other adult group who are newly eligible for medicaid under the affordable care act) based on the medicaid enrollment ratio from the most recent available quarter.

[~~(f)~~] **(g)**

Reporting and payment schedule:

(i)

Hospitals will count the number of residents working according to the specification in this part during each fiscal year (July 1 through June 30) and will report this information to the department by December 31. Counts will represent the weighted average number of residents who worked in the hospitals during the specified 12-month period. Hospitals may also add to this count any FTEs associated with newly approved residency programs that will be implemented on or before the start of the prospective GME payment year, to the extent that these FTEs are not already reflected in the weighted average counts of the preceding year. To illustrate, resident FTE amounts would be counted from 07/01/96 - 06/30/97 for the payment year 07/01/98 - 06/30/99. The department may require hospitals to provide documentation necessary to support the summary counts provided.

(ii)

The department will establish the amount payable to each hospital for the prospective payment period that will begin each July 1. Should total payments as initially calculated exceed either of the limitations in Subsection D of 8.311.3.11 NMAC, the amount payable to each will be proportionately reduced.

(iii)

The annual amount payable to each hospital is divided into four equal payments. These payments will be made by the department on or about the start of each prospective payment quarter.

(iv)

Should a facility not report timely with the accurate resident information as required in Item (i) of Subparagraph (f) of Paragraph (7) of Subsection F of 8.311.3.11 NMAC above, it will still be entitled to receive payment for any quarter yet remaining in the prospective payment year, after acceptable information has been submitted. However, payments to untimely reporting facilities will be limited to the amount of funds that remain available under the upper limits described in Subsection D of 8.311.3.11 NMAC, after prospective payment amounts to timely filing facilities have been established.

[8.311.3.12 NMAC - Rp, 8.311.3.12 NMAC, 6/1/2016; A, 1/1/2018; A, 1/1/2019]

8.311.3.13 DISPROPORTIONATE SHARE HOSPITALS: To take into account the situation of hospitals serving a disproportionate number of low-income patients with special needs, a payment will be made to qualifying hospitals.

A. Criteria for deeming hospitals eligible for a disproportionate share payment:

(1)

Determination of each hospital's eligibility for a disproportionate share payment for the MAD inpatient utilization rate as listed below, will be done annually by the department's audit agent, based on the hospital's most recently filed cost report. Hospitals which believe they qualify under the low income utilization rate must submit documentation justifying their qualification. This documentation should be submitted to the department by March 31 of each year.

(2) In the case of a DRG hospital with a PPS exempt specialty unit, data from the entire facility will be considered to determine DSH status.

(3) The following criteria must be met before a hospital is deemed to be eligible:

(a)

Minimum criteria: The hospital must have:

(i)

a MAD inpatient utilization rate greater than the mean MAD inpatient utilization rate for hospitals receiving MAD payments in the state; or

(ii)

a low-income utilization rate exceeding twenty-five percent; (refer to Subparagraph (b) of Paragraph (3) of Subsection A of 8.311.3.13 NMAC for definitions of these criteria).

(iii)

The hospital must have at least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to eligible recipients entitled to such services under MAD; in the case of a hospital located in a rural area (defined as an area outside of a metropolitan statistical area (MSA), as defined by the United States executive office of management and budget), the term "obstetrician" includes any physician with staff privileges at the hospital to perform non-emergency obstetric procedures.

(iv)

Item (iii) of Subparagraph (a) of Paragraph (3) of Subsection A of 8.311.3.13 NMAC does not apply to a hospital which meets the following criteria: the inpatients are predominantly individuals under 18 years of age; or the hospital did not offer non-emergency obstetric services as of December 22, 1987;

(v)

the hospital must have, at a minimum, a MAD inpatient utilization rate (MUR) of one percent.

(b) **Definitions of criteria:**

(i) MAD inpatient utilization: For a hospital, the total number of its MAD inpatient days in a cost reporting period, divided by the total number of the hospital's inpatient days in the same period. These include both MAD managed care and non-managed care MAD inpatient days.

(ii) Low-income utilization rate: For a hospital, the sum (expressed as a percentage) of the following fractions: the sum of total MAD inpatient and outpatient net revenues (this includes MAD managed care and non-managed care revenues) paid to the hospital, plus the amount of the cash subsidies received directly from state and local governments in a cost reporting period, divided by the total amount of net revenues of the hospital for inpatient and outpatient services (including the amount of such cash subsidies) in the same cost reporting period; and the total amount of the hospital's charges for inpatient hospital services attributable to charity care (care provided to individuals who have no source of payment, third-party or personal resources) in a cost reporting period, less the amount of the cash subsidies received directly from the state and local governments in that period reasonably attributable to inpatient hospital services, divided by the total amount of the hospital's charges for inpatient services in the hospital in the same period. If this number is zero or less than zero, then it is assumed to be zero. The total inpatient charges attributed to charity care shall not include contractual allowances and discounts (other than for indigent patients not eligible for medical assistance under an approved MAD state plan), that is, reductions in charges given to other third-party payers, such as HMOs, medicare, or Blue Cross.

(iii) The medicaid utilization rate (MUR) is computed as follows:

MUR % = 100 x M/T

M = hospital's number of inpatient days attributable to eligible recipients under the MAD state plan; these include MAD managed care and non-managed care days

T = hospital's total inpatient days.

(iv) Newborn days, days in specialized wards, and administratively necessary days are included in this calculation. Additionally, days attributable to individuals eligible for medicaid in another state are included. MAD inpatient days includes both MAD managed care and non-managed care patient days.

(v) The numerator (M) does not include days attributable to recipients 21 or older in institutions for mental disease (IMD) as these patients are not eligible for MAD coverage in IMDs under the New Mexico state plan and cannot be considered a MAD day.

B. Inpatient disproportionate share pools: Section 1923 of the Social Security Act allows qualifying hospitals to receive a disproportionate share payment, in addition to their allowable regular claims payments and any other payments to which they are entitled. This determination is performed annually as described in Subsection A of 8.311.3.13 NMAC. Qualifying hospitals will be classified into one of three disproportionate share hospital pools: Teaching PPS hospitals, non-teaching PPS hospitals, and PPS-exempt (TEFRA) hospitals. Hospitals may also qualify for a payment from a fourth pool: reserve pool, as explained in this Subsection C of 8.311.3.13 NMAC below.

(1) To qualify as a teaching hospital and be eligible for the teaching hospital DSH payment, the hospital must:

(a) be licensed by the state of New Mexico; and

(b) reimbursed, or be eligible to be reimbursed, under the DRG basis under the plan; and

(c) have 125 or more full-time equivalent (FTE) residents enrolled in approved teaching programs.

(2) A non-teaching PPS (DRG) hospital qualifies if it is an in-state acute care hospital reimbursed by or eligible to be reimbursed by prospective payment methodology.

(3) A PPS-exempt hospital (TEFRA) such as rehabilitation hospitals, children's hospitals, or free-standing psychiatric hospitals, qualify if it is reimbursed by or eligible to be reimbursed by TEFRA methodology as described in 8.311.3.11 NMAC.

(4) The reserve pool is to compensate DSH qualifying hospitals which have had a disproportionate shift in the delivery of services between low-income and MAD-covered inpatient days in any given quarter. A hospital will qualify for payment from the reserve pool if its charity ratio, as described in Item (ii) of Subparagraph (b) of Paragraph (3) of Subsection A of 8.311.3.13 NMAC, exceeds twenty percent. A qualifying hospital may receive a payment from the reserve pool in addition to its payment from one of the three other pools.

C. Disproportionate share hospital payments:

(1) DSH payments are subject to available state and federal funding, as determined by the department.

(2) If DSH funds are available, they shall be allocated to each pool and paid to qualifying hospitals based on the number of MAD discharges. These include both MAD managed care and non-managed care discharges. A discharge occurs when a patient dies in the hospital, is formally released from the hospital, or is transferred to another hospital or nursing home.

(3) Payments are made quarterly, with the annual amount for the pool divided into four parts, and each part distributed after the end of each quarter based on MAD discharges during that quarter. The quarterly payment to

each hospital qualifying for DSH pools one, two, or three will be computed by dividing the number of MAD discharges for that hospital by the total number of MAD discharges from all hospitals qualifying for that DSH pool and then multiplying this pro-rata share by the quarterly allocation for the respective pool. This amount cannot exceed the OBRA 93 DSH limit, which is described in Subsections E and F of 8.311.3.13 NMAC.

(4) MAD will review the allocation of DSH funds prior to the start of each state fiscal year and may re-allocate funds between pools at that time in consideration of shifts in the hospital utilization of MAD and low-income/ indigent care patients.

(5) The percentages allocated to each pool for state fiscal year 1998 are as listed below. The total allocations shall be adjusted in subsequent state fiscal years based on the medicare prospective payment update factor (MPPUF) or the DSH budget as defined by the department. The base year DSH budget for state fiscal year 1998 is $22,000,000.00.

(a) The teaching PPS hospital DSH pool is fifty-six percent of the overall DSH budget, as defined by HSD.

(b) The non-teaching PPS (DRG) hospital DSH pool is twenty two and a half percent of the overall DSH budget, as defined by HSD.

(c) The PPS-exempt hospital (TEFRA) DSH pool is one and a half percent of the overall DSH budget, as defined by HSD.

(d) The reserve DSH pool is twenty percent of the overall DSH budget, as defined by HSD. Quarterly payments may be made directly from the reserve pool to hospitals qualifying for any of the other three DSH pools at the rate of N dollars per MAD discharge, where N is equal to the fraction described in Item (ii) of Subparagraph (b) of Paragraph (3) of Subsection A of 8.311.3.13 NMAC minus twenty percent, multiplied by $1,750.

D. Request for DSH payment procedures: Hospitals must submit to the department the number of MAD discharges (both managed care and fee for service discharges), which they have incurred 30 calendar days after the end of each quarter. The department will review the hospital's documentation supporting their discharge information. Any requests received later than 60 calendar days from the end of the quarter will be denied as untimely.

E. DSH limits:

(1) Pursuant to section 1923 (g) of the Social Security Act, a limit is placed on the payment adjustment for any hospital. A hospital's payment adjustment determined in Subsections B through D of 8.311.3.13 NMAC shall not exceed that hospital's hospital-specific DSH limit, as determined under Subsection E of 8.311.3.13 NMAC. This limit is calculated as follows:

DSH limit = M + U

M = Cost of services to eligible recipients, less the amount paid by the MAD program under the non-DSH payment provisions of this plan

U = Cost of services to uninsured patients, less any cash payments made by them.

(2) The cost of services will include both inpatient and outpatient costs for purposes of calculating the limit. The "costs of services" are defined as those costs determined allowable under this plan. "Uninsured patients" are defined as those patients who do not possess health insurance or do not have a source of third-party payment for services provided, including individuals who do not possess health insurance which would apply to the service for which the individual sought treatment. Payments made to a hospital for services provided to indigent patients made by the state or a unit of local government within the state shall not be considered to be a source of third-party payment.

(3) Recovery of Overpayments: The department has one year from the date of discovery of an overpayment to a provider to recover or seek to recover the overpayment before the federal share must be refunded to CMS in accordance with 42 CFR 433.312. Upon DSH reconciliation, the audit agent or the department will notify the provider in writing of an overpayment and will specify the dollar amount that is subject to recovery. The provider has 90 calendar days from the date of notification to submit the payment in full unless otherwise directed by the department.

F. Limitations in New Mexico DSH allotment: If the DSH payment amounts as described in Subsections C through E of 8.311.3.13 NMAC above, exceed in any given year, the federal determined DSH allotment for New Mexico, the DSH allocations by pool will be reduced proportionately to a level in compliance with the New Mexico DSH allotment.

[8.311.3.13 NMAC - Rp, 8.311.3.13 NMAC, 6/1/2016; A, 1/1/2019]

8.311.3.14 DETERMINATION OF ACTUAL, ALLOWABLE, AND REASONABLE COSTS:

A. Adequate cost data:

(1) All hospitals must provide adequate cost data based on financial and statistical records which can be verified by qualified auditors. The hospital will submit a cost report each year. The cost data must be based on an approved method of cost finding and on the accrual basis of accounting. However, where governmental institutions operate on a cash basis of accounting, cost data on this basis will be acceptable, subject to appropriate treatment of capital expenditures.

(2) The cost finding method to be used by hospitals will be the step-down method. This method recognizes that services rendered by certain non-revenue-producing departments or centers are utilized by certain other non-revenue-producing centers. All costs

of non-revenue-producing centers are allocated to all centers which they serve, regardless of whether or not these centers produce revenue. The cost of the non-revenue-producing center serving the greatest number of other centers while receiving benefits from the least number of centers is apportioned first. Following the apportionment of the cost of the non-revenue-producing center, that center will be considered "closed" and no further costs will be apportioned to it. This applies even though it may have received some service from a center whose cost is apportioned later. Generally when two centers render services to an equal number, that center which has the greatest amount of expense will be allocated first.

B. Reporting year: For the purpose of determining payment rates, the reporting year is the hospital's fiscal year.

C. Cost reporting: At the end of each of its fiscal years, the hospital will provide to the department or its audit agent an itemized list of allowable costs (financial and statistical report) on the New Mexico MAD cost reporting form. The cost report must be submitted within [~~90 calendar days~~] five months after the close of the hospital's fiscal year. Failure to file a report within the [~~90 calendar day~~] five month limit, unless an extension is granted, will result in [~~suspension of MAD payments, until such time as the report is received.~~] any or all of the following: suspensions of MAD payments, suspension of the provider's medicaid number, or a penalty of $100 per day until such time as the report and other substantiating data is received. Extensions may be granted based on 42 CFR Part 413.

D. Retention of records:

(1) Each hospital will maintain financial and statistical records of the period covered by such cost report for a period of not less than four years following the date of submittal of the New Mexico MAD cost report to the department. These records must be accurate and in sufficient detail to substantiate the cost data reported. The provider will make such records available upon demand to representatives of the department, the state of New Mexico audit agent, or the United States department of health and human services.

(2) The department or its audit agent will retain all cost reports submitted by providers for a period of not less than three years following the date of final settlement of such reports.

E. Audits:

(1) Desk audit: Each cost report submitted will be subjected to a comprehensive desk audit by the state's audit agent. This desk audit is for the purpose of analyzing the cost report. After each desk audit is performed, the audit agent will submit a complete report of the desk review to the department.

(2) Field audit: Field audits will be performed on all facilities and per the auditing schedule established by medicare. The purpose of the field audit of the facility's financial and statistical records is to verify that the data submitted on the cost report is accurate, complete, and reasonable. The field audits are conducted in accordance with generally accepted auditing standards. Field audits are of sufficient scope to determine that only proper items of cost applicable to the service furnished were included in the provider's calculation of its cost and to determine whether the expense attributable to such proper items of cost was accurately determined and reasonable. After each field audit is performed, the audit agent will submit a complete report of the audit to the department. This report will meet generally accepted auditing standards and shall declare the auditor's opinion as to whether, in all material respects, the costs reported by the provider are allowable, accurate, and reasonable. These audit reports will be retained by the department for a period of not less than three years from the date of final settlement of such reports. Audits will be performed in accordance with applicable federal regulations.

F. Overpayments: All overpayments found in audits will be accounted for on the CMS-64 report in accordance with 42 CFR 433.300 through 42 CFR 433.322.

G. Allowable and non-allowable costs: Allowable costs, non-allowable costs, and reasonableness of costs will be determined as on the basis of the medicare health insurance manual (HIM-15).

[8.311.3.14 NMAC - Rp, 8.311.3.14 NMAC, 6/1/2016; A, 1/1/2019]

PUBLIC EDUCATION DEPARTMENT

The New Mexico Public Education Department approved at its 9/17/2018 hearing, to repeal its rule 6.10.7 NMAC, Statewide Standardized Testing Security Issues and Irregularities (filed 9/28/2001) and replace it with 6.10.7 NMAC, Standardized Testing Procedures and Requirements (adopted on 12/13/2018), and effective 12/27/2018.

The New Mexico Public Education Department approved *(and adopted)*, at its 12/3/2018 hearing, to repeal its rule 6.19.1 General Provisions (filed 03/29/2002), effective 12/31/2018.

The New Mexico Public Education Department approved at its 12/3/2018 hearing, to repeal its rule 6.19.8 NMAC, Grading of Public Schools (filed 03/29/2002) and replace it with 6.19.8 NMAC, Grading of Public Schools, adopted on 12/13/2018, and effective 12/31/2018.

The New Mexico Public Education Department approved at its 12/7/2018 hearing, to repeal its rule 6.60.10 NMAC, Mentorship Programs for Beginning Teachers (filed 7/1/2002) and replace it with 6.60.10 NMAC, Mentorship Programs for Teachers adopted on 12/13/2018, and effective 7/1/2019.

PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 10 PUBLIC SCHOOL ADMINISTRATION - PROCEDURAL REQUIREMENTS
PART 7 STANDARDIZED TESTING PROCEDURES AND REQUIREMENTS

6.10.7.1 ISSUING AGENCY: Public Education Department, herein after the department.
[6.10.7.1 NMAC – Rp, 6.10.7.1 NMAC, 12/27/2018]

6.10.7.2 SCOPE: All school districts, charter schools, state educational institutions and bureau of Indian education (BIE) schools that administer standardized tests, as well as their employees or volunteers who have access to those standardized tests.
[6.10.7.2 NMAC - Rp, 6.10.7.2 NMAC, 12/27/2018]

6.10.7.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2 and 22-2C-4 NMSA 1978.
[6.10.7.3 NMAC - Rp, 6.10.7.3 NMAC, 12/27/2018]

6.10.7.4 DURATION: Permanent
[6.10.7.4 NMAC - Rp, 6.10.7.4 NMAC, 12/27/2018]

6.10.7.5 EFFECTIVE DATE: December 27, 2018, unless a later date is cited at the end of a section.
[6.10.7.5 NMAC - Rp, 6.10.7.5 NMAC, 12/27/2018]

6.10.7.6 OBJECTIVE: This rule establishes the roles, responsibilities, and procedures required for the preparation, storing, handling, distribution, security, and administration of standardized tests.
[6.10.7.6 NMAC - Rp, 6.10.7.6 NMAC, 12/27/2018]

6.10.7.7 DEFINITIONS:

A. "District or charter test coordinator" or **"DTC"** means the licensed school instructor, counselor, student success advisor, or administrator in a school district, charter school, state educational institution, or bureau of Indian education school (BIE) designated by the district superintendent, charter administrator, or governing authority of a state educational institution or BIE school with the overall responsibility for:

(1) handling, storing, and distributing standardized tests;

(2) recording standardized test distribution by booklet or answer sheet number;

(3) collecting and administering standardized tests;

(4) training school personnel in test security matters; and

(5) following proper test administration procedures.

B. "Instructional support provider" means a licensed educational diagnostician, interpreter for the deaf, rehabilitation counselor, school counselor, school psychologist, school social worker, or speech language pathologist.

C. "New Mexico statewide assessment program" or "NMSAP" means the assessment program that is approved by the department and designates the required standardized tests to be administered in New Mexico public school districts, charter schools, state educational institutions, and BIE education schools.

D. "Proctor" means a designated, trained person who assists the test administrator during the time of testing.

E. "School test coordinator" means the licensed school instructor, counselor, student success advisor, administrator, or instructional support provider responsible for:

(1) handling, storing, and distributing standardized tests for administration to test administrators;

(2) recording standardized test distribution by booklet or answer sheet number;

(3) collecting and administering standardized tests;

(4) training school personnel in test security matters; and

(5) following proper test administration procedures within the school site.

F. "Standardized test" means any nationally norm-referenced assessment, state or national performance assessment, or state or national criterion-referenced assessment.

G. "Standardized test material" means a standardized test or any related items for paper-based or online testing such as examiner guides, preparation materials, student test tickets, test security guides, answer sheets or booklets, and any student notes, answers, or essays generated during the administration of a standardized test.

H. "Test administrator" means the licensed school instructor, counselor, student success advisor, administrator, or instructional support provider in a school district, charter school, state educational institution, or BIE education school with the responsibility of administering tests under the guidelines outlined in 6.10.7 NMAC.

I. "Test administration window" means a specified period of time, as designated by the department assessment bureau, during which statewide tests shall be administered.

J. "Testing irregularity" means any circumstance within or beyond the control of a school district or charter that raises doubts with the department, district, or charter about the propriety of standardized testing procedures, preparation materials, standardized testing administration, standardized testing security, student scores attained from standardized testing, or educators' or individuals' conduct observed during standardized test administration.
[6.10.7.7 NMAC - Rp, 6.10.7.7 NMAC, 12/27/2018]

6.10.7.8 RESPONSIBILITIES OF SUPERINTENDENTS AND CHARTER ADMINISTRATORS

It shall be the responsibility of each superintendent or charter administrator to ensure that standardized tests are handled, stored, prepared for, and administered in accordance with 6.10.7 NMAC and test manuals provided by the department or testing vendors.

A. Superintendents and state charter administrators shall designate one DTC and may designate a secondary test coordinator for the purpose of delegating the duties necessary to comply with 6.10.7 NMAC.

B. Test administration at district charters shall be the responsibility of the DTC designated by the district superintendent. District charters may submit documented requests to designate their own test coordinator. Requests shall be submitted to and approved by the superintendent at the start of the school year. Failure to meet any standardized test administration policies or practices will result in removal of the district charter test coordinator without appeal. Upon such determination, all test coordination responsibilities shall defer back to the authorizing district's test coordinator.

C. The designation of district, charter, and secondary test coordinators shall:

(1) be in writing; and

(2) identify the name, title, and contact information of the person(s) so delegated.

D. The superintendent or charter administrator shall complete and return the verification of test security, staff training, and accommodations requirements documentation to the department within 10 business days after the close of all NMSAP testing at the end of each semester.

[6.10.7.8 NMAC - Rp, 6.10.7.8 NMAC, 12/27/2018]

6.10.7.9 RESPONSIBILITIES OF DISTRICT OR CHARTER TEST COORDINATORS:

A. The DTC shall attend all trainings indicated as mandatory by the department in their entirety. DTC attendance at mandatory trainings shall be subject to verification.

B. Once trained, the DTC shall provide training for all secondary test coordinators, school test coordinators, and all personnel involved in test administration, preparation, and security.

C. The DTC shall provide principals the same training as test administrators as well as additional training in the storing, handling, destruction, and administration of standardized test material. Assistant principals shall, at a minimum, be knowledgeable of the requirements for the administration of standardized tests set forth in Subsection C of 6.10.7.12 NMAC.

D. The DTC shall inform all teachers, educational assistants, substitutes, volunteers, licensed and unlicensed office staff, and anyone else who is likely to come into contact with standardized testing material of the need to maintain strict standardized test security by:

(1) developing and disseminating handouts to these individuals;

(2) providing training to these individuals; and

(3) posting conspicuous signs near school copy machines prior to and during a standardized test that warn of department rules prohibiting the copying of any portion of a standardized test, including student responses and any other standardized testing material.

E. The DTC shall provide training participants with copies of the following:

(1) 6.10.7 NMAC and any other relevant statute or regulation, if necessary;

(2) written district or charter school guidance documents;

(3) testing schedules;

(4) test administration manuals; and

(5) the department shall inform DTCs of the test administration windows in writing at least annually. DTCs shall ensure that all required training, including online testing and test security training, is administered prior to the fall and spring test administration windows.

F. In the absence of a written district or charter policy that includes the procedures outlined in 6.10.7.12 NMAC, the DTC shall develop checklists and written procedures for internal use to ensure compliance with 6.10.7 NMAC.

G. The DTC shall:

(1) ensure all procedures for standardized testing comply with 6.10.7.12 NMAC; and

(2) carry out infrastructure trials, as necessary, and online testing preparations.

[6.10.7.9 NMAC - Rp, 6.10.7.9 NMAC, 12/27/2018]

6.10.7.10 RESPONSIBILITIES OF SCHOOL TEST COORDINATORS:

A. The school test coordinator(s) shall be trained by the DTC and shall provide training for all school personnel involved in test administration, preparation, and security, unless the DTC provides such training.

B. The school test coordinator(s) shall use the written district or charter policy or checklists and written procedures developed by the DTC to implement the procedures outlined in 6.10.7.12 NMAC.

[6.10.7.10 NMAC - Rp, 6.10.7.10 NMAC, 12/27/2018]

6.10.7.11 RESPONSIBILITIES OF TEST ADMINISTRATORS:

A. Test administrators shall be trained by the school test coordinator or the DTC.

B. Trainings shall inform test administrators of their duty to promptly report testing

irregularities as soon as they are aware to the DTC.

C. Test administrators shall:

(1) review the standardized test administrator's manual so that administration procedures are understood;

(2) use test proctors stationed in the hallway to gather missing supplies or deal with medical situations;

(3) administer the standardized test according to the directions and specifications in the standardized test administrator's manual;

(4) only administer the standardized test during the designated test administration window;

(5) return the standardized tests to the school, district, or charter test coordinator after testing each day during the test administration window for secure overnight storage; and

(6) take immediate corrective action if a student is observed engaging in any prohibited conduct during a standardized test.

[6.10.7.11 NMAC - Rp, 6.10.7.11 NMAC, 12/27/2018]

6.10.7.12 PROCEDURES FOR STANDARDIZED TESTING:

A. Storing and handling of standardized test material.

(1) Standardized tests shall be counted, inventoried, and stored in a secure, locked location with limited access.

(2) Space permitting, standardized test material shall be stored in sealed containers in a secure area.

(3) Standardized test materials, as directed by the department, shall be disposed of by either shredding or returning such materials to the test vendor.

B. Accessing standardized test material.

(1) Access to standardized test materials shall be restricted, limited, and controlled.

(2) Personnel with access to standardized test materials shall be designated by the superintendent or charter administrator.

(3) The removal of standardized test materials from their secure, locked location for the purposes of test administration and submittal at the close of the test administration window shall be logged and recorded. Records shall:

(a) identify the individual who removed standardized test materials;

(b) identify the name(s) and identifying number(s) of the standardized test materials that were removed;

(c) identify the number of standardized test materials that were removed;

(d) identify the date the standardized test materials that were removed;

(e) include documentation of any standardized test materials taken off school grounds and their return;

(f) be maintained for at least five calendar years; and

(g) be made available for review by the department upon request.

C. Administration of standardized tests.

(1) Only licensed school instructors, counselors, student success advisors, administrators, and instructional support providers shall administer a standardized test.

(2) Substitutes, educational assistants, school nurses, and coaches shall not administer standardized tests unless the individual additionally holds valid licensure to serve as a teacher, counselor, student success advisor, administrator, or instructional support provider.

(3) Educational assistants may be permitted to support testing accommodations for one-on-one and small group testing under the supervision of a test administrator.

(b) Educational assistants administering accommodations shall:

(i) meet the requirements stated in 6.10.7.11 NMAC;

(ii) receive the written approval of the DTC;

(iii) be under the supervision of a test administrator as defined in Subsection H of 6.10.7.7 NMAC; and

(iv) not support accommodations for a group larger than five students.

(4) Training shall be provided to all persons who administer or proctor a standardized test. Individuals shall not be permitted to administer or proctor a standardized test without first completing training in accordance with the timelines, topics, and materials designated by the department.

(a) Sign-in forms listing training topics, printed name, and signature shall be maintained as a record by date to identify all individuals who have completed the district or charter training in test security, practice materials, and administration of standardized tests.

(b) Each sign-in record shall be maintained for at least five calendar years and be made available for review by the department upon request.

(5) The ratio of test administrators to students shall not exceed 25 students per test administrator.

(a) Tests may be administered to no greater than 30 students per test administrator if, at a minimum, an additional test administrator or test proctor is present for the duration of the test.

(b) At no point shall the number of students tested simultaneously and in the same location exceed 30 students without the presence of at least two test administrators or one test administrator and one test proctor.

(6) Test proctors shall be utilized to support the following:

(a) gathering of missing supplies;

(b) assistance with medical situations; and

(c) monitoring of the testing environment in the presence of a test administrator.

D. Prohibited Practices. The following practices shall be prohibited:

(1) changing a student's standardized test answers, erasing double-marked or lightly erased or lightly marked answers, or directing or suggesting that a student change a standardized test answer;

(2) providing students with a review of specific standardized test items, specific standardized test items with minor changes in settings or numbers, verbal or written restatements or paraphrasing of standardized test items, specific vocabulary from standardized test directions or standardized test items, or answers before, during or after a standardized test;

(3) discussing, photocopying, or reproducing in any other fashion including paraphrasing, any portion of a standardized test or student responses;

(4) affording any student under a standardized administration extra time to complete a timed subtest, unless permitted as an accommodation in the student's IEP, 504 plan, or English learner plan;

(5) reading standardized test items aloud to students unless required in a specific standardized test or unless required as an accommodation in the student's IEP, 504 plan, or English learner plan;

(6) permitting students during a standardized test to have on or near their desk or on their person, any unauthorized items, including scrap paper, tablets, laptop computers, cell phones with or without cameras, cameras, calculators, calculator watches, smart watches, media players, headphones, backpacks, and rulers unless any of these are required or permitted by standardized test instructions;

(7) permitting students to observe standardized test vocabulary words with definitions, addition or multiplication tables (in various forms), spelling words on the standardized test, or similar assistance material during the administration of the standardized test;

(8) permitting students to talk, become disruptive, or exchange any test materials;

(9) permitting students to begin a subtest, leave the testing room, and return to finish the subtest;

(10) permitting students to enter a testing room after the standardized test has already commenced;

(11) permitting standardized test material to remain unattended in an unlocked room;

(12) taking standardized test material off campus unless specifically authorized by the DTC;

(13) displaying or failing to conceal visual aids that may assist students in the testing room;

(14) administering a standardized test to immediate family members or relatives including children, stepchildren, siblings, nieces, nephews, or grandchildren;

(15) teaching from, possessing, or in any way disseminating a photocopy or other reproduced or paraphrased standardized test or portion of a standardized test;

(16) copying copyrighted test preparation materials for the purpose of distribution;

(17) coaching or otherwise inappropriately assisting with the selection or writing of student answers; and

(18) accessing secure, online testing portals with unassigned log-in information

[6.10.7.12 NMAC - Rp, 6.10.7.12 NMAC, 12/27/2018]

6.10.7.13 NONDISCLOSURE OF STANDARDIZED TEST MATERIALS:

A. All standardized tests in the NMSAP are the proprietary interest of the department and shall be safeguarded.

B. Any person permitted to review a standardized test that is part of the NMSAP or participating in a review associated with assessment development procedures shall sign a nondisclosure form offered by the department agreeing not to reveal any confidential materials, specific standardized test items, or specific concepts or skills to be measured on the standardized test to include verbal or written restatements of standardized test items, minor changes in settings or numbers, and specific vocabulary from standardized test directions or standardized test items.

C. Any person given permission to review an NMSAP assessment may only review the assessment on-site during department office hours with the supervision of a department employee, unless permission to follow alternative review procedures is granted by the department. No NMSAP assessment may be written on, marked, electronically copied, hand-duplicated, or otherwise removed from the premises of the department or a local education agency in possession of an NMSAP assessment.

D. Upon request, a person suspected of engaging in a testing irregularity shall be given as much access to an NMSAP assessment as is reasonably necessary to prepare for a pending meeting or hearing relating to the suspected testing irregularity. The original or copy of any NMSAP assessment used as evidence at any meeting or hearing shall also be subject to confidentiality by all attendees and participants.

E. With the permission of testing vendors, the department may choose to release select portions of standardized assessments for the purposes of training and professional development. Under no circumstance

shall any part of a standardized test not previously released by the department be released by any unauthorized individual or organization.
[6.10.7.13 NMAC - Rp, 6.10.7.13 NMAC, 12/27/2018]

6.10.7.14 REPORTING STANDARDIZED TESTING IRREGULARITIES: To ensure the integrity of standardized tests and their results, the principles of test security shall be strictly followed. Accordingly, material violations of this rule or breaches of test security shall constitute good and just cause to suspend or revoke a person's department licensure.

A. School personnel and proctors shall report suspected testing irregularities to the DTC within 24 hours.

B. Districts and charters shall report by telephone or e-mail suspected testing irregularities to the department within three business days of being notified of a suspected testing irregularity.

C. The DTC shall submit a testing irregularity report within ten business days to the department assessment bureau that contains:

(1) the allegation(s);

(2) the findings from a completed investigation at the local level; and

(3) the corrective action taken, if any.

D. If a DTC is suspected of having engaged in a testing irregularity, the individual who discovers the irregularity shall notify the department assessment bureau by telephone or e-mail within three business days of learning of the suspected irregularity.

E. Districts and charters shall cooperate with the department if further investigation or action is needed.
[6.10.7.14 NMAC - Rp, 6.10.7.14 NMAC, 12/27/2018]

6.10.7.15 CORRECTIVE MEASURES FOR STANDARDIZED TESTING IRREGULARITIES: A. The department reserves the right to investigate suspected testing irregularities and confiscate any materials deemed necessary to conclude the investigation at their discretion.

B. Any combination of the following corrective measures may be taken by the department:

(1) direct the district or charter or a named individual to cease and desist engaging in a particular testing irregularity or the administration of further standardized tests during the current school year;

(2) revoke access to standardized test materials to ensure test security;

(3) recommend any further action it deems reasonable and necessary to maintain test security;

(4) invalidate the standardized test results and inform the district or charter that the affected student will not receive scores on portions or all of a standardized assessment;

(5) refer the matter for possible suspension or revocation of a person's educator or administrator licensure or other department licensure pursuant to procedures set forth in 6.68.3 NMAC;

(6) refer the matter to other department divisions for appropriate action;

(7) take any other action authorized by state or federal law or regulation; or

(8) modify school, district, and charter accountability determinations.
[6.10.7.15 NMAC - N, 12/27/2018]

HISTORY OF 6.10.7 NMAC

History of Repealed Material:
6.10.7 NMAC, Statewide Standardized Testing Security Issues and Irregularities, filed 9/28/2001 - Repealed effective 12/27/2018.

Other History of 6.10.7 NMAC:
6.10.7 NMAC, Statewide Standardized Testing Security Issues and Irregularities, filed 9/28/2001, was repealed and replaced by 6.10.7 NMAC, Standardized Testing Procedures and Requirements, effective 12/27/2018.

PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 19 PUBLIC SCHOOL ACCOUNTABILITY
PART 8 GRADING OF PUBLIC SCHOOLS

6.19.8.1 ISSUING AGENCY: Public Education Department, hereinafter the "department".
[6.19.8.1 NMAC - Rp, 6.19.8.1 NMAC, 12/31/2018

6.19.8.2 SCOPE: This rule shall apply to all public schools in New Mexico. If any part or application of this rule is held invalid, the remainder of the rule or its application in other situations shall not be affected.
[6.19.8.2 NMAC - Rp, 6.19.8.2 NMAC, 12/31/2018]

6.19.8.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2, and the A-B-C-D-F School Rating Act 22-2E-1 to 22-2E-4, 22-2C-4, 22-2C-5, and 22-2C-11 NMSA 1978.
[6.19.8.3 NMAC - Rp, 6.19.8.3 NMAC, 12/31/2018]

6.19.8.4 DURATION: Permanent.
[6.19.8.4 NMAC - Rp, 6.19.8.4 NMAC, 12/31/2018]

6.19.8.5 EFFECTIVE DATE: December 31, 2018, unless a later date is cited at the end of a section.
[6.19.8.5 NMAC - Rp, 6.19.8.5 NMAC, 12/31/2018]

6.19.8.6 OBJECTIVE: The purpose of this rule is to implement

the A-B-C-D-F Schools Rating Act (Sections 22-2E-1 to 22-2E-4 NMSA 1978) and the New Mexico State Plan under the Every Student Succeeds Act approved by the United States department of education in compliance with Section 1111 of the Elementary and Secondary Education Act as amended by the Every Student Succeeds Act to establish a consistent school accountability system for public schools. Additionally, this rule establishes criteria for determining the performance of public schools and provides options for students in failing schools. This rule provides for the identification of, and support for, historically struggling or low-performing schools and the prioritization of funding. This rule outlines the definition of supplemental accountability model schools and how the department may supplement the calculation of an overall score and school grade for supplemental accountability model schools. [6.19.8.6 NMAC - Rp, 6.19.8.6 NMAC, 12/31/2018]

6.19.8.7 DEFINITIONS:

A. "Chronic absenteeism" means an indicator equal to the percentage of students who missed ten percent or more of school days in which they were enrolled during the school year.

B. "College and career readiness" or "CCR" means an indicator calculated for all high schools statewide, consisting of the following:

(1) the number of students who participated in CCR opportunities, as defined by the department, divided by the number of students in the four-year graduation cohort;

(2) the number of students who were successful in CCR opportunities, as defined by the department, divided by the number students who participated; and

(3) the number of students who are successful in institutions of higher education measured by at least one of the following:

(a) remediation;

(b) enrollment;

(c) persistence; or

(d) completion.

C. "English learner" or "EL" means a student whose first or heritage language is not English and who does not yet understand, speak, read, or write English at a level comparable to grade-level English proficient peers and native English speakers.

D. "English learner progress" means a growth-to-proficiency indicator of the acquisition of English language proficiency for EL students.

(1) Each EL has an annual English language growth-to-proficiency target that is based on the student's grade level at identification as an EL and the student's initial English language proficiency level on the department-approved English language proficiency assessment.

(2) English language growth-to-proficiency targets are a measure of the extent to which students should be gaining English language proficiency within five years as measured by the department-approved English language proficiency assessment.

E. "Graduation growth" means an indicator equal to the annual increase in the four-year cohort graduation rate based on the three most recent years of data.

F. "Graduation rate" means an indicator equal to the percentage of students in a cohort who earned a New Mexico diploma of excellence within a specified number of years, with the cohort assigned based upon first-time entry into ninth grade.

(1) Four-year cohort graduation rate means the percentage of students in the four-year cohort who earned a New Mexico diploma of excellence within four years.

(2) Five-year cohort graduation rate means the percentage of students in the five-year cohort who earned a New Mexico diploma of excellence within five years.

(3) Six-year cohort graduation rate means the percentage of students in the six-year cohort who earned a New Mexico diploma of excellence within six years.

G. "Index score" means the score a school earns for each subgroup calculated using the same model as school grades using the indicators described in 6.19.8.8 NMAC that can be disaggregated by each of the following subgroups:

(1) economically disadvantaged students;

(2) students from racial and ethnic groups;

(3) children with disabilities; and

(4) English learners.

H. "Local education agency" or "LEA" means a school district or a state-authorized charter school.

I. "Proficiency" means a student's score of proficient or above as defined by the department on the New Mexico statewide assessment.

J. "Quartile" or "Q" means the student's quartile status for school grading when calculating the following indicators:

(1) Q1 means the lowest-performing quartile of students, based on previous years' performance on the statewide assessment;

(2) Q2 means the second-lowest-performing quartile of students, based on previous years' performance on the statewide assessment;

(3) Q3 means the second-highest-performing quartile of students, based on previous years' performance on the statewide assessment; and

(4) Q4 means the highest-performing quartile of students, based on previous years'

performance on the statewide assessment.

K. "School survey" means an indicator of student and family engagement, educator collaboration and engagement, and other critical components for quality schools as measured by a survey addressing the following domains:

(1) school climate;

(2) rigorous expectations;

(3) student-teacher relationships;

(4) belonging; and

(5) safety.

L. "Statewide assessment" means the collection of instruments administered annually that assess student academic performance and students' progress toward meeting New Mexico content standards in kindergarten through grade 12.

M. "Student growth" means an indicator of the extent to which students are increasing their mastery of state content standards as measured by the New Mexico statewide assessment in kindergarten and grades one through 12.

N. "Student proficiency" means an indicator equal to the percentage of students who were proficient or above in the current reporting year.

O. "Student STEM readiness" means an indicator of student proficiency on the statewide assessment for science.

P. "Supplemental accountability model school" or "SAM school" means any public school in which, based on the fortieth day reporting, thirty percent or more of the student population is:

(1) age 19 or older;

(2) non-gifted students who qualify for level C or level D special education; or

(3) pregnant or parenting teens.

[6.19.8.7 NMAC - Rp, 6.19.8.7 NMAC, 12/31/2018]

6.19.8.8 REQUIREMENTS:

A. Public schools shall earn a letter grade of either A, B, C, D, or F annually pursuant to Sections 22-2E-1 to 22-2E-4 NMSA 1978, A-B-C-D-F Schools Rating Act.

B. Elementary and middle schools shall earn grades based on the following indicators:

(1) student proficiency in English language arts and mathematics, as determined by New Mexico's statewide assessment;

(2) student STEM readiness;

(3) student growth;

(4) chronic absenteeism;

(5) school survey; and

(6) English learner progress.

C. High schools shall earn grades based on the following indicators:

(1) student proficiency in English language arts and mathematics, as determined by New Mexico's statewide assessment;

(2) student STEM readiness;

(3) student growth;

(4) chronic absenteeism;

(5) school survey;

(6) college and career readiness;

(7) graduation rate; and

(8) English learner progress.

D. The department shall annually publish disaggregated school grading data on its website.

E. Pursuant to Section 22-2E-4 NMSA 1978 and any applicable federal law, the parent of a student enrolled in a public school rated F for two of the last four years has the right to transfer the student in the same grade to any public school in the state not rated F or the right to have the student continue schooling by means of distance learning offered through the statewide or a local cyber academy. The school district or charter school in which the student was enrolled is responsible for the cost of distance learning. Enrollment policies shall align with the requirements outlined in Section 22-1-4 NMSA 1978 and applicable state charter law and shall prioritize the lowest achieving, low income students, as determined by the school district or charter school.

F. The transfer of any student pursuant to the A-B-C-D-F Schools Rating Act, Section 22-2E-2 NMSA 1978 shall be conducted pursuant to the open enrollment provisions of Section 22-1-4 NMSA 1978, provided that no school district or charter school shall adopt enrollment policies that exclude the enrollment of a student from a school rated F for two of the last four school years, and provided further that students seeking to enroll in a charter school must participate in that school's lottery unless the school has not exceeded its enrollment limit. The enrollment procedures set forth in Section 22-8B-4.1 NMSA 1978 shall apply. The sending school district, excluding state-authorized charter schools, shall be responsible for the transportation and transportation cost of a student who transfers to another school within the same district even if that school is outside of the student's attendance zone.

[6.19.8.8 NMAC - Rp, 6.19.8.8 NMAC, 12/31/2018]

6.19.8.9 DETERMINATION OF A SCHOOL'S GRADE:

A. Elementary and middle schools can earn up to a maximum of 100 points as follows:

(1) 33 points for student proficiency in English language arts and mathematics as determined by New Mexico's statewide assessment;

(2) five points for student STEM readiness;

(3) 42 points for student growth, as calculated in the following manner:

(a) five points for Q4;

(b) 12 points for Q2 and Q3; and

(c) 25 points for Q1;

(4) five points for chronic absenteeism;

(5) five points for school survey; and

(6) 10 points for English learner progress.

B. High schools can earn up to a maximum of 100 points as follows:

(1) 25 points for student proficiency in English language arts and mathematics, as determined by New Mexico's statewide assessment;

(2) five points for student STEM readiness;

(3) 30 points for student growth, calculated in the following manner:

(a) five points for Q4

(b) 10 points for Q2 and Q3; and

(c) 15 points for Q1;

(4) five points for chronic absenteeism;

(5) five points for school survey;

(6) 12 points for college and career readiness, with the greatest weight assigned to the percentage of successful students as outlined in Paragraph (2) of Subsection B of 6.19.8.7 NMAC.

(7) 13 points for graduation rate, calculated in the following manner:

(a) six points for the four-year rate;

(b) two points for the five-year rate;

(c) one point for the six-year rate; and

(d) four points for growth in the four-year rate; and

(8) five points for English learner progress.

C. All enrolled students in eligible grades and courses, as determined by the department, must be assessed with the appropriate state assessment, including the state-approved alternate assessment when applicable. The requirement for participation in the statewide assessment is ninety-five percent of all eligible students. Schools that fail to meet the minimum of ninety-five percent in either English language arts or mathematics shall have their letter grade reduced by one letter.

[6.19.8.9 NMAC - Rp, 6.19.8.9 NMAC, 12/31/2018]

6.19.8.10 PRIORITIZATION OF RESOURCES:

A. As part of the annual budget approval process pursuant to Section 22-8-11 NMSA 1978, on or before July 1 of each year, the department shall ensure that a local school board or governing body of a charter school is prioritizing resources of public schools identified pursuant to 6.19.8.11 NMAC.

B. Expenditures for instruction, student support services, instructional support services, and compensation and benefits for school principals designated as the 1000, 2100, 2200, and 2400 functions, respectively, in fund 11000 of the department's chart of accounts for expenditures shall be reported by the department every two years and posted on the department website. Published reports shall include the school grade earned for the three most recent years.

[6.19.8.10 NMAC - Rp, 6.19.8.10 NMAC, 12/31/2018]

6.19.8.11 SCHOOL IDENTIFICATION AND INTERVENTIONS: The department shall identify schools for comprehensive support and improvement (CSI), targeted support and improvement (TSI), and more rigorous interventions (MRI).

A. CSI identification. A school shall be identified as a CSI school if the school:

(1) is in the lowest performing five percent of Title I schools in New Mexico as identified by the overall score earned on the school grading report card as defined in 6.19.8.9 NMAC;

(2) has a four-year graduation rate less than or equal to 66 and two-thirds percent for two of the past three years; or

(3) is a Title I school that was previously identified for TSI due to low performing student subgroups that has not demonstrated sufficient improvement after three years in that status by meeting the exit criteria.

B. CSI exit criteria. CSI status has a three-year implementation timeline. An identified CSI school is expected to exit CSI status within three years of being identified. Exiting CSI status shall occur under the following conditions:

(1) for schools identified for being among the bottom five percent of Title I schools:

(a) improving the school grading overall score so that it is above the same overall score used to identify the lowest-performing five percent of Title I schools as described in Paragraph (1) of Subsection A of 6.19.8.11 NMAC; or

(b) by earning a grade of "C" or better;

(2) for high schools identified due to low graduation rates, the school must improve their four-year graduation rate to be above 66 and two-thirds percent; or

(3) for Title I schools previously identified as TSI schools with low-performing subgroups, the school must improve the index scores of all low-performing subgroups so the index scores for all subgroups are above the same score used to identify schools with low-performing subgroups as described in Subsection C of 6.19.8.11 NMAC.

C. TSI identification. A school shall be identified as a TSI school if one or more subgroups have an index score at or below the performance of all students at any of the lowest-performing five percent of Title I schools as defined in Paragraph (1) of Subsection A of 6.19.8.11 NMAC.

D. TSI exit criteria. Schools with one or more low-performing subgroups shall exit TSI status at any time when the school improves the index scores of all low-performing subgroups so the index scores for all subgroups are above the same score used to identify schools with low-performing subgroups as described in Subsection C of 6.19.8.11 NMAC.

E. MRI identification. A school shall be identified as an MRI school under one of the following conditions:

(1) the school has not exited CSI status in three years after identification; or

(2) the school has earned five or more consecutive school grades of F.

F. MRI plans. Once identified as an MRI school, LEAs shall be required to identify and submit a plan falling under one of the following categories:

(1) closure;

(2) restart;

(3) champion and provide choice: champion a range of choices in an open system that focuses on new approaches to learning, one that keeps individual students at the center of accessing options that best support their learning path. There shall be clear evidence that choice has been championed for the affected students; and

(4) significantly restructure and redesign:

(a) The school shall change the vision and systems at a school by:

(i) extending instructional time;

(ii) significantly changing staffing to include only educators earning highly effective ratings and above; and

(iii) adopting state-selected curriculum approaches.

(b) The school may implement personalized learning models for all students.

(5) The department shall provide additional guidance on the categories outlined in Paragraphs (1) through (4) of Subsection F of 6.19.8.11 NMAC.

G. MRI plan approval. If the district refuses to identify and obtain department approval for a more rigorous intervention in which to participate, the department will select the intervention for the school. The department reserves the right to approve or deny any MRI plan chosen and developed by an LEA.

H. MRI exit criteria. An identified MRI school shall exit in compliance with its approved plan if:

(1) the school has earned a "C" or better for three years; or

(2) the school has improved its school grading overall score such that it is above the same overall score used to identify the lowest-performing five percent of Title I schools as described in Paragraph (1) of Subsection A of 6.19.8.11 NMAC for three years. [6.19.8.11 NMAC - Rp, 6.19.8.11 NMAC, 12/31/2018]

6.19.8.12 SUPPLEMENTAL ACCOUNTABILITY MODEL:

A. The department may supplement the calculation of an overall score and school grade as described in 6.19.8.9 NMAC only for supplemental accountability model schools in one or more ways, as determined by the department and outlined in Subsections B, C, and D of 6.19.8.12 NMAC.

B. The department may include the rate of senior completion, which consists of students who are not members of the four-year graduation cohort, when calculating the number of points earned for the four-year cohort graduation rate described in Subparagraph (a) of Paragraph (7) of Subsection B of 6.19.8.9 NMAC;

C. The department may include additional department-approved assessments when calculating the participation and success components of the college and career readiness indicator included in Paragraph (6) of Subsection B of 6.19.8.9 NMAC; or

D. The department may realign the point distributions described in 6.19.8.9 NMAC as follows:

(1) For elementary and middle schools:

(a) 25 points for student proficiency in English language arts and mathematics as determined by New Mexico's statewide assessment;

(b) five points for student STEM readiness;

(c) 50 points for student growth, as calculated in the following manner:

(i) five points for Q4;

(ii) 15 points for Q2 and Q3; and

(iii) 30 points for Q1;

(d) five points for chronic absenteeism;

(e) five points for school survey; and

(f) 10 points for English learner progress.

(2) For high schools:

(a) 20 points for student proficiency in English language arts and mathematics, as determined by New Mexico's statewide assessment;

(b) five points for student STEM readiness;

(c) 35 points for student growth, as calculated in the following manner:

(i) five points for Q4

(ii) 15 points for Q2 and Q3; and

(iii) 15 points for Q1;

(d) five points for chronic absenteeism;

(e) five points for school survey;

(f) 12 points for college and career readiness, with the greatest weight assigned to the percentage of successful students as outlined in

Paragraph (2) of Subsection B of 6.19.8.7 NMAC;

(g) 13 points for graduation rate, calculated in the following manner:

(i) six points for the four-year rate;

(ii) two points for the five-year rate;

(iii) one point for the six-year rate; and

(iv) four points for growth in the four-year rate; and

(h) five points for English learner progress.

E. Schools eligible for SAM school status remain subject to the assessment participation requirement described in Subsection C of 6.19.8.9 NMAC.

[6.19.8.12 NMAC - N, 12/31/2018]

6.19.8.13 DISTRICT AND STATE REPORT CARDS: The department shall generate and publish district and state report cards annually in accordance with federal and state law.

HISTORY OF 6.19.8 NMAC: [RESERVED]

PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 29 STANDARDS FOR EXCELLENCE
PART 17 NEW MEXICO COMPUTER SCIENCE STANDARDS

6.29.17.1 ISSUING AGENCY: Public Education Department, hereinafter the department.

[6.29.2.1 NMAC - N, 7/1/2019]

6.29.17.2 SCOPE: All public schools, state educational institutions and educational programs conducted in state institutions other than New Mexico military institute.

[6.29.2.2 NMAC - N, 7/1/2019]

6.29.17.3 STATUTORY AUTHORITY:

A. Section 22-2-2 NMSA 1978 grants the authority and responsibility for the assessment and evaluation of public schools, state-supported educational institutions and educational programs conducted in state institutions other than New Mexico military institute.

B. Section 22-2-2 NMSA 1978 directs the department to set graduation expectations.

C. Section 22-2C-3 NMSA 1978 requires the department to adopt academic content and performance standards and to measure the performance of public schools in New Mexico.

[6.29.2.3 NMAC - N, 7/1/2019]

6.29.17.4 DURATION: Permanent.

[6.29.2.4 NMAC - N, 7/1/2019]

6.29.17.5 EFFECTIVE DATE: July 1, 2019, unless a later date is cited at the end of a section.

[6.29.2.5 NMAC - N, 7/1/2019]

6.29.17.6 OBJECTIVE: The department-approved New Mexico computer science standards represent the required knowledge and skills in this field. These standards are mandatory for any courses in kindergarten through grade 12 in which computer science content is being taught.

[6.29.2.6 NMAC - N, 7/1/2019]

6.29.17.7 DEFINITIONS: [RESERVED]

[6.29.2.7 NMAC - N, 7/1/2019]

6.29.17.8 CONTENT STANDARDS WITH BENCHMARKS AND PERFORMANCE STANDARDS: All public schools, state supported educational institutions and educational programs conducted in state institutions, other than the New Mexico military institute, are bound by the New Mexico computer science standards. These standards are available at www.ped.state.nm.us. The K-12 computer science standards published by the computer science teachers association and the association for computing machinery, inc. and any amendments made thereto are incorporated in this rule by reference.

[6.29.2.8 NMAC - N, 7/1/2019]

History of 6.29.17 NMAC: [RESERVED]

PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 60 SCHOOL PERSONNEL - GENERAL PROVISIONS
PART 10 MENTORSHIP PROGRAMS FOR TEACHERS

6.60.10.1 ISSUING AGENCY: Public Education Department, herein after the "department".

[6.60.10.1 NMAC - Rp, 6.60.10.1 NMAC, 7/1/2019]

6.60.10.2 SCOPE: Applies to all New Mexico public school districts, charter schools, or state educational institutions. First-year teachers shall successfully complete a minimum one-year teacher mentorship program provided by the public school district, charter school or state educational institution. If any part or application of this rule is held invalid, the remainder of the rule or its application in other situations shall not be affected.

[6.60.10.2 NMAC - Rp, 6.60.10.2 NMAC, 7/1/2019]

6.60.10.3 STATUTORY AUTHORITY: Sections 22-2-1 and 22-10A-9 NMSA 1978.

[6.60.10.3 NMAC - Rp, 6.60.10.3 NMAC, 7/1/2019]

6.60.10.4 DURATION: Permanent.

[6.60.10.4 NMAC - Rp, 6.60.10.4 NMAC, 7/1/2019]

6.60.10.5 EFFECTIVE DATE: July 1, 2019, unless a later date is cited at the end of a section.
[6.60.10.5 NMAC - Rp, 6.60.10.5 NMAC, 7/1/2019]

6.60.10.6 OBJECTIVE: To establish requirements for teacher mentorship programs that improve teacher practice, achievement of their students, and overall performance of their school.
[6.60.10.6 NMAC - Rp, 6.60.10.6 NMAC, 7/1/2019]

6.60.10.7 DEFINITIONS:

A. "First-year teacher" means a teacher in their first year of teaching in a New Mexico public school as a teacher of record, holding a New Mexico teaching license. Public school districts and charters may, at their discretion, extend this definition to include teachers in their first year as teacher of record in their school who may have had prior teaching experience in another school.

B. "Designated mentor" means a level 2 or level 3 teacher who:

(1) has earned an effectiveness rating of highly effective or exemplary as determined by the state's educator effectiveness evaluation system, NMTEACH, as outlined in 6.69.8 NMAC, for at least one of the two most recent years;

(2) is a nationally board certified teacher and has earned an effectiveness rating of effective as determined by the state's educator effectiveness evaluation system, NMTEACH, as outlined in 6.69.8 NMAC, for at least one of the most recent two years; or

(3) is assigned by the department in situations where no qualifying mentor is available.

C. "Director" means the director of the educator quality division for the public education department.

D. "Local education agency" or **"LEA"** means a local school district, charter school, or state educational institution.

E. "Teaching license" means a department license issued in any of the following:

(1) birth - pre-K;

(2) pre-K - grade 3;

(3) grades K-8;

(4) grades 5 - 9;

(5) grades 7-12;

(6) special education grades pre K-12;

(7) licensure for pre K-12 in specialty areas;

(8) blindness and visual impairment birth - grade 12;

(9) secondary vocational-technical education; or

(10) deaf and hard of hearing.

[6.60.10.7 NMAC - Rp, 6.60.10.7 NMAC, 7/1/2019]

6.60.10.8 REQUIREMENTS FOR TEACHER MENTORSHIP PROGRAMS: All mentorship programs must receive initial approval from the director prior to the first year of implementation and each year thereafter. To receive approval, public school districts, charter schools, or state educational institutions shall submit a proposed teacher mentorship program that aligns with and supports the public school district's, charter school's, or state educational institution's long range plan for student success. Teacher mentorship programs shall align with all competencies outlined in the state's educator effectiveness evaluation system, NMTEACH, in accordance with 6.69.8 NMAC, and all other competencies outlined in department regulation and guidance. The proposal shall describe how this mandatory teacher mentorship program for first-year teachers addresses the following.

A. Individual support for first-year teachers from designated mentors shall be aligned to all competencies outlined in the NMTEACH system and also include, at a minimum:

(1) instructional material development in alignment with department-approved standards;

(2) culturally and linguistically responsive, as defined by the department, lesson planning and lesson design appropriate for all diverse learners, including English learners and students with disabilities;

(3) development and administration of formative and benchmark student academic assessments;

(4) individual instructional conferences with students;

(5) individual conferences with parents and families, specifically to discuss student achievement, assessment scores, and college and career readiness; and

(6) classroom observation protocol.

B. Structured and evidence-based training activities for designated mentors, which shall include the following, at a minimum:

(1) identifying and addressing the needs of first-year teachers;

(2) developing mentorship relationships;

(3) evaluating mentees using observation domains outlined in NMTEACH; and

(4) documenting teacher growth aligned with the NMTEACH system and rubrics.

C. Structured process for selection of designated mentors shall include:

(1) selection criteria and process; and

(2) criteria of evaluation for the efficacy of the mentor.

D. Compensation provided to designated mentors, as determined by the relevant public school district, charter school, or state educational institution. Pursuant to Section 22-10A-4 NMSA 1978, a level 3-A license is the highest level of teaching licensure for those teachers who choose to advance as

instructional leaders in the teaching profession and undertake greater responsibilities such as curriculum development, peer intervention and mentoring. LEAs may increase compensation for level 3-A license teachers.

E. Mentor quality, specifically guaranteeing that all designated mentors will be a level 2 or level 3 teacher who:

(1) has earned an effectiveness rating of highly effective or exemplary as determined by the state's educator effectiveness evaluation system, NMTEACH, as outlined in 6.69.8 NMAC, for at least one of the two most recent years;

(2) is a nationally board certified teacher and has earned an effectiveness rating of effective as determined by the state's educator effectiveness evaluation system, NMTEACH, as outlined in 6.69.8 NMAC, for at least one of the most recent two years; or

(3) is assigned by the department in situations where no qualifying mentor is available.

F. Requirements to complete a mentorship program.

G. Programming that is at least one year in length and includes provisions whereby support for an additional one or two years may be provided to teachers who do not successfully complete the first-year teacher mentorship program and continue to be employed in the public school district, charter school, or state educational institution.

[6.60.10.8 NMAC - Rp, 6.60.10.8 NMAC, 7/1/2019]

6.60.10.9 COMPLETION OF TEACHER MENTORSHIP PROGRAM: All first-year teachers shall successfully complete a minimum of a one-year teacher mentorship program to be eligible for a level 2 license. Successful completion of the program shall be determined by the public school district, charter school, or state educational institution.

[6.60.10.9 NMAC - Rp, 6.60.10.9 NMAC, 7/1/2019]

6.60.10.10 ANNUAL PROGRAM REPORTING:

A. Mentorship programs shall be reviewed by the department annually for effectiveness. For the purposes of such review, each district shall maintain teacher evaluation data through NMTEACH and administer a department-issued teacher mentorship program survey for first-year teachers. These data shall be provided to the department in a report submitted annually by November 15 of the following school year. The annual report shall include the following, at a minimum, by school or institution:

(1) assessment of proficiency in the areas of practice detailed in the approved teacher mentorship proposal, pursuant to Subsection A of 6.60.10.8 NMAC;

(2) a current analysis each first-year teacher's performance as demonstrated by NMTEACH; and

(3) results from the department-issued teacher mentorship program survey for first-year teachers.

B. The department shall compile and analyze the data submitted by public school districts, charter schools and state educational institutions and report annually to the appropriate interim legislative committee. Nothing may inhibit the department's discretion to share program evaluation results as it determines to be beneficial, within the bounds of applicable state and federal laws and regulations.

[6.60.10.10 NMAC - Rp, 6.60.10.10 NMAC, 7/1/2019]

HISTORY OF 6.60.10 NMAC:
[**RESERVED**]

PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 65 SCHOOL PERSONNEL - EDUCATOR PREPARATION
PART 4 TEACHER LEADER DEVELOPMENT FRAMEWORK

6.65.4.1 ISSUING AGENCY: Public Education Department, herein after the department.

[6.65.4.1 NMAC - N, 12/31/2018]

6.65.4.2 SCOPE: The New Mexico teacher leader development framework establishes statewide standards for teacher leader development opportunities for licensed staff in New Mexico public schools.

[6.65.4.2 NMAC - N, 12/31/2018]

6.65.4.3 STATUTORY AUTHORITY: Subsection C of Section 22-1-1.2 and Paragraph (1) of Subsection B of Section 22-1-1.2 NMSA 1978.

[6.65.4.3 NMAC - N, 12/31/2018]

6.65.4.4 DURATION: Permanent.

[6.65.4.4 NMAC - N, 12/31/2018]

6.65.4.5 EFFECTIVE DATE: December 31, 2018, unless a later date is cited at the end of a section.

[6.65.4.5 NMAC - N, 12/31/2018]

6.65.4.6 OBJECTIVE: The objective of this rule is to establish criteria for specific teacher leadership roles and opportunities provided by the department.

[6.65.4.6 NMAC - N, 12/31/2018]

6.65.4.7 DEFINITIONS:

A. "Department policymakers" means any senior level department officials who have a direct impact on policy development or policy implementation.

B. "Regionally diverse" means representative of every region across the state of New Mexico.

C. "School liaison" means a licensed, employed school staff person, not to include school administration, who serves as their school's representative to facilitate communication between the school and the department.

D. "Secretary" means the secretary of education for the New Mexico public education department.

E. "Secretary's teacher advisory" means a group of licensed, employed teachers who earn a rating of highly effective or exemplary on the state's educator effectiveness evaluation system, NMTEACH, and who meet with the secretary regularly in person quarterly and by conference call monthly to provide feedback on education issues. The department shall make every effort to ensure that a minimum of ten percent of the participants are nationally board certified teachers who are licensed, employed teachers and earn a rating of highly effective or exemplary on the state's educator effectiveness evaluation system, NMTEACH.

F. "Teacher ambassador" means licensed teacher, currently employed by a school or district, who learns about key policy areas as defined by the federal Every Student Succeeds Act (ESSA), develops a statewide community of support, and creates resources to equip teachers with accurate information.

G. "Teacher liaison" means a classroom teacher hired by the department to implement and manage the teacher leader development framework as outlined in 6.65.4 NMAC and to maintain direct communication between the department and regionally diverse teachers, providing them with resources and a platform for communication.

[6.65.4.7 NMAC - N, 12/31/2018]

6.65.4.8 REQUIREMENTS FOR TEACHER LEADER DEVELOPMENT FRAMEWORK:

A. School liaisons program. The department shall make every effort to have one school liaison in every public school in the state. The school liaison program is a regional model designed to develop a set of teachers who will:

(1) serve as their school's liaison to disseminate information regarding key policy areas as defined by the federal ESSA;

(2) provide feedback to department policymakers and the secretary;

(3) develop skills to support colleagues' growth and development; and

(4) gain access to department resources and tools.

B. Teacher ambassadors program. Beginning December 31, 2018, returning applicants shall be given the option to stay in the program for one additional year. The department shall make every effort to begin each year with 55 teacher ambassadors, at a minimum.

(1) Teachers ambassadors are required to complete specific deliverables outlined by the department.

(2) The department shall provide teacher ambassadors with a stipend.

C. Secretary's teacher advisory. Beginning December 31, 2018, returning applicants shall be given the option to stay in the program through July 1, 2020. The department shall make every effort to begin each year with 50 members, at a minimum, of the secretary's teacher advisory. The secretary's teacher advisory shall collaborate and engage with the secretary in person quarterly and by conference call monthly to advise on key policy areas as defined in the federal ESSA. The department shall work to ensure representation among the secretary's teacher advisory members that reflects the diverse geography and cultures of New Mexico.

[6.65.4.8 NMAC - N, 12/31/2018]

6.65.4.9 REQUIREMENTS FOR TEACHER LEADER DEVELOPMENT ENGAGEMENT:

A. School liaisons. School liaisons must participate in virtual and regional in-person meetings provided and facilitated by the department.

(1) The purpose of the virtual and regional in-person meetings is to:

(a) collaborate with educators across the region;

(b) learn about key policy areas as defined by ESSA;

(c) build instructional content and leadership skills through professional learning opportunities;

(d) network with other teachers; and

(e) develop a community of support.

(2) Virtual meetings facilitated by the department shall occur, at a minimum, once every month. Virtual meetings shall be scheduled to ensure that teacher liaisons will not miss instructional time with students.

(3) Regional meetings shall occur at locations across the state, at a minimum, two times per year. Regional meetings shall be scheduled to ensure that teacher liaisons will not miss instructional time with students nor need to stay overnight.

(4) Virtual and regional meetings shall provide teacher liaisons with resources and information regarding education policy and practice.

B. Teacher ambassadors.

(1) Teacher ambassadors shall participate in quarterly in-person meetings annually hosted by the department.

(2) The in-person meetings shall provide opportunities to learn about and discuss education policy and practice.

C. Secretary's teacher advisory.

(1) The secretary's teacher advisory shall meet with the secretary at least once quarterly for a full day.

(2) The secretary's teacher advisory shall participate in monthly calls facilitated by the secretary and teacher liaisons.

D. Annual teacher summit. An annual teacher summit shall be organized by the department. The teacher liaisons shall be responsible for disseminating communication regarding the event and planning logistics. The department shall collaborate with school liaisons, teacher ambassadors, and the secretary's teacher advisory to ensure that the teacher summit:

(1) brings together teachers from across the state to learn, collaborate, and celebrate with their peers;

(2) provides training that covers multiple areas of education policy and practice and is led by teachers.

[6.65.4.9 NMAC - N, 12/31/2018]

6.65.4.10 TECHNICAL ASSISTANCE:

A. The teacher liaison's main function shall be to communicate directly with teachers and to manage each of the three teacher leader groups outlined in 6.65.4.8 NMAC.

(1) The teacher liaison shall provide the secretary with support regarding all communication with teachers.

(2) The teacher liaison shall meet with the secretary on a monthly basis, at a minimum, to review key policy areas as defined by ESSA and to plan teacher engagement.

(3) The teacher liaison shall provide direct communication between the department and teachers statewide on a daily basis.

(4) The teacher liaison shall:

(a) share announcements with each of the three teacher leader groups outlined in 6.65.4.8 NMAC;

(b) receive and answer teacher leader questions on various platforms;

(c) connect teacher leaders with department directors and department policymakers for engagement opportunities and sharing of resources;

(d) develop, coordinate, and facilitate content for virtual and in-person trainings to all teacher leader groups outlined in Sections 8 and 9 of 6.65.4 NMAC;

(e) provide quarterly emails to all New Mexico teachers that include updates from the department;

(f) develop and execute content for teacher videos and profiles to be published on the department website;

(g) plan, manage, and communicate information regarding the annual teacher summit.

B. The teacher liaison shall oversee the recruitment, application process, selection, and execution for the following programs:

(1) school liaisons program;

(2) teacher ambassadors program; and

(3) secretary's teacher advisory.

History of 6.65.4 NMAC: [RESERVED]

PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.80.4 NMAC, Sections 7, 13, 14, and 17, effective 12/31/2018.

6.80.4.7 DEFINITIONS:

A. "Applicant" means one or more teachers, parents or community members or a public post-secondary educational institution or nonprofit organization who submits an initial or renewal application to a chartering authority.

B. "Authorizer" means either a local school board or the commission that permits the operation of a charter school.

C. "Charter school" means a conversion school or start-up school authorized by a chartering authority to operate as a public school.

D. "Chartering authority" means either a local school board or the commission that permits the operation of a charter school.

E. "Chief executive officer" means the person with duties similar to that of a superintendent as set forth in Section 22-5-14 NMSA 1978.

F. "Commission" means the public education commission.

G. "Conversion school" means an existing public school within a school district that was authorized by a local school board or the commission to become a charter school.

H. "Days" means, unless otherwise specified in a provision in this rule or applicable statute, business days when the period referenced is 10 days or less, and calendar days when the period referenced is 11 days or more. In computing the amount of days, exclude the day of the event that triggers the period, and include the last day of the period. If the last day is a day when the department is closed, the period continues to run until the end of the next business day that the department is not closed. Whenever a person or entity must act under this rule within a prescribed period after service of a notice or paper upon the person or entity, and the notice or paper is served by mail or courier service, three calendar days are added to the prescribed period.

[~~H~~] **I. "Department"** means the public education department.

[~~I~~] **J. "Division"** means the charter schools division of the department which maintains offices in both Santa Fe and Albuquerque.

[~~J~~] **K. "Governing body"**

means the governing body of a charter school as set forth in the school's charter.

[~~K~~] L. **"Head administrator"** means the duly licensed school administrator who is the chief executive officer of the charter school.

[~~L~~] M. **"Locally chartered charter school"** means a charter school authorized by a local school board.

[~~M~~] N. **"MEM"** means membership, which is the total enrollment of qualified students on the current roll of a class or school on a specified day.

[~~N~~] O. **"New Mexico coalition for charter schools"** means the non-profit membership organization representing charter schools in New Mexico.

[~~O~~] P. **"New Mexico school boards association"** means the organization consisting of the local public school boards and the governing bodies of charter schools in New Mexico.

[~~P~~] Q. **"Organizer"** means one or more persons or entities who seek to arrange, form or otherwise put together a charter school.

[~~Q~~] R. **"Prospective applicant"** means one or more teachers, parents or community members or a public post-secondary educational institution or nonprofit organization who submits a notice of intent to a chartering authority.

[~~R~~] S. **"Secretary"** means the New Mexico secretary of public education.

[~~S~~] T. **"Start-up charter school"** means a public school developed by one or more parents, teachers or community members who applied to and were authorized by a chartering authority to become a charter school.

[~~T~~] U. **"Application for start-up charter school"** means an application requesting the establishment of either a locally-chartered or state-chartered school.

[~~U~~] V. **"Special education plan"** means a comprehensive written design, scheme or method that includes specific details on how the charter school shall:

(1) utilize state and federal funds to provide children with disabilities a free and appropriate public education, in accordance with applicable law;

(2) provide educational services, related services and supplementary aids and services to children with disabilities in accordance with each child's individualized education program; and

(3) address a continuum of alternative educational placements to meet the needs of students with disabilities, in accordance with applicable law.

[~~V~~] W. **"State-chartered charter school"** means a charter school authorized by the commission. [6.80.4.7 NMAC - Rp, 6.80.4.7 NMAC, 6/29/2007; A, 6/30/2008; A, 6/30/2009; A, 12/31/2018]

6.80.4.13 CHARTER SCHOOL RENEWAL PROCESS AND RENEWAL APPLICATIONS:

A. The governing body of a charter school seeking to renew its charter shall file its renewal application with a chartering authority no earlier than 270 days prior to the date the charter expires. Commencing with any charters that are due to expire at any time after January 1, 2008, all applications for renewal shall be submitted no later than October 1 of the fiscal year prior to the expiration of the school's charter. The chartering authority shall rule in a public meeting on the renewal application no later than January 1 of the fiscal year in which the charter expires.

B. The governing body may submit its charter renewal application to either the commission or to the local school board of the district in which the charter school is located, but may not submit the renewal application to both authorizers simultaneously.

C. The application shall contain:

(1) a report on the progress of the charter school in achieving the goals, objectives, student performance standards, state minimum educational standards and other terms of the initial approved charter application, including the accountability requirements set forth in the Assessment and Accountability Act (Section 22-2C-1 et seq., NMSA, 1978);

(2) a financial statement that discloses the costs of administration, instruction and other spending categories for the charter school that is understandable to the general public, that will allow comparison of costs to other schools or comparable organizations and that is in a format required by the department;

(3) any changes to the original charter the governing board is requesting and any amendment to the initial charter, which were previously approved;

(4) a certified petition in support of the charter school renewing its charter status signed by not less than 65 percent of the employees in the charter school;

(5) a certified petition in support of the charter school renewing its charter status signed by at least seventy-five percent of the households whose children are enrolled in the charter school as identified in the school's 120-day report of the fiscal year prior to the expiration of the charter;

(6) a description of the charter school facilities and assurances that the facilities are in compliance with the requirements of Section 22-8B-4.2 NMSA 1978; and

(7) a statement of the term of the renewal requested, if less than five years; if a charter school renewal application does not include a statement of the term of the renewal, it will be assumed that renewal is sought for a term of five years.

D. A chartering authority may refuse to renew a charter if it determines that:

(1) the charter school committed a material violation of any of the conditions, standards or procedures set forth in the charter contract;

(2) the charter school failed to meet or make substantial progress toward achievement of the department's minimum educational standards or student performance standards [~~identified in the charter application;~~.] Failure to meet or make substantial progress toward achievement of the department's standards of excellence or student performance standards identified in the charter contract and defined by the following criteria:

(a) charter school earns a tier four rating as defined in the charter school academic performance framework, developed and approved by the public education commission, in the charter contract for the most recent two consecutive years or for three of the last four years; or

(b) charter school earns an F rating pursuant to Section 22-2E-1 NMSA 1978 for the most recent two consecutive years or any combination of D ratings or F ratings over the last three years;

(3) the charter school failed to meet generally accepted standards of fiscal management;

(4) the charter school violated any provision of law from which the charter school was not specifically exempted; or

(5) the public school capital outlay council has determined that the facilities do not meet the standards required in Section 22-8B-4.2 NMSA 1978.

E. [~~If the chartering authority refuses to approve a charter school renewal application or approves the renewal application with conditions, it shall state its reasons for the non-renewal or imposition of conditions in writing within 14 days of the meeting; provided that if the chartering authority grants renewal of a charter, it shall deliver the approved charter to the applicant and a copy to the chartering authority. The chartering authority shall keep a copy of the charter for its files.~~] If the chartering authority refuses to approve a charter school renewal application or approves the renewal application with conditions, it shall state its reasons for the non-renewal or imposition of conditions in writing within 14 days of the public meeting at which the vote was taken. The written decision must restate the motion that was voted on in the public meeting and must restate the reasons that were voted on in the public meeting during which the vote was taken.

F. If the chartering authority grants renewal of a charter, it shall deliver the approved charter to the applicant and a copy to the chartering authority.

[~~F~~] **G.** If the approved charter contains a waiver request for release from department rules or the Public School Code, the department shall notify the authorizer and the charter school whether the request is granted or denied and, if denied, the reasons thereto.

[~~G~~] **H.** If the authorizer refuses to approve a charter school renewal application or imposes conditions for renewal that are unacceptable to the charter applicant, the applicant may appeal the decision to the secretary pursuant to Sections 22-8B-7 NMSA 1978 and 6.80.4.14 NMAC.

[~~H~~] **I.** The provisions of this section shall apply to conversion schools.

[6.80.4.13 NMAC - Rp, 6.80.4.8 NMAC, 6/29/2007; A, 6/30/2008; A, 6/30/2009; A, 12/31/2018]

6.80.4.14 APPEALS TO THE SECRETARY:

A. Right of appeal. A charter applicant may appeal to the secretary from any chartering authority decision denying a charter school application, revoking or refusing to renew a previously approved charter, or imposing conditions for approval or renewal that are unacceptable to the applicant. Appeals from suspension of governing bodies and head administrators by the secretary shall be governed by the procedures set forth in 6.30.6 NMAC ("Suspension of Authority of a Local School Board, Superintendent or Principal").

B. Notice of appeal and appellant's argument in support of appeal.

(1) Filing and service of notice and argument in support of appeal. A charter applicant or governing body of a charter school that wishes to appeal a decision of a chartering authority concerning the denial, nonrenewal or revocation of a charter, or the imposition of conditions for approval or renewal that are unacceptable to the charter school or charter school applicant shall file and serve a written notice of appeal and its argument in support of appeal within 30 days after service of the chartering authority's decision. One original plus four copies of the notice of appeal and argument in support of appeal together with [~~any supporting documents~~] the required attachments shall be filed with the secretary at the department's main office in Santa Fe. No notice of appeal or argument in support of appeal, including exhibits [~~and other related documents~~] or required attachments, shall be filed using compact disks, floppy disks or email; instead, paper documents must be filed with the department.

(2) [~~Grounds~~] Appellant's argument in support of appeal. [~~The notice~~] The appellant's argument in support of appeal shall include a [~~brief~~] statement of the reasons and argument in support of why the appellant contends the chartering authority's decision was in error with reference to the standards set forth in Subsection B of Section 22-8B-7 NMSA 1978 that the authorizer acted arbitrarily or capriciously, rendered a decision not supported by substantial evidence, or did not act in accordance with law. The appellant shall limit the grounds of its appeal to the authorizer's written reasons for denial, nonrenewal, revocation or imposition of conditions.

(3) Required attachments. The appellant shall attach to each copy of the notice of appeal:

(a) a copy of the chartering authority's written decision, together with a copy of the authorizer's minutes or draft minutes of the meeting if available; and

(b) a copy of the charter or proposed charter in question.

C. Filing and service of other documents. An original document shall be filed with the secretary at the department's main office in Santa Fe. Each party shall simultaneously serve a copy of all documents filed with the secretary including any attachments upon the other party at that party's address of record on appeal. A party may file documents other than a notice of appeal and required documents referenced at Paragraph (5) of Subsection D of 6.80.4.14 NMAC below, by email to the secretary provided that the email includes any attachments, as well as the sender's name and mailing address. Filings with the secretary shall reflect by certification of the sender that a copy of all documents being submitted is simultaneously being served on the other party, the method of service, and the address where filed. Filing or service by mail is not complete until the documents are received.

D. Pre-hearing procedures.

(1) Within 10 days after receipt of the notice of appeal, the secretary shall inform the parties by letter of the date, time and location for the appeal hearing.

(2) Except for brief inquiries about scheduling, logistics, procedure or similar questions that do not address the merits of the case, neither party shall communicate with or encourage others to communicate with any employee of the department about a pending appeal unless the other party is simultaneously served with a copy of any written communication or has an opportunity to participate in any conversation by meeting or conference call. Nor shall any employee of the department initiate such prohibited communications. The secretary must disqualify himself or herself from hearing an appeal if the secretary determines, after learning of a prohibited communication, that the secretary is unable to render an unbiased decision. Appellants will be provided a point of contact in the letter referenced in Paragraph (1) of Subsection D of 6.80.4.14 NMAC.

[~~**(3)** The deadlines in 6.80.4.14 NMAC may be extended by the secretary for good cause. Good cause may include, but shall not be limited to, an agreement between the parties or a well-reasoned request from either party based upon hardship, a scheduling conflict or an event beyond the control of the requester.~~]

[~~**(4)**~~] **(3)** All submissions to the secretary on appeal shall focus on the factual and legal correctness of the chartering authority's decision in light of the grounds upon which a chartering authority may deny an application set forth in Subsection K of Section 22-8B-6 NMSA 1978 or the grounds for non-renewal or revocation as set forth in Subsection F of Section 22-8-12 NMSA 1978, and the standards for affirmance or reversal that the chartering authority's decision was arbitrary, capricious, not supported by substantial evidence or otherwise not in accordance with the law.

[~~**(5)** Within 10 days after filing the notice of appeal, the appellant shall file one original and four copies with the secretary and serve upon the chartering authority one copy of:~~

~~**(a)** the appellant's arguments for reversal of the chartering authority's decision, clearly labeled accordingly;~~

~~**(b)** the chartering authority's written decision that the appellant is appealing;~~

~~**(c)** the charter or proposed charter in question, of which only two (2) copies need to be filed; and~~

~~**(d)** any other materials related to the issues raised by the appellant which the appellant wishes to have considered in support of its appeal.~~

~~**(6)** Within 10 days after receiving the appellant's submissions, the chartering authority shall file one original and four copies with the secretary and serve upon the appellant one copy of:~~

~~**(a)** the chartering authority's response to the appellant's arguments; and~~

~~**(b)** any other materials the chartering authority wishes to have considered in support of its decision.~~]

(4) Within 15 days of the mailing date of the appellant's notice of appeal and reasons to the chartering authority, the chartering authority shall file one original and four copies with the secretary and serve upon the appellant one copy of the chartering authority's response to the appellant's arguments.

[~~**(7)** If requested by the secretary, the division and other department staff as appropriate shall review each party's submissions and prepare a report for the secretary which~~]

(5) The division shall review each party's submissions and prepare a report for the secretary which:

(a) analyzes and outlines the parties' contentions on appeal with reference to the standards of Subsection K of Section 22-8B-6 and Subsections B and E of Section 22-8B-7 NMSA 1978;

(b) sets forth the staff's recommendations for the secretary to affirm or reverse the chartering authority's decision, with or without reasonable conditions or changes to the charter, and the reasons for those recommendations.

[~~**(8)**~~] **(6)** At least five days before the hearing date, the division shall deliver its report and recommendations to the secretary and shall simultaneously serve a copy upon each party.

[~~**(9)**~~] **(7)** While an appeal is pending, the parties are strongly encouraged to continue discussions and negotiations in an effort to resolve the matter by

agreement and reestablish productive working relations. An appellant may withdraw an appeal at any time before the secretary reaches a final decision. If an appeal is withdrawn, the secretary shall approve an appropriate order of dismissal. The secretary's decision and order may incorporate the terms of any agreement reached by the parties. An appeal which has been withdrawn may not be refiled.

E. Secretary hearing and decision.

[~~**(1)** Unless an extension for good cause has been granted pursuant to Paragraph (4) of Subsection D of 6.80.4.14 NMAC within 60 days after receipt of the notice of appeal, the secretary, after a public hearing that may be held in Santa Fe or in the school district where the proposed charter school has applied for a charter, shall review the decision of the chartering authority and make written findings.~~]

(1) Within 60 days after receipt of the notice of appeal, the secretary, after a public hearing that may be held in Santa Fe or in the school district where the proposed charter school has applied for a charter, shall review the decision of the chartering authority and make written findings.

(2) Participants at the hearing before the secretary shall be the designated representatives of the appellant, the chartering authority and the division and other department staff as appropriate.

(3) The time allotment for a hearing shall be three hours. Both parties shall be allowed up to 30 minutes for their presentations. Department staff shall be allowed 20 minutes for their presentation. The appellant may reserve part of its 30 minutes for rebuttal if desired. The order of presentations will be department staff, appellant, chartering authority and rebuttal by the appellant if time has been reserved. The parties may present remarks from whomever they wish in their 30 minutes but must include any comments they wish to make on the staff recommendations within their allotted time. Presentations, questions or discussions that exceed these limits may be ruled out of order by the secretary. The secretary may ask questions of the staff, the parties or the secretary's counsel at any time and may take up to one hour after the staff's and the parties' presentations for further questions, discussion and [~~its~~] a decision. Unless stricken during the hearing for good cause or withdrawn, the parties can assume that the department staff and the secretary have reviewed their written submissions, which shall be deemed evidentiary submissions subject to be given increased or diminished weight based upon the oral presentations.

(4) All presentations and discussion before the secretary shall focus on the factual and legal correctness of the chartering authority's decision in light of the standards and grounds set forth in Subsection K of Section 22-8B-6, Subsections B, C or E of Section 22-8B-7 and Subsection F of Section 22-8B-12 NMSA 1978.

(5) The secretary may reverse the decision of the chartering authority, with or without the imposition of reasonable conditions, if the secretary finds that the chartering authority:

(a) acted arbitrarily or capriciously;

(b) rendered a decision not supported by substantial evidence; or

(c) did not act in accordance with the law.

(6) The secretary shall reverse a decision of the chartering authority denying an application, refusing to renew an application or revoking a charter if the secretary finds that the decision was based upon a determination by the public school capital outlay council that the facilities of the proposed or [~~exiting~~] existing charter school did not meet the standards required by Section 22-8B-4.2 NMSA 1978 and that the decision was:

(a) arbitrary or capricious;

(b) not supported by substantial evidence; or

(c) otherwise not in accordance with the law.

(7) The department shall promptly serve a formal notice of the secretary's decision upon the parties to the appeal.

(8) A person aggrieved by a final decision of the secretary may appeal the decision to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

F. The provisions of this section shall apply to conversion schools.

[6.80.4.14 NMAC - Rp, 6.80.4.10 NMAC, 6/29/2007; A, 6/30/2008; A, 10/15/2013; A, 12/31/2018]

6.80.4.17 NEW MEXICO SCHOOL FOR THE ARTS:

A. Upon approval by the commission, a state chartered charter school may operate as the New Mexico school for the arts ("the school"), which shall be a statewide residential charter school for grades nine through 12 offering intensive preprofessional instruction in the performing and visual arts combined with a strong academic program that leads to a New Mexico diploma of excellence.

B. An application to the commission for approval of a charter shall contain assurances of compliance together with a plan for how the school will accomplish the following requirements contained in the New Mexico School for the Arts Act, being Laws 2008, Chapter 15, Sections 1 to 9:

(1) paying for all expenses associated with outreach activities and for room and board costs for students unable to pay all or part of the cost of room and board from a foundation or other private funding sources;

(2) working with a foundation or soliciting other private funding sources to obtain gifts, grants and donations to ensure

that the school has adequate revenue to make the payments described in Paragraph (1) of Subsection B of 6.80.4.17 NMAC;

(3) not using money received from the state other than charter school stimulus funds to make the payments described in Paragraph (1) of Subsection B of 6.80.4.17 NMAC;

(4) admitting an equal number of students from each of the state's congressional districts, to the greatest extent possible and without jeopardizing admissions standards;

(5) conducting its admissions process in a way that provides equal opportunity regardless of a student's prior exposure to artistic training and to the student's ability to pay for room and board; and

(6) conducting admissions criteria-free outreach activities throughout the state each year that acquaint potential students with the programs at the school, to include programs specifically for middle school students and workshops for teachers.

C. By July 1 after the first year the school has provided preprofessional instruction in the performing and visual arts and by July 1 every year thereafter, the school shall submit a report simultaneously to the division and the commission containing:

(1) non-personally identifiable demographic information about both applicants and students admitted to the school delineated by counties, congressional districts, socioeconomic status, gender and ethnicity; and

(2) the number of students who requested financial assistance for room and board, the total amount of financial assistance provided, and the amounts distributed delineated by the source of gifts, grants and donations received by the school.

D. During the planning year the school shall develop a sliding-fee scale subject to the following considerations:

(1) the purpose of the sliding-fee scale is to defray all or part of the costs of room and board for students whose parents or guardians are financially unable to pay these fees;

(2) in determining ability to pay, the school may use a variety of methods including but not limited to:

(a) [~~self disclosures~~] self-disclosures in a financial aid application developed by the school;

(b) poverty thresholds as maintained by the United States census bureau;

(c) poverty guidelines as maintained by the United States department of health and human services;

(d) whether the public school that the student applicant most recently came from was a recipient of funds under Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended;

(e) whether the student applicant for enrollment was eligible to receive free or reduced price school meals at the public school previously attended; and

(f) the amount or percentage of assistance an enrolled student received for room and board the prior school year from the school;

(3) the school shall submit its sliding-fee scale to the commission for initial approval during the planning year and may request changes at subsequent commission meetings for good cause shown.

E. It shall be the responsibility of the school to obtain adequate funding from private sources to pay annual outreach costs and to defray all or part of room and board fees for students financially unable to pay. No state funds except for charter school stimulus funds received and used during the planning year may be used for these purposes. Private funding sources available to the school shall include the use of a foundation or the soliciting and receipt of gifts, grants and donations. Failure to secure adequate funding for these purposes shall constitute grounds for denial or revocation of a charter.

F. Except for provisions of this rule related to admission of students by lottery, admission on a first-come first-serve basis, the ability to charge for residential fees, admissions criteria and location of the school anywhere in the state, all other provisions of this rule related to state-chartered charter schools shall apply to the school.

[6.80.4.17 NMAC - N, 6/30/2008; A, 12/31/2018]

RETIREE HEALTH CARE AUTHORITY

This is an amendment to 2.81.11 NMAC, Sections 6 through 9, adding Section 10 and changing part name, effective 1/1/2021.

TITLE 2 PUBLIC FINANCE
CHAPTER 81 RETIREE HEALTH CARE FUNDS
PART 11 ESTABLISHING SUBSIDY LEVELS ON THE BASIS OF YEARS OF AGE AND CREDITABLE SERVICE

2.81.11.6 OBJECTIVE: The objective of this rule is to establish subsidy levels commensurate with a retiree's years of credited service with a participating employer for employees who become eligible for enrollment into the NMRHCA health care program on or after July 1, 2001, and their dependents, and subject to a minimum retiree age for employees who become eligible for enrollment into the NMRHCA health care program on or after January 1, 2021.

[2.81.11.6 NMAC - N, 2/14/2002; A, 1/1/2021]

2.81.11.7 DEFINITIONS:

A. [~~"Retiree Health Care Authority" or "Authority" or "NMRHCA" means, the Retiree Health Care Authority established by~~

~~chapter 6 laws of New Mexico, 1990 [Sections 10-7C-1 et seq. NMSA 1978]~~

~~**B.** "Board" means, the board of directors of the NMRCHA.~~

~~**C.** "Subsidy" means a set portion of the cost of an eligible retiree's monthly coverage, a varying percentage of which is borne by the authority as determined by the board.~~

~~**D.** "Credited service" means the number of full years of employment with a participating employer as verified by the authority.~~

~~**E.** "Disabled retiree" means an eligible retiree who has been authorized to retire due to disability by the appropriate state retirement agency.~~

~~**F.** "State retirement agency" means each of the agencies created and authorized by law to administer the educational retirement act, the public employees retirement act, the judicial retirement act, the magistrate retirement act, the public employees retirement reciprocity act, or the retirement program of an independent public employer on or before July 1, 1990.~~] **"Board"** means, the board of directors of the NMRCHA.

B. "Credited service" means the number of full years of employment with a participating employer as verified by the authority.

C. "Disabled retiree" means an eligible retiree who has been authorized to retire due to disability by the appropriate state retirement agency.

D. "Member of an enhanced retirement plan" means a member of a retirement plan as defined by Section 10-7C-15 NMSA 1978.

E. "Retiree health care authority" or "authority" or "NMRHCA" means, the retiree health care authority established by chapter 6 laws of New Mexico, 1990 (Sections 10-7C-1 *et seq*., NMSA 1978).

F. "State retirement agency" means each of the agencies created and authorized by law to administer the educational retirement act, the public employees retirement act, the judicial retirement act, the magistrate retirement act, the public employees retirement reciprocity act, or the retirement program of an independent public employer on or before July 1, 1990.

G. "Subsidy" means a set portion of the cost of an eligible retiree's monthly coverage, a varying percentage of which is borne by the authority as determined by the board.

[2.81.11.7 NMAC - N, 2/14/2002; A, 12/30/2002; 1/1/2021]

2.81.11.8 NMRHCA CONTRIBUTION OF A PERCENTAGE OF A SUBSIDY TO MONTHLY PREMIUMS OF ELIGIBLE RETIREES:

A. Except as otherwise provided in 2.81.11.9 NMAC, for eligible retirees who are members of an enhanced retirement plan and become eligible for participation on or after July 1, 2001, or are not members of an enhanced retirement plan and become eligible for participation on or after July 1, 2001 but before January 1, 2021, and the eligible dependents of such retirees, the NMRCHA will contribute the following percentages of the subsidy to the monthly premiums according to the corresponding numbers of years of credited service with an NMRHCA-participating employer:

[~~**A.**~~] **(1)** Example: If the subsidy for a particular plan is one half the premium cost, then for a retiree with 20 years of credited service the NMRHCA would provide [~~100~~] one hundred percent of the subsidy; half the cost.

[~~**B.**~~] **(2)** Example: For the same subsidy of one half the premium cost, the percent of subsidy for a retiree with eight years of credited service would be [~~25~~] twenty-five percent of the [~~50~~] fifty percent subsidy: [~~12.5~~] twelve and one-half percent of the cost.

Years of credited service	Percentage of subsidy
5	6.25
6	12.50
7	18.75
8	25.00
9	31.25
10	37.50
11	43.75
12	50.00
13	56.25
14	62.50
15	68.75
16	75.00
17	81.25
18	87.50
19	93.75
20	100.00

B. Subject to 2.81.11.10 NMAC and except as otherwise provided in 2.81.11.9 NMAC, for eligible retirees who are not members of an enhanced retirement plan and become eligible for participation on or after January 1, 2021, and the eligible dependents of such retirees, the NMRCHA will contribute the following percentages of the subsidy to the monthly premiums according to the corresponding numbers of years of credited service with an NMRHCA-participating employer:

[~~**A.**~~] **(1)** Example: If the subsidy for a particular plan is one half the premium cost, then for a retiree with 25 years of credited service the NMRHCA would provide one hundred percent of the subsidy; half the cost.

[~~**B.**~~] **(2)** Example: For the same subsidy of one half the premium cost, the percent of subsidy for a retiree with twelve years of credited service would be thirty-eight and one-tenth percent of the fifty percent subsidy: nineteen and five-hundredths percent of the cost.

Years of credited service	Percentage of subsidy
5	4.76
6	9.52
7	14.29
8	19.05
9	23.81
10	28.57
11	33.33
12	38.10
13	42.86
14	47.62
15	52.38
16	57.14
17	61.90
18	66.67
19	71.43
20	76.19
21	80.95
22	85.71
23	90.48
24	95.24
25	100.00

[2.81.11.8 NMAC - N, 2/14/2002; A, 4/30/2003; A, 1/1/2021]

2.81.11.9 SUBSIDIES FOR DISABLED RETIREES: Notwithstanding any other provision of this rule:

A. The subsidy paid by the NMRHCA for a disabled retiree with a "duty disability," as described in [~~2.81.7.10 NMAC, subsection B~~] Subsection B of 2.81.7.10 NMAC, and to the dependents of such a retiree, shall be at the [~~100~~] one hundred percent level, corresponding to the applicable maximum [~~20~~] year level set forth in [~~the foregoing~~] 2.81.11.8 NMAC, regardless of such retiree's period of credited service and age.

B. The subsidy paid by the NMRHCA for a disabled retiree with a "non-duty disability," as described in [~~subsection C of 2.81.7.10 NMAC~~] Subsection C of 2.81.7.10 NMAC, and to the dependents of such a retiree, shall be as set forth in [~~the foregoing subsection~~] Subsection A of 2.81.11.9 NMAC, *provided,* that, as a condition of eligibility for benefits, such retiree has five or more years of credited service.

[2.81.11.9 NMAC - N, 2/14/2002; A, 12/30/2002; A, 4/30/2003; A, 1/1/2021]

2.81.11.10 AGE REQUIREMENT FOR SUBSIDIES: Except as otherwise provided in 2.81.11.9 NMAC, for eligible retirees who are not members of an enhanced retirement plan and become eligible for participation on or after January 1, 2021, the minimum retiree age requirement to be eligible for subsidies is 55.

[2.81.11.10 NMAC - N, 1/1/2021]

SUPERINTENDENT OF INSURANCE

In the Notice of Proposed Rulemaking, issued on October 16, 2018, the Office of Superintendent of Insurance announced its intent to repeal existing 13.10.25 NMAC 2010 Medicare Supplement Insurance Standards and adopt a new rule in its place. At the hearing held on November 19, 2018, the hearing officer received no objections to repeal of the existing rule. By Final Order, dated December 11, 2018, the Superintendent of Insurance has repealed and replaced 13.10.25 NMAC, effective January 1, 2019.

SUPERINTENDENT OF INSURANCE

TITLE 13 INSURANCE
CHAPTER 10 HEALTH INSURANCE
PART 25 MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS

13.10.25.1 ISSUING AGENCY: Office of Superintendent of Insurance.

[13.10.25.1 NMAC - Rp, 13.10.25.1 NMAC, 1/1/2019]

13.10.25.2 SCOPE:

A. Except as otherwise specifically provided in Sections 10, 19, 20, 23 and 28 of 13.10.25 NMAC this regulation shall apply to:

(1) All Medicare Supplement policies delivered or issued for delivery in this state before or after the effective date of this regulation; and

(2) All certificates issued under group Medicare Supplement policies, which certificates have been delivered or issued for delivery in this state.

B. This regulation shall not apply to a policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or a combination thereof, or for members or former members, or a combination thereof, of the labor organizations

[13.10.25.2 NMAC - Rp, 13.10.25.2 NMAC, 1/1/2019]

13.10.25.3 STATUTORY AUTHORITY: Section 59A-2-9, Subsection D of Section 59A-18-12, Subsection B of Section 59A-18-13, Paragraph (4) of Subsection A of Section 59A-23-3 and Section 59A-24A-1 et seq. NMSA 1978.

[13.10.25.3 NMAC - Rp, 13.10.25.3 NMAC, 1/1/2019]

13.10.25.4 DURATION: Permanent.

[13.10.25.4 NMAC - Rp, 13.10.25.4 NMAC, 1/1/2019]

13.10.25.5 OBJECTIVE: The purpose of this regulation is to provide for the reasonable standardization of coverage and simplification of terms and benefits of Medicare Supplement policies; to facilitate public understanding and comparison of such policies; to eliminate provisions contained in such policies which may be misleading or confusing in connection with the purchase of such policies or with the settlement of claims; and to provide for full disclosures in the sale of accident and sickness insurance coverages to persons eligible for Medicare.

[13.10.25.5 NMAC - Rp, 13.10.25.5 NMAC, 1/1/2019]

13.10.25.6 EFFECTIVE DATE: January 1, 2019, unless a later date is cited at the end of a section.

[13.10.25.6 NMAC - Rp, 13.10.25.6 NMAC, 1/1/2019]

13.10.25.7 DEFINITIONS: For purposes of this regulation:

A. "1990 Standardized Medicare Supplement benefit plan," "1990 standardized benefit plan" or **"1990 Plan"** means a group or individual policy of Medicare Supplement insurance issued on or after July 1, 1992 with an effective date prior to June 1, 2010 and includes Medicare Supplement insurance policies and certificates renewed on or after that date which are not replaced by the issuer at the request of the insured.

B. "2010 Standardized Medicare Supplement benefit plan," "2010 standardized benefit plan" or **"2010 plan"** means a group or individual policy

of Medicare Supplement insurance issued on or after June 1, 2010.

C. "Activities of daily living" include, but are not limited to bathing, dressing, personal hygiene, transferring, eating, ambulating, administration of drugs that are normally self-administered, and changing bandages or other dressings.

D. "Applicant" means:

(1) In the case of an individual Medicare Supplement policy, the person who seeks to contract for insurance benefits, and

(2) In the case of a group Medicare Supplement policy, the proposed certificate holder.

E. "At-home recovery visit" means the period of a visit required to provide at-home-recovery care, without limit on the duration of the visit, except each consecutive four hours in a 24 hour period of services provided by a care provider is one visit.

F. "Bankruptcy" means when a Medicare Advantage organization that is not an issuer has filed, or has had filed against it, a petition for declaration of bankruptcy and has ceased doing business in the state.

G. "Care provider" means a duly qualified or licensed home health aide or homemaker, personal care aide, nurse provided through a licensed home health care agency, referred by a licensed referral agency or by a licensed nurses' registry.

H. "Certificate" means any certificate delivered or issued for delivery in this state under a group Medicare Supplement policy.

I. "Certificate form" means the form on which the certificate is delivered or issued for delivery by the issuer.

J. "Complaint" means any dissatisfaction expressed by an individual concerning a Medicare Select issuer or its network providers.

K. "Continuous period of creditable coverage" means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than 63 days.

L. "Creditable coverage"

(1) means with respect to an individual, coverage of the individual provided under any of the following:

(a) a group health plan;

(b) health insurance coverage;

(c) Part A or Part B of Title XVIII of the Social Security Act (Medicare);

(d) Title XIX of the Social Security Act (Medicaid), 42 U.S.C. 1396, et seq., other than coverage consisting solely of benefits under section 1928;

(e) Chapter 55 of Title 10 U.S.C. (*Civilian Health and Medical Program of the Uniformed Services* – CHAMPUS, TRICARE);

(f) a medical care program of the Indian Health Service or of a tribal organization;

(g) a state health benefits risk pool;

(h) a health plan offered under Chapter 89 of Title 5 U.S.C. (*Federal Employees Health Benefits Program*);

(i) a public health plan as defined in federal regulation; and

(j) a health benefit plan under Section 5(e) of the Peace Corps Act (22 U.S.C. 2504(e));

(2) shall not include one or more, or any combination of, the following:

(a) coverage only for accident or disability income insurance, or any combination thereof;

(b) coverage issued as a supplement to liability insurance;

(c) liability insurance, including general liability insurance and automobile liability insurance;

(d) workers' compensation or similar insurance;

(e) automobile medical payment insurance;

(f) credit-only insurance;

(g) coverage for on-site medical clinics; and

(h) other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits;

(3) shall not include the following benefits if they are provided under a separate policy, certificate or contract of insurance or are otherwise not an integral part of the plan:

(a) limited scope dental or vision benefits;

(b) benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; and

(c) such other similar, limited benefits as are specified in federal regulations;

(4) shall not include the following benefits if offered as independent, non-coordinated benefits:

(a) coverage only for a specified disease or illness; and

(b) hospital indemnity or other fixed indemnity insurance; and

(5) shall not include the following if it is offered as a separate policy, certificate or contract of insurance:

(a) Medicare Supplemental health insurance as defined under section 1882(g)(1) of the Social Security Act (42 U.S.C. 1395ss(g)(1));

(b) coverage supplemental to the coverage provided under Chapter 55 of Title 10, U.S.C.; and

(c) similar supplemental coverage provided to coverage under a group health plan.

M. "Grievance" means dissatisfaction expressed in writing by an individual insured under a Medicare Select policy or certificate with the administration, claims practices, or provision of services concerning a Medicare Select issuer or its network providers.

N. "Home" shall mean any place used by the insured as a place of residence, provided that the place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.

O. "Insolvency" exists as to:

(1) any organization, when it is unable to meet its obligations as they mature;

(2) a stock insurer or other stock corporation, when its assets are in amount less than its liabilities, exclusive of paid-in capital stock;

(3) a mutual, reciprocal, or foreign Lloyds insurer, when its assets are in amount less than its liabilities exclusive of the minimum paid-in basic capital required under Section 59A-5-16 NMSA 1978 for its authority to transact insurance; or

(4) a domestic Lloyds insurer, nonprofit health care plan, prepaid dental care plan, motor club, or other corporation other than any referred to in Paragraph (1) of (2) of this subsection, when its assets are in amount less than its liabilities, exclusive of surplus, guaranty fund or deposit required to be maintained under the Insurance Code for its authority to transact insurance in this state.

P. "Issuer" includes insurance companies, fraternal benefit societies, nonprofit health care plans, health maintenance organizations and any other entity offering, delivering, issuing Medicare Supplement policies or certificates for delivery in this state.

Q. "Medicare" has the meaning set forth in Subsection F of 13.10.25.8 NMAC.

R. "Medicare Advantage plan" or previously "**Medicare+Choice"** means a plan of coverage for health benefits under Medicare Part C as defined in 42 U.S.C. 1395w-28(b)(1), and includes:

(1) Coordinated care plans that provide health care services, including but not limited to health maintenance organization plans (with or without a point-of-service option), plans offered by provider-sponsored organizations, and preferred provider organization plans;

(2) Medical savings account plans coupled with a contribution into a Medicare Advantage plan medical savings account; and

(3) Medicare Advantage private fee-for-service plans.

S. "Medicare Select issuer" means an issuer offering, or seeking to offer, a Medicare Select policy or certificate.

T. "Medicare Select policy" or **"Medicare Select certificate"** mean respectively a Medicare Supplement policy or certificate that contains restricted network provisions.

U. "Medicare Supplement policy" means a group or individual policy of accident and sickness insurance or a subscriber contract of a nonprofit health care plan or health maintenance organization, other than a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act (42U.S.C. Section 1395 et. seq.) or an issued policy under a demonstration project specified in 42 U.S.C. § 1395ss(g)(1), which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare. "Medicare Supplement policy" does not include Medicare Advantage plans established under Medicare Part C, Outpatient Prescription Drug plans established under Medicare Part D, or any Health Care Prepayment Plan (HCPP) that provides benefits pursuant to an agreement under §1833(a)(1)(A) of the Social Security Act (42 U.S.C. §1395l(a)(1)(A)).

V. "NAIC" means the national association of insurance commissioners.

W. "Network provider" means a provider of health care, or a group of providers of health care, which has entered into a written agreement with the issuer to provide benefits insured under a Medicare Select policy.

X. "Pre-standardized Medicare Supplement benefit plan," "Pre-standardized benefit plan" or **"Pre- standardized plan"** means a group or individual policy of Medicare Supplement insurance issued prior to July 1, 1992.

Y. "Policy form" means the form on which the policy is delivered or issued for delivery by the issuer.

Z. "Restricted network provision," means any provision that conditions the payment of benefits, in whole or in part, on the use of network providers.

AA. "Secretary" means the secretary of the United States department of health and human services.

BB. "SERFF" means the NAIC's system for electronic rate and form filing.

CC. "Service area" means the geographic area approved by the superintendent within which an issuer is authorized to offer a Medicare Select policy.

DD. "Superintendent" means the superintendent of insurance, the office of superintendent of insurance or employees of the office of superintendent of insurance acting within the scope of the superintendent's official duties and with the superintendent's authorization.

[13.10.25.7 NMAC - Rp, 13.10.25.7 NMAC, 1/1/2019]

13.10.25.8 POLICY DEFINITIONS AND TERMS: No policy or certificate may be

advertised, solicited or issued for delivery in this state as a Medicare Supplement policy or certificate unless the policy or certificate contains definitions or terms that conform to the requirements of this section.

A. "Accident," "accidental injury," or **"accidental means"** shall be defined to employ "result" language and shall not include words that establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.

(1) The definition shall not be more restrictive than the following: "Injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."

(2) The definition may provide that injuries shall not include injuries for which benefits are provided or available under any workers' compensation, employer's liability or similar law, or motor vehicle no-fault plan, unless prohibited by law.

B. "Benefit period" or **"Medicare benefit period"** shall not be defined more restrictively than as defined in the Medicare program.

C. "Convalescent nursing home," "extended care facility," or **"skilled nursing facility"** shall not be defined more restrictively than as defined in the Medicare program.

D. "Health care expenses" means, for purposes of 13.10.25.20 NMAC, expenses of health maintenance organizations associated with the delivery of health care services, which expenses are analogous to incurred losses of insurers.

E. "Hospital" may be defined in relation to its status, facilities and available services or to reflect its accreditation by the joint commission on accreditation of hospitals, but not more restrictively than as defined in the Medicare program.

F. "Medicare" shall be defined in the policy and certificate. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as then constituted or later amended," or "Title I, Part I of Public Law 89-97, as enacted by the eighty-ninth congress of the United States of America and popularly known as the *Health Insurance for the Aged Act*, as then constituted and any later amendments or substitutes thereof," or words of similar import.

G. "Medicare eligible expenses" shall mean expenses of the kinds covered by Medicare Part A and Medicare Part B, to the extent recognized as reasonable and medically necessary by Medicare.

H. "Physician" shall not be defined more restrictively than as defined in the Medicare program.

I. "Sickness" shall not be defined to be more restrictive than the following:

(1) "Sickness means illness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force."

(2) The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability or similar law.

[13.10.25.8 NMAC - Rp, 13.10.25.8 NMAC, 1/1/2019]

13.10.25.9 PROHIBITED POLICY PROVISIONS:

A. Except for permitted preexisting condition clauses as described in Paragraph (1) of Subsection A of 13.10.25.10 NMAC, Paragraph (1) of Subsection A of 13.10.25.11 NMAC, and Paragraph (1) of Subsection A of 13.10.25.13 NMAC, no policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare Supplement policy if the policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.

B. No Medicare Supplement policy or certificate may use waivers to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

C. No Medicare Supplement policy or certificate in force in the state shall contain benefits that duplicate benefits provided by Medicare.

D. Outpatient prescription drugs:

(1) Subject to Paragraphs (4) of Subsection A and Subsection B of 13.10.25.10 NMAC and Paragraphs (4) of Subsection A and Subsection B of 13.10.25.11 NMAC, a Medicare Supplement policy with benefits for outpatient prescription drugs in existence prior to January 1, 2006 shall be renewed for current policyholders who do not enroll in Medicare Part D at the option of the policyholder.

(2) A Medicare Supplement policy with benefits for outpatient prescription drugs shall not be issued after December 31, 2005.

(3) After December 31, 2005, a Medicare Supplement policy with benefits for outpatient prescription drugs may not be renewed after the policyholder enrolls in Medicare Part D at the option of the policyholder unless:

(a) The policy is modified to eliminate outpatient prescription coverage for expenses of outpatient prescription drugs incurred after the effective date of the individual's coverage under a Medicare Part D plan and;

(b) Premiums are adjusted to reflect the elimination of outpatient prescription drug coverage at the time of Medicare Part D enrollment, accounting for any claims paid, if applicable.

[13.10.25.9 NMAC - Rp, 13.10.25.9 NMAC, 1/1/2019]

13.10.25.10 MINIMUM BENEFIT STANDARDS FOR PRE-STANDARDIZED MEDICARE SUPPLEMENT BENEFIT PLAN POLICIES OR CERTIFICATES ISSUED FOR DELIVERY PRIOR TO JULY 1, 1992: No policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare Supplement policy or certificate unless it meets or exceeds the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

A. General standards. The following standards apply to Medicare Supplement policies and certificates and are in addition to all other requirements of this regulation.

(1) Preexisting conditions. A Medicare Supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(2) Losses from sickness. A Medicare Supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(3) Cost sharing. A Medicare Supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, co-payment, or coinsurance amounts. Premiums may be modified to correspond with such changes.

(4) Cancellation and termination. A "non-cancellable," "guaranteed renewable" or "non-cancellable and guaranteed renewable" Medicare Supplement policy shall not:

(a) provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or

(b) be cancelled or non-renewed by the issuer solely on the grounds of deterioration of health.

B. Renewal and continuation of coverage for policies or certificates.

(1) Cancellation by issuer. Except as authorized by the superintendent, an issuer shall neither cancel nor non-renew a Medicare Supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.

(2) Termination by group. If a group Medicare Supplement insurance policy is terminated by the group policyholder and not replaced as provided in Paragraph (4) of this subsection, the issuer shall offer certificate holders an individual Medicare Supplement policy. The issuer shall offer the certificate holder at least the following choices:

(a) an individual Medicare Supplement policy currently offered by the issuer having comparable benefits to those contained in the terminated group Medicare Supplement policy; and

(b) an individual Medicare Supplement policy which provides only such benefits as are required to meet the minimum standards as defined in Subsection D of 13.10.25.13 NMAC.

(3) Group membership termination. If membership in a group is terminated, the issuer shall:

(a) offer the certificate holder the conversion opportunities described in Paragraph (2) of this subsection; or

(b) at the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

(4) Replacement. If a group Medicare Supplement policy is replaced by another group Medicare Supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(5) Coverage of continuous loss. Termination of a Medicare Supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss.

(6) Elimination of drug benefit. If a Medicare Supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the *Medicare Prescription Drug, Improvement, and Modernization Act of 2003*, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this subsection.

C. Minimum Benefit Standards. Medicare Supplement insurance policies shall consist of the following:

(1) Medicare Part A coinsurance after day 60. Coverage of eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(2) Medicare Part A hospitalization inpatient deductible. Coverage of either all or

none of the Medicare Part A inpatient hospital deductible amount;

(3) Medicare Part A reserve lifetime days daily charges. Coverage of eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

(4) Medicare Part A uncovered hospitalization coverage. Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of ninety percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

(5) Medicare Part A blood. Coverage for or the reasonable cost (as per 42 U.S.C. §1395x(v)) of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations or already paid for under Medicare Part B;

(6) Medicare Part B cost sharing. Coverage of the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the co-payment amount, of Medicare eligible expenses under Medicare Part B regardless of hospital confinement, subject to a maximum calendar year out-of- pocket amount equal to the Medicare Part B deductible; and

(7) Medicare Part B blood. Effective January 1, 1990, coverage for the reasonable cost (as per 42 U.S.C. §1395x(v)) of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Medicare Part A, subject to the Medicare deductible amount.

[13.10.25.10 NMAC - Rp, 13.10.25.10 NMAC, 1/1/2019]

13.10.25.11 BENEFIT STANDARDS FOR 1990 STANDARDIZED MEDICARE SUPPLEMENT BENEFIT PLAN POLICIES OR CERTIFICATES ISSUED OR DELIVERED ON OR AFTER JULY 1, 1992 AND PRIOR TO JUNE 1, 2010: The following standards are applicable to all Medicare Supplement policies or certificates delivered or issued for delivery in this state on or after July 1, 1992 and with an effective date prior to June 1, 2010. For policies issued with an effective date after June 1, 2010, refer to Section 13.10.25.13 NMAC.

A. General Standards. The following standards apply to 1990 Benefit Standardized Plan policies and certificates and are in addition to all other requirements of this regulation.

(1) Preexisting conditions. Refer to Paragraph (1) of Subsection A of 13.10.25.10 NMAC.

(2) Loss from sickness. Refer to Paragraph (2) of Subsection A of 13.10.25.10 NMAC.

(3) Cost sharing. Refer to Paragraph (3) of Subsection A of 13.10.25.10 NMAC. An increase in premium shall not be effective without 60 days-notice to the policyholder.

(4) Termination of spousal coverage. No Medicare Supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

B. Renewal and continuation of coverage for policies or certificates. Each Medicare Supplement policy shall be guaranteed renewable.

(1) Cancellation for health status. The issuer shall not cancel or non-renew the policy solely on the ground of health status of the individual.

(2) Cancellation by issuer. The issuer shall not cancel or non-renew the policy for any reason other than nonpayment of premium or material misrepresentation.

(3) Termination by group. If the Medicare Supplement policy is terminated by the group policyholder and is not replaced as provided under Paragraph (5) of this subsection, the issuer shall offer certificate holders an individual Medicare Supplement policy which (at the option of the certificate holder):

(a) provides for continuation of the benefits contained in the group policy, or

(b) provides for benefits that otherwise meet the requirements of this subsection.

(4) Group membership termination. If an individual is a certificate holder in a group Medicare Supplement policy and the individual terminates membership in the group, the issuer shall

(a) offer the certificate holder the conversion opportunity described in Paragraph (3) of this subsection, or

(b) at the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

(5) Replacement. Refer to Paragraph (4) of Subsection B of 13.10.25.10 NMAC.

(6) Coverage of continuous loss. Refer to Paragraph (5) of Subsection B of 13.10.25.10 NMAC.

(7) Elimination of drug benefit. Refer to Paragraph (6) of Subsection B of 13.10.25.10 NMAC.

C. Coordination with Medical Assistance under Title XIX of the Social Security Act.

(1) Temporary suspension. A Medicare Supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificate holder for the period (not to exceed 24

months) in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificate holder notifies the issuer of the policy or certificate within 90 days after the date the individual becomes entitled to assistance.

(2)

Reinstitution. If suspension occurs and if the policyholder or certificate holder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstituted (effective as of the date of termination of entitlement) as of the termination of entitlement if the policyholder or certificate holder provides notice of loss of entitlement within 90 days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

(3)

Suspension - other coverage. Each Medicare Supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section 226 (b) of the Social Security Act and is covered under a group health plan (as defined in Section 1862 (b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstituted (effective as of the date of loss of coverage) if the policyholder provides notice of loss of coverage within 90 days after the date of the loss.

(4)

Reinstitution of coverage. Reinstitution of coverages as described in Paragraphs (2) and (3) of this subsection:

(a)

shall not provide for any waiting period with respect to treatment of preexisting conditions;

(b)

shall provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of suspension. If the suspended Medicare Supplement policy provided coverage for outpatient prescription drugs, reinstitution of the policy for Medicare Part D enrollees shall be without coverage for outpatient prescription drugs and shall otherwise provide substantially equivalent coverage to the coverage in effect before the date of suspension; and

(3)

shall provide for classification of premiums on terms at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage not been suspended.

D. Policy exchanges. If an issuer makes a written offer to the Medicare Supplement policyholders or certificate holders of one or more of its plans to exchange during a specified period from the policyholder's 1990 Standardized Benefit Plan (as described in 13.10.25.12 NMAC) to a 2010 Standardized Benefit Plan (as described in 13.10.25.14 NMAC), the offer and subsequent exchange shall comply with the following requirements:

(1) An issuer need not provide justification to the superintendent if the insured replaces a 1990 Standardized Benefit Plan policy or certificate with a 2010 Standardized Benefit Plan policy or certificate of identical rate structure and basis, using the insured's identical rating characteristics and classification. If an insured's policy or certificate to be replaced is priced on an issue age rate schedule at the time of such offer, the rate charged to the insured for the new exchanged policy shall recognize the policy reserve buildup, due to the pre-funding inherent in the use of an issue age rate basis, for the benefit of the insured. The issuer must file the proposed method electronically in SERFF or as otherwise designated by the superintendent, pursuant to Subsection D of Section 59A-17-9, Subsection D of Section 59A-18-12 and Subsection B of Section 59A-18-13 NMSA 1978.

(2) The rating class of the new policy or certificate shall be the class of the replaced coverage.

(3) An issuer may not apply new pre-existing condition limitations or a new incontestability period to the new policy for those benefits contained in the exchanged 1990 Standardized Benefit Plan policy or certificate of the insured, but may apply pre-existing condition limitations of no more than six months to any added benefits contained in the new 2010 Standardized Benefit Plan policy or certificate not contained in the exchanged policy.

(4) The new policy or certificate shall be offered to all policyholders or certificate holders within a given plan, except where the offer or issue would be in violation of state or federal law.

E. Standards for basic (core) benefits common to benefit plans A to J. Every issuer shall make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare Supplement insurance benefit plans in addition to the basic core package, but not in lieu of it.

(1) Medicare Part A coinsurance after day 60. Coverage of eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(2) Medicare Part A reserve lifetime days coinsurance. Coverage of Medicare Part A –eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;

(3) Medicare Part A uncovered hospitalization coverage. Upon exhaustion of the

Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of one-hundred percent of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance;

(4) Medicare Part A and Medicare Part B blood. Coverage under Medicare Part A and Medicare Part B for the reasonable cost (as per 42 U.S.C. §1395x(v)) of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations;

(5) Medicare Part B cost sharing. Coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the co-payment amount, of Medicare eligible expenses under Medicare Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

F. Standards for additional benefits. The following additional benefits shall be included in Medicare Part B for Plan B through Plan J only as provided by 13.10.25.12 NMAC:

(1) Medicare Part A deductible. Coverage for one-hundred percent of the Medicare Part A inpatient hospital deductible amount per benefit period.

(2) Skilled nursing facility care. Coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A.

(3) Medicare Part B deductible. Coverage of one-hundred percent of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(4) Eighty percent of the Medicare Part B excess charges. Coverage for eighty percent of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Medicare Part B charge.

(5) One-hundred percent of the Medicare Part B excess charges. Coverage for one-hundred percent of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Medicare Part B charge.

(6) Basic outpatient prescription drug benefit. Coverage for fifty percent of outpatient prescription drug charges, after a $250 calendar year deductible, to a maximum of $1,250 in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may not be included for sale or issuance in a Medicare Supplement policy effective after December 31, 2005.

(7) Extended outpatient prescription drug benefit. Coverage for fifty percent of outpatient prescription drug charges, after a $250 calendar year deductible to a maximum of $3,000 in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may not be included for sale or issuance in a Medicare Supplement policy effective after December 31, 2005.

(8) Medically necessary emergency care in a foreign country. Coverage to the extent not covered by Medicare for eighty percent of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first 60 consecutive days of each trip outside the United States, subject to a calendar year deductible of $250, and a lifetime maximum benefit of $50,000. For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.

(9) Preventive medical care benefit.

(a) Coverage for the following preventive health services not covered by Medicare:

(i) an annual clinical preventive medical history and physical examination that may include tests and services from clause (ii) of this subparagraph and patient education to address preventive health care measures; and

(ii) preventive screening tests or preventive services, the selection and frequency of which is determined to be medically appropriate by the attending physician.

(b) Reimbursement shall be for the actual charges up to one-hundred percent of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in *American Medical Association Current Procedural Terminology* (AMA CPT) codes, to a maximum of $120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare.

(10) At-home recovery benefit. Coverage for services to provide short term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery.

(a) Coverage requirements and limitations.

(i) At-home recovery services provided must be primarily services that assist in activities of daily living.

(ii) The insured's attending physician must certify that the specific type

and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.

(b) Coverage is limited to:

(i) no more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare approved home health care visits under a Medicare approved home care plan of treatment;

(ii) the actual charges for each visit up to a maximum reimbursement of $40 per visit;

(iii) $1,600 per calendar year;

(iv) seven visits in any one week;

(v) care furnished on a visiting basis in the insured's home;

(vi) **s**ervices provided by a care provider as defined in Subsection E of 13.10.25.7 NMAC;

(vii) at-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded; and

(viii) at-home recovery visits received during the period the insured is receiving Medicare approved home care services or no more than eight weeks after the service date of the last Medicare approved home health care visit.

(c) Coverage is excluded for:

(i) home care visits paid for by Medicare or other government programs; and

(ii) care provided by family members, unpaid volunteers or providers who are not care providers.

G. Standards for Plans K and L.

(1) Plan K. Standardized Medicare Supplement benefit Plan K shall consist of the following:

(a) **Medicare Part A coinsurance after day 60.** Refer to Paragraph (1) of Subsection E of 13.10.25.11 NMAC;

(b) **Medicare Part A coinsurance reserves.** Refer to Paragraph (2) of Subsection E of 13.10.25.11 NMAC;

(c) **Medicare Part A hospital inpatient coverage.** Refer to Paragraph (3) of Subsection E of 13.10.25.11 NMAC;

(d) **Medicare Part A deductible.** Coverage for fifty percent of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in Subparagraph (j) of this paragraph;

(e) **Skilled nursing facility care.** Coverage for fifty percent of the coinsurance amount for each day used from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in Subparagraph (j) of this paragraph;

(f) **Hospice care.** Coverage for fifty percent of cost sharing for all Medicare Part A -eligible expenses and respite care until the out-of-pocket limitation is met as described in Subparagraph (j) of this paragraph;

(g) **Blood.** Coverage for fifty percent, under Medicare Part A or Medicare Part B, of the reasonable cost (as per 42 U.S.C. §1395x(v)) of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in Subparagraph (j) of this paragraph;

(h) **Medicare Part B cost sharing.** Except for coverage provided in Subparagraph (i) of this paragraph, coverage for fifty percent of the cost sharing otherwise applicable under Medicare Part B after the policyholder pays the Medicare Part B deductible until the out-of-pocket limitation is met as described in Subparagraph (j) of this paragraph;

(i) **Medicare Part B preventive services.** Coverage of one-hundred percent of the cost sharing for Medicare Part B preventive services after the policyholder pays the Medicare Part B deductible; and

(j) **Cost sharing – out-of-pocket limitation.** Coverage of one-hundred percent of all cost sharing under Medicare Part A and Medicare Part B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Part A and Medicare Part B of $4000 in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary of the U.S. Department of Health and Human Services.

(2) Plan L. Standardized Medicare Supplement benefit Plan L shall consist of the following:

(a) the benefits described in Subparagraphs (a), (b) (c) and (i) of Paragraph (1) of this subsection;

(b) the benefit described in Subparagraphs (d) (e), (f) and (h) of Paragraph (1) of this subsection, but substituting seventy-five percent for fifty percent; and

(c) the benefit described in Subparagraph (j) of Paragraph (1), but substituting $2000 for $4000.

[13.10.25.11 NMAC - Rp, 13.10.25.11 NMAC, 1/1/2019]

13.10.25.12 STANDARD MEDICARE SUPPLEMENT BENEFIT PLANS FOR 1990 STANDARDIZED MEDICARE SUPPLEMENT BENEFIT PLAN POLICIES OR CERTIFICATES ISSUED FOR DELIVERY ON OR AFTER JULY 1, 1992 AND PRIOR TO JUNE 1, 2010:

A. An issuer shall make available to each prospective policyholder and certificate holder a policy form or certificate form containing only the basic core benefits, as defined in Subsection E of 13.10.25.11 NMAC.

B. No groups, packages or combinations of Medicare Supplement benefits other than those listed in this section shall be offered for sale in this state, except as may be permitted in Subsection G of this section and in 13.10.25.16 NMAC.

C. Benefit plans shall be uniform in structure, language, designation and format to the standard benefit *Plans A* through *L* listed in this section and conform to the definitions in 13.10.25.7 NMAC. Each benefit shall be structured in accordance with the format provided in Subsection B, C or D of 13.10.25.11 NMAC and list the benefits in the order shown in this section. For purposes of this section, "structure, language, and format" means style, arrangement and overall content of a benefit.

D. An issuer may use, in addition to the benefit plan designations required in Subsection C of this section, other designations to the extent permitted by law.

E. Make-up of benefit plans:

(1) Plan A. Standardized Medicare Supplement benefit Plan A shall be limited to the basic (core) benefits common to all benefit plans, as defined in Subsection E of 13.10.25.11 NMAC.

(2) Plan B. Standardized Medicare Supplement benefit Plan B shall include only the following: The core benefit as defined in Subsection E of 13.10.25.11 NMAC, plus the Medicare Part A deductible as defined in Paragraph (1) of Subsection F of 13.10.25.11 NMAC.

(3) Plan C. Standardized Medicare Supplement benefit Plan C shall include only the following: The core benefit as defined in Subsection E of 13.10.25.11 NMAC, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible and medically necessary emergency care in a foreign country as defined in Paragraphs (1), (2), (3) and (8) respectively of Subsection F of 13.10.25.11 NMAC.

(4) Plan D. Standardized Medicare Supplement benefit Plan D shall include only the following: The core benefit as defined in Subsection E of 13.10.25.11 NMAC, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in an foreign country and the at-home recovery benefit as defined in Paragraphs (1), (2), (8) and (10) respectively of Subsection F of 13.10.25.11. NMAC.

(5) Plan E. Standardized Medicare Supplement benefit Plan E shall include only the following: The core benefit as defined in Subsection E of 13.10.25.11 NMAC, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country and preventive medical care as defined in Paragraphs (1), (2), (8) and (9) respectively of Subsection F of 13.10.25.11. NMAC.

(6) Plan F. Standardized Medicare Supplement benefit Plan F shall include only the following: The core benefit as defined Subsection E of 13.10.25.11 NMAC, plus the Medicare Part A deductible, the skilled nursing facility care, the Medicare Part B deductible, one-hundred percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Paragraphs (1), (2), (3), (5) and (8) respectively of Subsection F of 13.10.25.11 NMAC.

(7) High deductible Plan F. Standardized Medicare Supplement benefit High Deductible Plan F shall include only the following: one-hundred percent of covered expenses following the payment of the annual High Deductible Plan F deductible. The covered expenses include the core benefit as defined in Subsection E of 13.10.25.11 NMAC, plus the Medicare Part A deductible, skilled nursing facility care, the Medicare Part B deductible, one-hundred percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Paragraphs (1), (2), (3), (5) and (8) respectively of Subsection F of 13.10.25.11 NMAC. The annual High Deductible Plan F deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare Supplement Plan F policy, and shall be in addition to any other specific benefit deductibles. The annual High Deductible Plan F deductible shall be $1500 for 1998 and 1999, and shall be based on the calendar year. It shall be adjusted annually thereafter by the secretary to reflect the change in the *Consumer Price Index* for all urban consumers for the 12-month period ending with August of the preceding year, and rounded to the nearest multiple of $10.

(8) Plan G. Standardized Medicare Supplement benefit Plan G shall include only the following: The core benefit as defined in Subsection E of 13.10.25.11 NMAC, plus the Medicare Part A deductible, skilled nursing facility care, eighty percent of the Medicare Part B excess charges, medically necessary emergency care in a foreign country, and the at-home recovery benefit as defined in Paragraphs (1), (2), (4), (8) and (10) respectively of Subsection F of 13.10.25.11 NMAC.

(9) Plan H. Standardized Medicare Supplement benefit Plan H shall consist of only the following: The core benefit as defined in Subsection E of 13.10.25.11 NMAC, plus the Medicare Part A deductible, skilled nursing facility care, basic prescription drug benefit and medically necessary emergency care in a foreign country as defined in Paragraphs (1), (2), (6), and (8) respectively of Subsection F of 13.10.25.11 NMAC. The outpatient prescription drug benefit shall not be included in a Medicare Supplement policy sold after December 31, 2005.

(10) Plan I. Standardized Medicare Supplement benefit Plan I shall consist of only the

following: The core benefit as defined in Subsection E of 13.10.25.11 NMAC, plus the Medicare Part A deductible, skilled nursing facility care, one-hundred percent of the Medicare Part B excess charges, basic prescription drug benefit, medically necessary emergency care in a foreign country and at-home recovery benefit as defined in Paragraphs (1), (2), (5), (6), (8) and (10) respectively of Subsection F of 13.10.25.11 NMAC. The outpatient prescription drug benefit shall not be included in a Medicare Supplement policy sold after December 31, 2005.

(11) Plan J. Standardized Medicare Supplement benefit Plan J shall consist of only the following: The core benefit as defined in Subsection E of 13.10.25.11 NMAC, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, one-hundred percent of the Medicare Part B excess charges, extended prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care and at-home recovery benefit as defined in Paragraphs (1), (2), (3), (5), (7), (8), (9) and (10) respectively of Subsection F of 13.10.25.11 NMAC. The outpatient prescription drug benefit shall not be included in a Medicare Supplement policy sold after December 31, 2005.

(12) High deductible Plan J. Standardized Medicare Supplement benefit High Deductible Plan J shall consist of only the following: one-hundred percent of covered expenses following the payment of the annual High Deductible Plan J deductible. The covered expenses include the core benefit as defined in Subsection E of 13.10.25.11 NMAC, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, one-hundred percent of the Medicare Part B excess charges, extended outpatient prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care benefit and at-home recovery benefit as defined in Paragraphs (1), (2), (3), (5), (7), (8), (9) and (10) respectively of Subsection F of 13.10.25.11 NMAC. The annual High Deductible Plan J deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare Supplement Plan J policy, and shall be in addition to any other specific benefit deductibles. The annual deductible shall be $1500 for 1998 and 1999, and shall be based on a calendar year. It shall be adjusted annually thereafter by the secretary to reflect the change in the *Consumer Price Index* for all urban consumers for the 12-month period ending with August of the preceding year, and rounded to the nearest multiple of $10. The outpatient prescription drug benefit shall not be included in a Medicare Supplement policy sold after December 31, 2005.

(13) Plan K and Plan L. Make-up of two Medicare Supplement plans mandated by the *Medicare Prescription Drug, Improvement and Modernization Act of 2003* (MMA):

(a) Plan K. Standardized Medicare Supplement benefit Plan K shall consist of only those benefits described in Paragraph (1) of Subsection G of 13.10.25.11 NMAC.

(b) Plan L. Standardized Medicare Supplement benefit Plan L shall consist of only those benefits described in Paragraph (2) of Subsection G of 13.10.25.11 NMAC.

F. New or innovative benefits: An issuer may, with the prior approval of the superintendent, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits may include benefits that are appropriate to Medicare Supplement insurance, new or innovative, not otherwise available, cost- effective, and offered in a manner that is consistent with the goal of simplification of Medicare Supplement policies. After December 31, 2005, the innovative benefit shall not include an outpatient prescription drug benefit.

[13.10.25.12 NMAC - Rp, 13.10.25.12 NMAC, 1/1/2019]

13.10.25.13 BENEFIT STANDARDS FOR 2010 STANDARDIZED MEDICARE SUPPLEMENT BENEFIT PLAN POLICIES OR CERTIFICATES ISSUED FOR DELIVERY WITH AN EFFECTIVE DATE FOR COVERAGE ON OR AFTER JUNE 1, 2010: The following standards are applicable to all Medicare Supplement policies or certificates delivered or issued for delivery in this state with an effective date for coverage on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this state as a Medicare Supplement policy or certificate unless it complies with these benefit standards. No issuer may offer any 1990 Standardized Medicare Supplement benefit plan for sale on or after June 1, 2010. Benefit standards applicable to Medicare Supplement policies and certificates issued with an effective date of coverage before June 1, 2010 remain subject to the requirements of 13.10.25.11 NMAC.

A. General standards. The following standards apply to 2010 Standardized Benefit Plan policies and certificates and are in addition to all other requirements of this regulation.

(1) Preexisting conditions. Refer to Paragraph (1) of Subsection A of 13.10.25.11 NMAC.

(2) Losses from sickness. Refer to Paragraph (2) of Subsection A of 13.10.25.11 NMAC.

(3) Cost sharing. Refer to Paragraph (3) of Subsection A of 13.10.25.11 NMAC.

(4) Termination of spousal coverage. Refer to Paragraph (4) of Subsection A of 13.10.25.11 NMAC.

B. Renewal and continuation of coverage for policies or certificates. Each Medicare Supplement policy shall be guaranteed renewable.

(1) **Cancellation for health status.** Refer to Paragraph (1) of Subsection B of 13.10.25.11 NMAC.

(2) **Cancellation by issuer.** Refer to Paragraph (2) of Subsection B of 13.10.25.11 NMAC.

(3) **Termination by group.** Refer to Paragraph (3) of Subsection B of 13.10.25.11 NMAC.

(4) Group membership termination. Refer to Paragraph (4) of Subsection B of 13.10.25.11 NMAC.

(5) **Replacement.** Refer to Paragraph (5) of Subsection B of 13.10.25.11 NMAC.

(6) Coverage of continuous loss. Refer to Paragraph (6) of Subsection B of 13.10.25.11 NMAC.

C. Coordination with medical assistance under Title XIX of the Social Security Act. Refer to Subsection C of 13.10.25.11 NMAC.

D. Standards for basic (core) benefits common to Medicare Supplement insurance benefit plans A, B, C, D, F, F with high deductible, G, M and N: Every issuer shall make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare Supplement insurance benefit plans in addition to the basic core package, but not in lieu of it.

(1) Medicare Part A coinsurance after day 60. Refer to Paragraph (1) of Subsection E of 13.10.25.11 NMAC;

(2) Medicare Part A reserve lifetime days coinsurance. Refer to Paragraph (2) of Subsection E of 13.10.25.11 NMAC;

(3) Medicare Part A uncovered hospitalization coverage. Refer to Paragraph (3) of Subsection E of 13.10.25.11 NMAC;

(4) Medicare Part A and Medicare Part B blood. Refer to Paragraph (4) of Subsection E of 13.10.25.11 NMAC;

(5) Medicare Part B cost sharing. Refer to Paragraph (5) of Subsection E of 13.10.25.11 NMAC; and

(6) Hospice care cost sharing. Coverage of cost sharing for all Medicare Part A-eligible hospice care and respite care expenses.

E. Standards for additional benefits: The following additional benefits shall be included in Medicare Supplement benefit Plans B, C, D, F, F with High Deductible, G, M, and N as provided by 13.10.25.14 NMAC.

(1) Medicare Part A deductible, one-hundred percent. Refer to Paragraph (1) of Subsection F of 13.10.25.11 NMAC;

(2) Medicare Part A deductible, fifty percent. Coverage for fifty percent of the Medicare Part A inpatient hospital deductible amount per benefit period.

(3) Skilled nursing facility care. Refer to Paragraph (2) of Subsection F of 13.10.25.11 NMAC.

(4) Medicare Part B deductible. Refer to Paragraph (3) of Subsection F of 13.10.25.11 NMAC;

(5) One-hundred percent of the Medicare Part B excess charges. Refer to Paragraph (5) of Subsection F of 13.10.25.11 NMAC; and

(6) Medically necessary emergency care in a foreign country. Refer to Paragraph (8) of Subsection F of 13.10.25.11 NMAC.

F. Standards for Plans K and L.

(1) Plan K. Plan K as mandated by the *Medicare Prescription Drug, Improvement and Modernization Act of 2003,* shall include only the following:

(a) **Medicare Part A coinsurance after day 60.** Refer to Subparagraph (a) of Paragraph (1) of Subsection G of 13.10.25.11 NMAC;

(b) **Medicare Part A hospital coinsurance, 91st through 150th days.** Refer to Subparagraph (b) of Paragraph (1) of Subsection G of 13.10.25.11 NMAC;

(c) **Medicare Part A hospitalization after lifetime reserve days are exhausted.** Refer to Subparagraph (c) of Paragraph (1) of Subsection G of 13.10.25.11 NMAC;

(d) **Medicare Part A deductible.** Refer to Subparagraph (d) of Paragraph (1) of Subsection G of 13.10.25.11 NMAC

(e) **Skilled nursing facility care.** Refer to Subparagraph (e) of Paragraph (1) of Subsection G of 13.10.25.11 NMAC;

(f) **Hospice Care.** Refer to Subparagraph (f) of Paragraph (1) of Subsection G of 13.10.25.11 NMAC;

(g) **Blood.** Refer to Subparagraph (g) of Paragraph (1) of Subsection G of 13.10.25.11 NMAC;

(h) **Medicare Part B Cost sharing.** Refer to Subparagraph (h) of Paragraph (1) of Subsection G of 13.10.25.11 NMAC;

(i) **Medicare Part B preventive services.** Refer to Subparagraph (i) of Paragraph (1) of Subsection G of 13.10.25.11 NMAC;

(j) **Cost sharing after out-of-pocket limits.** Refer to Subparagraph (j) of Paragraph (1) of Subsection G of 13.10.25.11 NMAC.

(2) Plan L. Plan L as mandated by the *Medicare Prescription Drug Improvement and Modernization Act of 2003*, shall include only the following:

(a) The benefits described in Subparagraphs (a), (b), (c) and (i) of the preceding paragraph;

(b) The benefit described in Subparagraphs (d), (e), (f), (g) and (h) of the preceding paragraph, but substituting seventy-five percent for fifty percent; and

(c) The benefit described in Subparagraph (j) of the preceding paragraph, but substituting $2000 for $4000.

[13.10.25.13 NMAC - Rp, 13.10.25.13 NMAC, 1/1/2019]

13.10.25.14 STANDARD MEDICARE SUPPLEMENT BENEFIT PLANS FOR 2010 STANDARDIZED MEDICARE SUPPLEMENT BENEFIT PLAN POLICIES OR CERTIFICATES ISSUED FOR DELIVERY WITH AN EFFECTIVE DATE FOR COVERAGE ON OR AFTER JUNE 1, 2010: The following standards are applicable to all Medicare Supplement policies or certificates delivered or issued for delivery in this state on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered or issued for delivery in this state as a Medicare Supplement policy or certificate unless it complies with these benefit plan standards. Benefit plan standards applicable to Medicare Supplement policies and certificates issued before June 1, 2010 remain subject to the requirements of 13.10.25.12 NMAC.

A. Benefit requirements:

(1) An issuer shall make available to each prospective policyholder and certificate holder a policy form or certificate form containing only the basic (core) benefits, as defined in Subsection D of 13.10.25.13 NMAC of this regulation.

(2) If an issuer makes available any of the additional benefits described in Subsection E of 13.10.25.13 NMAC, or offers standardized benefit Plans K or L (as described in Paragraphs (8) and (9) of Subsection E of this section), then the issuer shall make available to each prospective policyholder and certificate holder, in addition to a policy form or certificate form with only the basic (core) benefits as described in Paragraph (1) of this subsection, a policy form or certificate form containing either standardized benefit Plan C (as described in Paragraph (3) of Subsection of E of this section) or standardized benefit Plan F (as described in Paragraph (5) of Subsection E of this section).

B. No groups, packages or combinations of Medicare Supplement benefits other than those listed in this section shall be offered for sale in this state, except as may be permitted in Subsection F of this section and 13.10.25.16 NMAC.

C. Benefit plans shall be uniform in structure, language, designation and format to the standard benefit plans listed in this subsection and conform to the definitions in 13.10.25.7 NMAC. Each benefit shall be structured in accordance with the format provided in Subsections D and E of 13.10.25.13 NMAC; or, in the case of Plans K or L, in Paragraphs (8) and (9) of Subsection E of this section and list the benefits in the order shown. For purposes of this section, "structure, language, and format" means style, arrangement and overall content of a benefit.

D. In addition to the benefit plan designations required in Subsection C of this section, an issuer may use other designations to the extent permitted by law.

E. Make-up of 2010 standardized benefit plans:

(1) Plan A. Standardized Medicare Supplement Benefit Plan A shall include only the following: The basic (core) benefits as defined in Subsection D of 13.10.25.13 NMAC.

(2) Plan B. Standardized Medicare Supplement Benefit Plan B shall include only the following: The basic (core) benefit as defined in Subsection d of 13.10.25.13 NMAC, plus one-hundred percent of the Medicare Part A deductible as defined in Paragraph (1) of Subsection E of 13.10.25.13 NMAC.

(3) Plan C. Standardized Medicare Supplement Benefit Plan C shall include only the following: The basic (core) benefit as defined in Subsection D of 13.10.25.13 NMAC, plus one-hundred percent of the Medicare Part A deductible, skilled nursing facility care, one-hundred percent of the Medicare Part B deductible, and medically necessary emergency care in a foreign country as defined in Paragraphs (1), (3), (4), and (6) respectively of Subsection E of 13.10.25.13 NMAC.

(4) Plan D. Standardized Medicare Supplement Benefit Plan D shall include only the following: The basic (core) benefit as defined in Subsection D of 13.10.25.13 NMAC, plus one-hundred percent of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in an foreign country as defined in Paragraphs (1), (3) and (6) respectively of Subsection E of 13.10.25.13 NMAC.

(5) Plan F. Standardized Medicare Supplement Benefit Plan F shall include only the following: The basic (core) benefit as defined in Subsection D of 13.10.25.13 NMAC, plus one-hundred percent of the Medicare Part A deductible, the skilled nursing facility care, one-hundred percent of the Medicare Part B deductible, one-hundred percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Paragraphs (1), (3), (4), (5) and (6) respectively of Subsection E of 13.10.25.13 NMAC.

(6) High Deductible Plan F. Standardized Medicare Supplement Benefit Plan F with High Deductible shall include only the following: one-hundred percent of covered expenses following the payment of the annual deductible set forth in Subparagraph (b) of this paragraph.

(a) The basic (core) benefit as defined in Subsection D of 13.10.25.13 NMAC, plus one-hundred percent of the Medicare Part A deductible, skilled nursing facility care, one-hundred percent of the Medicare Part B deductible, one-hundred percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Paragraphs (1), (3), (4), (5) and (6) respectively of Subsection E of 13.10.25.13 NMAC.

(b) The annual deductible in Plan F with High Deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by Plan F, and shall be in addition to any other specific benefit deductibles. The basis for the deductible shall be $1,500 and shall be adjusted annually from 1999 by the Secretary of the U.S. Department of Health and Human Services to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of ten dollars ($10).

(7) Plan G. Standardized Medicare Supplement Benefit Plan G shall include only the following: The basic (core) benefit as defined in Subsection D of 13.10.25.13 NMAC, plus one-hundred percent of the Medicare Part A deductible, skilled nursing facility care, one-hundred percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Paragraphs (1), (3), (5) and (6) respectively of Subsection E of 13.10.25.13 NMAC. Effective January 1, 2020, the standardized benefit plans described in Paragraph (4) of Subsection A of 13.10.25.15 NMAC (Redesignated Plan G With High Deductible) may be offered to any individual who was eligible for Medicare prior to January 1, 2020.

(8) Plan K. Standardized Medicare Supplement Benefit Plan K shall consist of only those benefits described in Paragraph (1) of Subsection F of 13.10.25.13 NMAC.

(9) Plan L. Standardized Medicare Supplement Benefit Plan L shall consist of only those benefits described in Paragraph (2) of Subsection F of 13.10.25.13 NMAC.

(10) Plan M. Standardized Medicare Supplement Benefit Plan M shall include only the following: The basic (core) benefit as defined in Subsection B of 13.10.25.13 NMAC, plus fifty percent of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as defined in Paragraphs (2), (3) and (6) of Subsection C of 13.10.25.13 NMAC, respectively.

(11) Plan N. Standardized Medicare Supplement Benefit Plan N shall include only the following: The basic (core) benefit as defined in Subsection B of 13.10.25.13 NMAC, plus one-hundred percent of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as defined in Paragraphs (1), (3) and (6) Subsection C of 13.10.25.13 NMAC, respectively, with co-payments in the following amounts:

(a) the lesser of $20 or the Medicare Part B coinsurance or co-payment for each covered health care provider office visit (including visits to medical specialists); and

(b) the lesser of $50 or the Medicare Part B coinsurance or co-payment for each covered emergency room visit, however, this co-payment shall be waived if the insured is admitted to any hospital and the emergency visit is subsequently covered as a Medicare Part A expense.

F. New or innovative benefits: An issuer may, with the prior approval of the superintendent, offer policies or certificates with new or innovative benefits, in addition to the standardized benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits shall include only benefits that are appropriate to Medicare Supplement insurance, are new or innovative, are not otherwise available, and are cost-effective. Approval of new or innovative benefits must not adversely impact the goal of Medicare Supplement simplification. New or innovative benefits shall not include an outpatient prescription drug benefit. New or innovative benefits shall not be used to change or reduce benefits, including a change of any cost-sharing provision, in any standardized plan.

[13.10.25.14 NMAC - Rp, 13.10.25.14 NMAC, 1/1/2019]

13.10.25.15 STANDARD MEDICARE SUPPLEMENT BENEFIT PLANS FOR 2020 STANDARDIZED MEDICARE SUPPLEMENT BENEFIT PLAN POLICIES OR CERTIFICATES ISSUED FOR DELIVERY TO INDIVIDUALS NEWLY ELIGIBLE FOR MEDICARE ON OR AFTER JANUARY 1, 2020: The *Medicare Access and CHIP Reauthorization Act of 2015* (MACRA) requires the following standards are applicable to all Medicare Supplement policies or certificates delivered or issued for delivery in this state to individuals newly eligible for Medicare on or after January 1, 2020. No policy or certificate that provides coverage of the Medicare Part B deductible may be advertised, solicited, delivered or issued for delivery in this state as a Medicare Supplement policy or certificate to individuals newly eligible for Medicare on or after January 1, 2020. All policies must comply with the following benefit standards. Benefit plan standards applicable to Medicare Supplement policies and certificates issued to individuals eligible for Medicare before January 1, 2020, remain subject to the requirements of 13.10.25.11 NMAC.

A. Benefit Requirements. The standards and requirements of 13.10.25.14 NMAC shall apply to all Medicare Supplement policies or certificates delivered or issued for delivery to individuals newly eligible for Medicare on or after January 1, 2020, with the following exceptions:

(1) Standardized Medicare Supplement Benefit Plan C is redesignated as Plan D and shall provide the benefits contained in Paragraph (3) of Subsection E of 13.10.25.14 NMAC but shall not provide coverage for one-hundred percent or any portion of the Medicare Part B deductible.

(2) Standardized Medicare Supplement Benefit Plan F is redesignated as Plan G and shall provide the benefits contained in Paragraph (5) of Subsection E of 13.10.25.14 NMAC but shall not provide coverage for one-hundred percent or any portion of the Medicare Part B deductible.

(3) Standardized Medicare Supplement Benefit Plan F with High Deductible is redesignated as Plan G with High Deductible and shall provide the benefits contained in Paragraph (6) of Subsection E of 13.10.25.14 NMAC but shall not provide coverage for one-hundred percent or any portion of the Medicare Part B deductible; provided further that, the Medicare Part B deductible paid by the beneficiary shall be considered an out-of-pocket expense in meeting the annual high deductible.

(4) Standardized Medicare Supplement Benefit Plans C, F, and F with High Deductible may not be offered to individuals newly eligible for Medicare on or after January 1, 2020.

(5) The reference to Plans C or F contained in Paragraph (2) of Subsection A of 13.10.25.14 NMAC is deemed a reference to Plans D or G for purposes of this section.

B. Applicability to certain individuals. This section, applies to only individuals who are newly eligible for Medicare on or after January 1, 2020:

(1) by reason of attaining age 65 on or after January 1, 2020; or

(2) by reason of entitlement to benefits under Medicare Part A pursuant to section 226(b) or 226A of the Social Security Act, or who is deemed to be eligible for benefits under section 226(a) of the Social Security Act on or after January 1, 2020.

C. Guaranteed issue for eligible persons. For purposes of Subsection E of 13.10.25.18 NMAC, in the case of any individual newly eligible for Medicare on or after January 1, 2020, any reference to a Medicare Supplement policy Plans C or F including Plan F with High Deductible) shall be deemed to be a reference to Medicare Supplement Plans D or G (including Plan G with High Deductible), respectively that meet the requirements of this Subsection A of this section.

D. Offer of redesignated plans to individuals other than newly eligible. On or after January 1, 2020, the standardized benefit plans described in Paragraph (4) of Subsection A of this section may be offered to any individual who was eligible for Medicare prior to January 1, 2020 in addition to the standardized plans described in Subsection E of 13.10.25.14 NMAC of this regulation. [13.10.25.15 NMAC - Rp, 13.10.25.15 NMAC, 1/1/2019]

13.10.25.16 MEDICARE SELECT POLICIES AND CERTIFICATES:

A. Applicability.

(1) This section shall apply to Medicare Select policies and certificates, as defined in this section.

(2) No policy or certificate may be advertised as a Medicare Select policy or certificate unless it meets the requirements of this section.

B. Authorization. The superintendent may authorize a Medicare Select issuer to offer a Medicare Select policy or certificate, pursuant to this section and Section 4358 of the *Omnibus Budget Reconciliation Act (OBRA) of 1990* if the superintendent finds that the issuer has satisfied all of the requirements of this regulation.

C. Approval required. A Medicare Select issuer shall not issue a Medicare Select policy or certificate in this state until its plan of operation has been approved by the superintendent.

D. Filing of plan of operation. A Medicare Select issuer shall file a proposed plan of operation with the superintendent in accordance with the requirements set forth in 13.10.30 NMAC, "Network Access Plans, Network Adequacy and Provider Directories." The plan of operation shall contain at least the following information:

(1) Evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that:

(a) Services can be provided by network providers with reasonable promptness with respect to geographic location, hours of operation and after-hour care. The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall reflect the usual travel times within the community.

(b) The number of network providers in the service area is sufficient, with respect to current and expected policyholders, either:

(i) to deliver adequately all services that are subject to a restricted network provision; or

(ii) to make appropriate referrals.

(c) There are written agreements with network providers describing specific responsibilities.

(d) Emergency care is available 24 hours per day and seven days per week.

(e) In the case of covered services that are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting the providers from billing or otherwise seeking reimbursement from or recourse against any individual insured under a Medicare Select policy or certificate. This paragraph shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy or certificate.

(2) A statement or map providing a clear description of the service area.

(3) A description of the grievance procedure to be utilized.

(4) A description of the quality assurance program, including:

(a) the formal organizational structure;

(b) the written criteria for selection, retention and removal of network providers; and

(c) the procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action when warranted.

(5) A list and description, by specialty, of the network providers.

(6) Copies of the written information proposed to be used by the issuer to comply with Subsection I of this section.

(7) Any other information requested by the superintendent.

E. Plan updates.

(1) A Medicare Select issuer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the superintendent prior to implementing the changes. Changes shall be considered approved by the superintendent after 30 days unless specifically disapproved.

(2) An updated list of network providers shall be filed with the superintendent at least quarterly.

F. Payment of non-network providers.

(1) A Medicare Select policy or certificate shall not restrict payment for covered services provided by non- network providers if:

(a) the services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury or condition; and

(b) it is not reasonable to obtain services through a network provider.

(2) A Medicare Select policy or certificate shall not restrict payment for covered services that are not available through network providers.

G. Required disclosures. A Medicare Select issuer shall make full and fair disclosure in writing of the provisions, restrictions and limitations of the Medicare Select policy or certificate to each applicant. This disclosure shall include at least the following:

(1) an outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with:

(a) other Medicare Supplement policies or certificates offered by the issuer; and

(b) other Medicare Select policies or certificates;

(2) a description (including address, phone number and hours of operation) of the network providers, including primary care physicians, specialty physicians, hospitals and other providers;

(3) a description of the restricted network provisions, including payments for coinsurance and deductibles when providers other than network providers are utilized. Except to the extent specified in the policy or certificate, expenses incurred when using out-of-network providers do not count toward the out-of-pocket annual limit contained in plans K and L;

(4) a description of coverage for emergency and urgently needed care and other out-of-service area coverage;

(5) a description of limitations on referrals to restricted network providers and to other providers;

(6) a description of the insured's rights to purchase any other Medicare Supplement policy or certificate otherwise offered by the issuer; and

(7) a description of the Medicare Select issuer's quality assurance program and grievance procedure.

H. Signed acknowledgment. Prior to the sale of a Medicare Select policy or certificate, a Medicare Select issuer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided pursuant to Subsection I of this section and that the applicant understands the restrictions of the Medicare Select policy or certificate.

I. Complaint and grievance procedure. A Medicare Select issuer shall have and use procedures for hearing complaints and resolving written grievances from the insureds. The procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures.

(1) The grievance procedure shall be described in the policy and certificates and in the outline of coverage.

(2) At the time the policy or certificate is issued, the issuer shall provide detailed information to the insured describing how a grievance may be registered with the issuer.

(3) Grievances shall be considered in a timely manner and shall be transmitted to appropriate decision-makers who have authority to fully investigate the issue and take corrective action.

(4) If a grievance is found to be valid, corrective action shall be taken promptly.

(5) All concerned parties shall be notified about the results of a grievance.

(6) The issuer shall report no later than each March 1 to the superintendent regarding its grievance procedure. The report shall be in a format prescribed by the superintendent and shall contain the number of grievances filed in the past year and a summary of the subject, nature and resolution of such grievances.

J. Alternate policies. At the time of initial purchase, a Medicare Select issuer shall make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare Supplement policy or certificate otherwise offered by the issuer.

K. Offering non-network policies.

(1) At the request of an individual insured under a Medicare Select policy or certificate, a Medicare Select issuer shall make available to the individual insured the opportunity to purchase a Medicare Supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies or certificates available without requiring evidence of insurability after the Medicare Select policy or certificate has been in force for six months.

(2) For the purposes of this subsection, a Medicare Supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this paragraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for at-home recovery services or coverage for Medicare Part B excess charges.

L. Continuation of coverage. Medicare select policies and certificates shall provide for continuation of coverage in the event the secretary determines that Medicare Select policies and certificates issued pursuant to this section should be discontinued due to either the failure of the Medicare Select program to be reauthorized under law or its substantial amendment.

(1) Each Medicare Select issuer shall make available to each individual insured under a Medicare Select policy or certificate the opportunity to purchase any Medicare Supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies and certificates available without requiring evidence of insurability.

(2) For the purposes of this subsection, a Medicare Supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this paragraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for at-home recovery services or coverage for Part B excess charges.

M. Data calls. A Medicare Select issuer shall comply with reasonable requests for data made by state or federal agencies, including the United States department of health and human services, for the purpose of evaluating the Medicare Select Program.

[13.10.25.16 NMAC - Rp, 13.10.25.16 NMAC, 1/1/2019]

13.10.25.17 OPEN ENROLLMENT:

A. Plan availability. An issuer shall not deny or condition the issuance or effectiveness of any Medicare Supplement policy or certificate available for sale in this state, nor discriminate in the pricing of a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a policy or certificate that is submitted prior to or during the six month period beginning with the first day of the first month in which an individual is both 65 years of age or older and is enrolled for benefits under Medicare Part B. Each Medicare Supplement policy and certificate currently available from an insurer shall be made available to all applicants who qualify under this subsection without regard to age.

B. Period of creditable coverage.

(1) If an applicant qualifies under Subsection A of this section and submits an application during the time period referenced in Subsection A and, as of the date of application, has had a continuous period of creditable coverage of at least six months, the issuer shall not exclude benefits based on a preexisting condition.

(2) If the applicant qualifies under Subsection A of this section and submits an application during the time period referenced in Subsection A and, as of the date of application, has had a continuous period of creditable coverage that is less than six months, the issuer shall reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. The secretary shall specify the manner of the reduction under this subsection.

C. Exclusion of benefits. Except as provided in Subsection B of this section and 13.10.25.18 NMAC and 13.10.25.29 NMAC, Subsection A of this section shall not be construed as preventing the exclusion of benefits under a policy, during the first six months, based on a preexisting condition for which the policyholder or certificate holder received treatment or was otherwise diagnosed during the six months before the coverage became effective.

[13.10.25.17 NMAC - Rp, 13.10.25.17 NMAC, 1/1/2019]

13.10.25.18 GUARANTEED ISSUE FOR ELIGIBLE PERSONS:

A. Guaranteed issue.

(1) Eligibility. Eligible persons, as defined in the *Balanced Budget Act of 1997*, are those individuals described in Subsection B of this section who seek to enroll under the policy during the period specified in Subsection C of this section, and who submit evidence of the date of termination, disenrollment, or Medicare Part D enrollment with the application for a Medicare Supplement policy.

(2) Discrimination, denial and exclusion. With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare Supplement policy described in Subsection E of this

section that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a Medicare Supplement policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare Supplement policy.

B. Eligible persons. An eligible person is an individual described in any of the following paragraphs:

(1) Employee welfare benefit plan. The individual is enrolled under an employee welfare benefit plan, as defined in 29 U.S.C. Section 1002, that provides health benefits that supplement the benefits under Medicare; and the plan terminates, or the plan ceases to provide some or all of such supplemental health benefits to the individual;

(2) Medicare Advantage or PACE. The individual is enrolled with a Medicare Advantage organization under a Medicare Advantage plan under Medicare Part C, and any of the following circumstances apply, or the individual is 65 years of age or older and is enrolled with a *Program of All-Inclusive Care for the Elderly* (PACE) provider under Section 1894 of the Social Security Act (42 U.S.C. §1395eee), and there are circumstances similar to those described below that would permit discontinuance of the individual's enrollment with such provider if such individual were enrolled in a Medicare Advantage plan:

(a) the certification of the organization or plan has been terminated;

(b) the organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;

(c) the individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the secretary, but not including termination of the individual's enrollment on the basis described in Section 1851(g)(3)(B) of the federal Social Security Act (42 U.S.C. §1395w-21(g)(3)(B), where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under Section 1856), or the plan is terminated for all individuals within a residence area;

(d) the individual demonstrates, in accordance with guidelines established by the secretary, that:

(i) the organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or

(ii) the organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

(e) the individual meets such other exceptional conditions as the secretary may provide.

(3) Eligible organization.

(a) The individual is enrolled with:

(i) an eligible organization under a contract under Section 1876 of the Social Security Act (42 U.S.C. §1395mm, Medicare cost);

(ii) a similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

(iii) an organization under an agreement under Section 1833(a)(1)(A) of the Social Security Act (42 U.S.C. §1395l(a)(1)(A), health care prepayment plan); or

(iv) an organization under a Medicare Select policy; and

(b) the enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under Paragraph (2) of this subsection.

(4) Enrollment ceases. The individual is enrolled under a Medicare Supplement policy and the enrollment ceases because:

(a) of the insolvency of the issuer or bankruptcy of the non-issuer organization or of other involuntary termination of coverage or enrollment under the policy;

(b) the issuer of the policy substantially violated a material provision of the policy; or

(c) the issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual;

(5) Termination of enrollment with Medicare Advantage.

(a) the individual was enrolled under a Medicare Supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare Advantage organization under a Medicare Advantage plan under Medicare Part C, any eligible organization under a contract under Section 1876 of the Social Security Act (42 U.S.C. §1395mm, Medicare cost), any similar organization operating under demonstration project authority, any PACE provider under Section 1894 of the Social Security Act (42 U.S.C. §1395eee) or a Medicare Select policy; and

(b) the subsequent enrollment under Subparagraph (a) of this paragraph is terminated by the enrollee during any period within the first 12 months of such subsequent enrollment (during which the enrollee is permitted to

terminate such subsequent enrollment under Section 1851(e) of the federal Social Security Act, 42 U.S.C. §1395w-21(e));

(6) Disenrollment with Medicare Advantage. The individual, upon first becoming eligible for benefits under Medicare Part A at age 65, enrolls in a Medicare Advantage plan under Medicare Part C, or with a PACE provider under Section 1894 of the Social Security Act (42 U.S.C. §1395eee), and disenrolls from the plan or program by not later than 12 months after the effective date of enrollment; or

(7) Duplicate drug plan enrollment. The individual enrolls in a Medicare Part D plan during the initial enrollment period and, at the time of enrollment in Medicare Part D, was enrolled under a Medicare Supplement policy that covers outpatient prescription drugs and the individual terminates enrollment in the Medicare Supplement policy and submits evidence of enrollment in Medicare Part D along with the application for a policy described in Paragraph (4) of Subsection E of this section.

C. Guaranteed issue time periods.

(1) In the case of an individual described in Paragraph (1) of Subsection B of this section, the guaranteed issue period begins on the later of:

(a) the date the individual receives a notice of termination or cessation of all supplemental health benefits (or, if a notice is not received, notice that a claim has been denied because of a termination or cessation); or

(b) the date that the applicable coverage terminates or ceases, and ends 63 days thereafter.

(2) In the case of an individual described in Paragraphs (2), (3), (5) or (6) of Subsection B of this section whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends 63 days after the date the applicable coverage is terminated.

(3) In the case of an individual described in Subparagraph (a) of Paragraph (4) of Subsection B of this section, the guaranteed issue period begins on the earlier of:

(a) the date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice if any, and

(b) the date that the applicable coverage is terminated, and ends on the date that is 63 days after the date the coverage is terminated.

(4) In the case of an individual described in Paragraph (2), (5) or (6) or Subparagraphs (b) of (c) of Paragraph (4) of Subsection B of this section, who disenrolls voluntarily, the guaranteed issue period begins on the date that is 60 days before the effective date of the disenrollment and ends on the date that is 63 days after the effective date.

(5) In the case of an individual described in Paragraph (7) of Subsection B of this section, the guaranteed issue period begins on the date the individual receives notice pursuant to Section 1882(v)(2)(B) of the Social Security Act (42 U.S.C. §1395ss(v)(2)(B)) from the Medicare Supplement issuer during the 60 day period immediately preceding the initial Medicare Part D enrollment period and ends on the date that is 63 days after the effective date of the individual's coverage under Medicare Part D.

(6) In the case of an individual described in Subsection B of this section but not described in the preceding provisions of this subsection, the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is 63 days after the effective date.

D. Extended Medigap access for interrupted trial periods.

(1) In the case of an individual described in Paragraph (5) of Subsection B of this section (or deemed to be so described, pursuant to this paragraph) whose enrollment with an organization or provider described in Subparagraph (a) of Paragraph (5) of Subsection B of this section is involuntarily terminated within the first 12 months of enrollment, and who, without an intervening enrollment, enrolls with another such organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in Paragraph (5) of Subsection B of this section;

(2) In the case of an individual described in Paragraph (6) of Subsection B of this section (or deemed to be so described, pursuant to this paragraph) whose enrollment with a plan or in a program described in Paragraph (6) of Subsection B of this section is involuntarily terminated within the first 12 months of enrollment, and who, without an intervening enrollment, enrolls in another such plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described Paragraph (6) of Subsection B of this section; and

(3) For purposes of Paragraph (5) and (6) of Subsections B of this section, no enrollment of an individual with an organization or provider described in Subparagraph (a) of Paragraph (5) of Subsection B of this section, or with a plan or in a program described in Paragraph (6) of Subsection B of this section, may be deemed to be an initial enrollment under this paragraph after the two-year period beginning on the date on which the individual first enrolled with such an organization, provider, plan or program.

E. Products to which eligible persons are entitled. The Medicare Supplement policy to which eligible persons are entitled under:

(1) Paragraphs (1), (2), (3) and (4) of Subsection B of this section is a Medicare Supplement policy which has a benefit package classified as Plan A, B, C, F (including F with a high deductible), K or L offered by any issuer.

(2) Subject to Subparagraph (b) of Paragraph (5) of Subsection B of this section is the same Medicare Supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in Paragraph (1) of this section and after December 31, 2005, if the individual was most recently enrolled in a Medicare Supplement policy with an outpatient prescription drug benefit, a Medicare Supplement policy described in this paragraph is:

(a) the policy available from the same issuer but modified to remove outpatient prescription drug coverage; or

(b) at the election of the policyholder, a Plan A, B, C, F (including F with a high deductible), K or L that is offered by any issuer.

(3) Paragraph (6) of Subsection B of this section shall include any Medicare Supplement policy offered by any issuer.

(4) Paragraph (7) of Subsection B of this section is a Medicare Supplement policy that has a benefit package classified as Plan A, B, C, F (including F with a high deductible), K or L, and that is offered and is available for issuance to new enrollees by the same issuer that issued the individual's Medicare Supplement policy with outpatient prescription drug coverage.

F. Notification provisions.

(1) At the time of an event described in Subsection B of this section because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare Supplement policies under Subsection A of this section. Such notice shall be communicated contemporaneously with the notification of termination.

(2) At the time of an event described in Subsection B of this section because of which an individual ceases enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare Supplement policies under Subsection A of this section. Such notice shall be communicated within ten working days of the issuer receiving notification of disenrollment.
[13.10.25.18 NMAC - Rp, 13.10.25.18 NMAC, 1/1/2019]

13.10.25.19 STANDARDS FOR CLAIMS PAYMENT:

A. An issuer shall comply with section 1882(c)(3) of the Social Security Act (42 U.S.C. §1395ss(c)(3), as enacted by section 4081(b)(2)(C) of the *Omnibus Budget Reconciliation Act of 1987 (OBRA) 1987*, Pub. L. No. 100-203) by:

(1) accepting a notice from a Medicare carrier on dually assigned claims submitted by participating physicians and suppliers as a claim for benefits in place of any other claim form otherwise required and making a payment determination on the basis of the information contained in that notice;

(2) notifying the participating physician or supplier and the beneficiary of the payment determination;

(3) paying the participating physician or supplier directly;

(4) furnishing, at the time of enrollment, each enrollee with a card listing the policy name, number and a central mailing address to which notices from a Medicare carrier may be sent;

(5) paying user fees for claim notices that are transmitted electronically or otherwise; and

(6) providing to the secretary, at least annually, a central mailing address to which all claims may be sent by Medicare carriers.

B. Compliance with the requirements set forth in Subsection A of this section shall be certified on the Medicare Supplement insurance experience reporting form.
[13.10.25.19 NMAC - Rp, 13.10.25.19 NMAC, 1/1/2019]

13.10.25.20 LOSS RATIO STANDARDS AND REFUND OR CREDIT OF PREMIUM:

A. Loss ratio standards.

(1) Return of premiums.

(a) A Medicare Supplement policy form or certificate form shall not be delivered unless the policy form or certificate form can be expected, as estimated for the entire period for which rates are computed to provide coverage, i.e., are guaranteed, to return to policyholders and certificate holders in the form of aggregate benefits (not including anticipated refunds or credits) provided under the policy form or certificate form:

(i) At least seventy-five percent of the aggregate amount of premiums earned in the case of group policies; or

(ii) At least sixty-five percent of the aggregate amount of premiums earned in the case of individual policies;

(b) Calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for the period and in accordance with accepted actuarial principles and practices. Incurred health care expenses where coverage is provided by a health maintenance organization shall not include:

(i) home office and overhead costs;

(ii) advertising costs;

(iii) commissions and other acquisition costs;

(iv) taxes;

(v) capital costs;

(vi) administrative costs; and

(vii) claims processing costs.

(2) Rate filings. All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this section when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage, i.e., are guaranteed, can be expected to meet the appropriate loss ratio standards.

(3) Solicited policies. For purposes of applying Paragraph (1) of this subsection and Paragraph (3) of Subsection C of 13.10.25.21 NMAC only, policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print and broadcast advertising) shall be deemed to be group policies.

(4) Combining experience. For policies issued prior to July 1, 1992, expected claims in relation to premiums shall meet:

(a) The originally filed anticipated loss ratio when combined with the actual experience since inception;

(b) The appropriate loss ratio requirement from items (i) and (ii) of Subparagraph (a) of Paragraph (1) of this subsection when combined with actual experience beginning with July 1, 1992 to date; and

(c) The appropriate loss ratio requirement from items (i) and (ii) of Subparagraph (a) of Paragraph (1) of this subsection over the entire future period for which the rates are computed to provide coverage, i.e., are guaranteed.

B. Refund or credit calculation.

(1) Filing Appendix A. Pursuant to Subsection A of 13.10.26.31 NMAC, for each type in a standard Medicare Supplement benefit plan, the issuer shall collect and file with the superintendent by May 31 of each year the data contained in the applicable reporting form contained in Appendix A as provided in the *Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.

(2) Refund calculation. If on the basis of the experience as reported, the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), then a refund or credit calculation is required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare Supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.

(3) Calculation of older policies. For the purposes of this section, policies or certificates issued prior to July 1, 1992, the issuer shall make the refund or credit calculation separately for all individual policies (including all group policies subject to an individual loss ratio standard when issued) combined and all other group policies combined for experience after January 1, 1996. The first report shall be due by May 31, 1998.

(4) Refund interest and distribution. A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a *de minimis* level. The refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the secretary of health and human services, but in no event shall it be less than the average rate of interest for thirteen-week treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.

C. Annual filing of premium rates. An issuer of Medicare Supplement policies and certificates issued before or after July 1, 1992, shall annually file its rates, rating schedule and supporting documentation including ratios of incurred losses to earned premiums by policy duration for approval by the superintendent electronically in SERFF or as otherwise designated by the superintendent, pursuant to Subsection D of Section 59A-17-9, Subsection D of Section 59A-18-12 and Subsection B of Section 59A-18-13 NMSA 1978. The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed, i.e., are guaranteed. The demonstration shall exclude active life reserves. An expected third-year loss ratio that is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three years. As soon as practicable, but prior to the effective date of enhancements in Medicare benefits, every issuer of Medicare Supplement policies or certificates in this state shall file for approval electronically in SERFF or as otherwise designated by the superintendent, pursuant to Subsection D of Section 59A-17-9, Subsection D of Section 59A-18-12 and Subsection B of Section 59A-18-13 NMSA 1978:

(1) Premium adjustments.

(a) Appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies

or certificates. The supporting documents necessary to justify the adjustment shall accompany the filing.

(b) An issuer shall make premium adjustments necessary to produce an expected loss ratio under the policy or certificate to conform to minimum loss ratio standards for Medicare Supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for the Medicare Supplement policies or certificates. No premium adjustment that would modify the loss ratio experience under the policy other than the adjustments described herein shall be made with respect to a policy at any time other than upon its renewal date or anniversary date.

(c) If an issuer fails to make premium adjustments acceptable to the superintendent, the superintendent may order premium adjustments, refunds or premium credits deemed necessary to achieve the loss ratio required by this section.

(2) Eliminating duplications. Any appropriate riders, endorsements or policy forms needed to accomplish the Medicare Supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. The riders, endorsements or policy forms shall provide a clear description of the Medicare Supplement benefits provided by the policy or certificate.

D. Public hearings. The superintendent may, at the superintendent's discretion, conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or certificate form issued before or after July 1, 1992 if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance is made without consideration of any refund or credit for the reporting period. Public notice of the hearing shall be furnished in a manner deemed appropriate by the superintendent. [13.10.25.20 NMAC - Rp, 13.10.25.20 NMAC, 1/1/2019]

13.10.25.21 FILING AND APPROVAL OF POLICIES AND CERTIFICATES AND PREMIUM RATES:

A. Filing policies and certificates. An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed and approved electronically in SERFF or as otherwise designated by the superintendent, pursuant to Subsection D of Section 59A-17-9, Subsection D of Section 59A-18-12 and Subsection B of Section 59A-18-13 NMSA 1978.

B. Filing riders and amendments. An issuer shall file any riders or amendments to policy or certificate forms to delete outpatient prescription drug benefits as required by the *Medicare Prescription Drug, Improvement, and Modernization Act of 2003* only with the superintendent in the state in which the policy or certificate was issued.

C. Filing rate change requests. An issuer shall not use or change premium rates for a Medicare Supplement policy or certificate unless the rates, rating schedule and supporting documentation have been filed and approved electronically in SERFF or as otherwise designated by the superintendent, pursuant to Subsection D of Section 59A-17-9, Subsection D of Section 59A-18-12 and Subsection B of Section 59A-18-13 NMSA 1978.

D. Restrictions on number of forms filed.

(1) Except as provided in Paragraph (2) of this subsection, an issuer shall not file for approval more than one form of a policy or certificate of each combination of type and series for each standard Medicare Supplement benefit plan.

(2) An issuer may offer, with the approval of the superintendent, up to four additional policy forms or certificate forms of the same type for the same standard Medicare Supplement benefit plan, one for each of the following cases:

(a) The inclusion of new or innovative benefits;

(b) The addition of either direct response or agent marketing methods;

(c) The addition of either guaranteed issue or underwritten coverage;

(d) The offering of coverage to individuals eligible for Medicare by reason of disability.

(3) For the purposes of this subsection, a "type" means an individual policy, a group policy, an individual Medicare Select policy, or a group Medicare Select policy; "series" means the separate sets of 1990, 2010, and 2020 Standardized Medicare Supplement Benefit Plans defined in Sections 13.10.25.12, 13.10.25.14, and 13.10.25.15 NMAC respectively.

E. Availability of approved forms.

(1) Except as provided in Subparagraph (a) of this paragraph, an issuer shall continue to make available for purchase any policy form or certificate form issued after July 1, 1992, that has been approved by the superintendent, unless constrained by law from doing so. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous 12 months.

(a) An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the superintendent in writing its decision at least 60 days prior to discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the superintendent, the issuer shall no longer offer for sale the policy form or certificate form in this state.

(b) An issuer that discontinues the availability of a policy form or certificate form pursuant to

Subparagraph (a) of this paragraph shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare Supplement benefit plan as the discontinued form for a period of five years after the issuer provides notice to the superintendent of the discontinuance. The period of discontinuance may be reduced if the superintendent determines that a shorter period is appropriate.

(2) The sale or other transfer of Medicare Supplement business to another issuer shall be considered a discontinuance for the purposes of this subsection.

(3) A change in the rating structure or methodology shall be considered a discontinuance under Paragraph (1) of this subsection.

F. Combining experience for refund calculation.

(1) Except as provided in Paragraph (2) of this subsection, the experience of all policy forms or certificate forms of the same type in a standard Medicare Supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in 13.10.25.20 NMAC.

(2) Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

G. An issuer shall not present for filing or approval a rate structure for its Medicare Supplement policies or certificates issued after the effective date of the amendment of this regulation based upon a structure or methodology with any groupings of attained ages greater than one year. The ratio between rates for successive ages shall increase smoothly as age increases.

[13.10.25.21 NMAC - Rp, 13.10.25.21 NMAC, 1/1/2019]

13.10.25.22 PERMITTED COMPENSATION ARRANGEMENTS:

A. First year. An issuer or other entity may provide commission or other compensation to an agent or other representative for the sale of a Medicare Supplement policy or certificate only if the first year commission or other first year compensation is no more than two-hundred percent of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.

B. Subsequent years. The commission or other compensation provided in subsequent (renewal) years must be the same as that provided in the second year or period and must be provided for no fewer than five renewal years.

C. Replacement policies. No issuer or other entity shall provide compensation to its agents or other producers and no agent or producer shall receive compensation greater than the renewal compensation payable by the replacing issuer on renewal policies or certificates if an existing policy or certificate is replaced.

D. Compensation defined. For purposes of this section, "compensation" includes pecuniary or non-pecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate including but not limited to bonuses, gifts, prizes, awards and finders fees.

[13.10.25.22 NMAC - Rp, 13.10.25.22 NMAC, 1/1/2019]

13.10.25.23 REQUIRED DISCLOSURE PROVISIONS:

A. General rules.

(1) Renewal or continuation. Medicare Supplement policies and certificates shall include a renewal or continuation provision. The language or specifications of the provision shall be consistent with the type of contract issued. The provision shall be appropriately captioned and shall appear on the first page of the policy, and shall include any reservation by the issuer of the right to change premiums and any automatic renewal premium increases based on the policyholder's age.

(2) Riders or endorsements. Except for riders or endorsements by which the issuer effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare Supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare Supplement policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of policy or certificate issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare Supplement policies, or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy.

(3) Payment standards. Medicare Supplement policies or certificates issued or delivered after July 1, 1992 shall not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import.

(4) Disclosure of preexisting condition limitations. If a Medicare Supplement policy or certificate contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations."

(5) Return and refund period. Medicare Supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificate holder shall have the right to return the policy or certificate within 30 days of its delivery and to have the premium

refunded within 30 days after its return if, after examination of the policy or certificate, the insured person is not satisfied for any reason.

(6) Delivery of guide.

(a) Issuers of accident and sickness policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis to persons eligible for Medicare shall provide to those applicants a *Guide to Health Insurance for People with Medicare* in the form developed jointly by the NAIC and Center for Medicare and Medicaid Services (CMS) and in a type size no smaller than 12 point type. Delivery of the guide shall be made whether or not the policies or certificates are advertised, solicited or issued as Medicare Supplement policies or certificates as defined in this regulation. Except in the case of direct response issuers, delivery of the guide shall be made to the applicant at the time of application and acknowledgement of receipt of the guide shall be obtained by the issuer. Direct response issuers shall deliver the guide to the applicant upon request but not later than at the time the policy is delivered.

(b) For the purposes of this section, "form" means the language, format, type size, type proportional spacing, bold character, and line spacing.

B. Notice requirements.

(1) Benefit changes. As soon as practicable, but no later than 30 days prior to the annual effective date of any Medicare benefit changes, an issuer shall notify its policyholders and certificate holders of modifications it has made to Medicare Supplement insurance policies or certificates in a format acceptable to the superintendent. The notice shall:

(a) include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare Supplement policy or certificate, and

(b) inform each policyholder or certificate holder as to when any premium adjustment is to be made due to changes in Medicare.

(2) Required format. The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(3) No solicitation. The notices shall not contain or be accompanied by any solicitation.

C. MMA notice requirements. Issuers shall comply with any notice requirements of the *Medicare Prescription Drug, Improvement and Modernization Act of 2003*.

D. Outline of coverage requirements.

(1) Issuers shall provide an outline of coverage to all applicants at the time application is presented to the prospective applicant and, except for direct response policies, shall obtain an acknowledgement of receipt of the outline from the applicant; and

(2) If an outline of coverage is provided at the time of application and the Medicare Supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany the policy or certificate when it is delivered and contain the following statement, in no less than 12 point type, immediately above the company name:

NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

(3) The outline of coverage provided to applicants pursuant to this section consists of four parts: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage shall be in the language and format prescribed below in no less than 12 point type. All plans shall be shown on the cover page, and the plans that are offered by the issuer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.

(4) The following items shall be included in the outline of coverage in the order prescribed below.

(Continued on next page)

Benefit Chart of Medicare Supplement Plans Sold on or After June 1, 2010

[Insert "Benefit Chart of Medicare Supplement Plans Sold on or After June 1, 2010" provided in the *Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.]

PREMIUM INFORMATION [Boldface Type]

We [insert issuer's name] can only raise your premium if we raise the premium for all policies like yours in this State. [If the premium is based on the increasing age of the insured, include information specifying when premiums will change.]

READ YOUR POLICY VERY CAREFULLY [Boldface Type]

This is only an outline describing your policy's most important features. The policy is your insurance contract. You must read the policy itself to understand all of the rights and duties of both you and your insurance company.

RIGHT TO RETURN POLICY [Boldface Type]

If you find that you are not satisfied with your policy, you may return it to [insert issuer's address]. If you send the policy back to us within 30 days after you receive it, we will treat the policy as if it had never been issued and will return all of your payments.

POLICY REPLACEMENT [Boldface Type]

If you are replacing another health insurance policy, do NOT cancel it until you have actually received your new policy and are sure you want to keep it.

NOTICE [Boldface Type]

This policy may not fully cover all of your medical costs.

[for agents:] - Neither [insert company's name] nor its agents are connected with Medicare.

[for direct response:] [insert company's name] is not connected with Medicare.

This outline of coverage does not give all the details of Medicare coverage. Contact your local Social Security Office or consult Medicare and You for more details.

COMPLETE ANSWERS ARE VERY IMPORTANT [Boldface Type]

When you fill out the application for the new policy, be sure to answer truthfully and completely all questions about your medical and health history. The company may cancel your policy and refuse to pay any claims if you leave out or falsify important medical information. [If the policy or certificate is guaranteed issue, this paragraph must not appear.]

Review the application carefully before you sign it. Be certain that all information has been properly recorded.

[Include for each plan prominently identified in the cover page, a chart showing the services, Medicare payments, plan payments and insured payments for each plan, using the same language, in the same order, using uniform layout and format as listed below. No more than four plans may be shown on one chart. For purposes of illustration, charts for each plan are included in *Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017. An issuer may use additional benefit plan designations on these charts pursuant to Subsection D of 13.10.25.14 NMAC.]

[Include an explanation of any innovative benefits on the cover page and in the chart, in a manner approved by the superintendent.]

Benefit Chart of Medicare Supplement Plans Sold on or after January 1, 2020

This chart shows the benefits included in each of the standard Medicare Supplement plans. Some plans may not be available. Only applicants first eligible for Medicare before 2020 may purchase Plans C, F, and high deductible F.

[Use the Benefit Chart of Medicare Supplement Plans Sold on or After June 1, 2020 provided in the *Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.]

PLAN A

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

[Use the Plan A (Part A) chart, chart notes and associated values provided in the *Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.]

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

[Use the Plan A (Part B) chart, chart notes and associated values provided in the *Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.]

PARTS A & B

[Use the Plan A (Parts A& B) chart, chart notes and associated values provided in the *Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.]

PLAN B

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

[Use the Plan B (Part A) charts, chart notes and associated values provided in the *Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.]

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

[Use the Plan B (Part B) charts, chart notes and associated values provided in the *Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.]

PARTS A & B

[Use the Plan B (Parts A& B) chart, chart notes and associated values provided in the *Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.]

PLAN C

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

[Use the Plan C (Part A) charts, chart notes and associated values provided in the *Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.]

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

[Use the Plan C (Part B) charts, chart notes and associated values provided in the Model *Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.]

PARTS A & B

[Use the Plan C (Parts A& B) chart, chart notes and associated values provided in the *Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.]

OTHER BENEFITS—NOT COVERED BY MEDICARE

[Use the Plan C chart, chart notes and associated values for Other Benefits – Not Covered by Medicare provided in the *Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.]

PLAN D

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

[Use the Plan D (Part A) chart, chart notes, and associated values provided in the *Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.]

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

[Use the Plan D (Part B) chart, chart notes and associated values provided in the *Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.]

PARTS A & B

[Use the Plan D (Parts A& B) chart, chart notes and associated values provided in the *Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.]

OTHER BENEFITS—NOT COVERED BY MEDICARE

[Use the Plan D chart, chart notes and associated values for Other Benefits – Not Covered by Medicare provided in the *Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.]

PLAN F or HIGH DEDUCTIBLE PLAN F

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

[Use the Plan F or High Deductible Plan F (Part A) chart, chart notes and associated values provided in the *Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.]

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

[Use the Plan F or High Deductible Plan F (Part B) chart, chart notes and associated values provided in the *Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.]

PARTS A & B

[Use the Plan F or High Deductible Plan F (Parts A& B) chart, chart notes and associated values provided in the *Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.]

OTHER BENEFITS—NOT COVERED BY MEDICARE

[Use the Plan F or High Deductible Plan F chart and associated values for Other Benefits – not covered by Medicare provided in the *Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.]

PLAN G or HIGH DEDUCTIBLE PLAN G

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

[Use the Plan G or High Deductible Plan G (Part A) chart, chart notes and associated values provided in the *Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.]

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

[Use the Plan G or High Deductible Plan G (Part B) chart, chart notes and associated values provided in the *Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.]

PARTS A & B

[Use the Plan G or High Deductible Plan G (Parts A& B) chart, chart notes and associated values provided in the *Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.]

OTHER BENEFITS—NOT COVERED BY MEDICARE

[Use the Plan G or High Deductible Plan G chart, chart notes and associated values for Other Benefits – not covered by Medicare provided in the *Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.]

PLAN K

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

[Use the Plan K (Part A) chart, chart notes and associated values provided in the Model Regulation To Implement the *NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.]

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

[Use the Plan K (Part B) chart, chart notes and associated values provided in the Model Regulation To Implement the *NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.]

PARTS A & B

[Use the Plan K (Parts A& B) chart, chart notes and associated values provided in the *Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.]

PLAN L

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

[Use the Plan L (Part A) chart, chart notes and associated values provided in the Model Regulation To Implement the *NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

[Use the Plan L (Part B) chart. chart notes and associated values provided in the Model Regulation To Implement the *NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.

PARTS A & B

[Use the Plan L (Parts A& B) chart, chart notes and associated values provided in the *Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.]

PLAN M

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

[Use the Plan M (Part A) chart, chart notes and associated values provided in the Model Regulation To Implement the *NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

[Use the Plan L (Part B) chart, chart notes and associated values provided in the Model Regulation To Implement the *NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.

PARTS A & B

[Use the Plan M (Parts A& B) chart, chart notes and associated values provided in the *Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.]

OTHER BENEFITS—NOT COVERED BY MEDICARE

[Use the Plan M chart, chart notes and associated values for Other Benefits – not covered by Medicare provided in the Model Regulation To Implement the *NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.

PLAN N

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

[Use the Plan N (Part A) chart, chart notes and associated values provided in the Model Regulation To Implement the *NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.]

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

[Use the Plan N (Part B) chart, chart notes and associated values provided in the Model Regulation To Implement the *NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.]

PARTS A & B

[Use the Plan N (Parts A& B) chart, chart notes and associated values provided in the *Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.]

OTHER BENEFITS—NOT COVERED BY MEDICARE

[Use the Plan N chart, chart notes and associated values for Other Benefits – not covered by Medicare provided in the Model Regulation To Implement the *NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.

E. Notice Regarding Policies or Certificates Which are not Medicare Supplement Policies.

(1) Any accident and sickness insurance policy or certificate, other than a Medicare Supplement policy, a policy issued pursuant to a contract under Section 1876 of the Federal Social Security Act (42 U.S.C. § 1395 et seq.), disability income policy; or other policy identified in Subsection B of 13.10.25.3 NMAC, issued for delivery in this state to persons eligible for Medicare shall notify insureds under the policy that the policy is not a Medicare Supplement policy or certificate. The notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, to the first page of the policy, or certificate delivered to insureds. The notice shall be in no less than 12 point type and shall contain the following language:

"THIS [POLICY OR CERTIFICATE] IS NOT A MEDICARE SUPPLEMENT [POLICY OR CONTRACT]. If you are eligible for Medicare, review the *Guide to Health Insurance for People with Medicare* available from the company."

(2) Pursuant to Subsection B of 13.10.25.31 NMAC, applications provided to persons eligible for Medicare for the health insurance policies or certificates described in Paragraph (1) of Subsection D of this section shall be disclosed, using the applicable statement in Appendix C as provided in the *Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017, the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as a part of, or together with, the application for the policy or certificate.

[13.10.25.23 NMAC - Rp, 13.10.25.23 NMAC, 1/1/2019]

13.10.25.24 REQUIREMENTS FOR APPLICATION FORMS AND REPLACEMENT COVERAGE:

A. Statements and questions. Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant currently has Medicare Supplement, Medicare Advantage, Medicaid coverage, or another health insurance policy or certificate in force or whether a Medicare Supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent containing such questions and statements may be used.

[Statements]

1. You do not need more than one Medicare Supplement policy.

2. If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages.

3. You may be eligible for benefits under Medicaid and may not need a Medicare Supplement policy.

4. If, after purchasing this policy, you become eligible for Medicaid, the benefits and premiums under your Medicare Supplement policy can be suspended, if requested, during your entitlement to benefits under Medicaid for 24 months. You must request this suspension within 90 days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your suspended Medicare Supplement policy (or, if that is no longer available, a substantially equivalent policy) will be reinstituted if requested within 90 days of losing Medicaid eligibility. If the Medicare Supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstituted policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension.

5. If you are eligible for, and have enrolled in a Medicare Supplement policy by reason of disability and you later become covered by an employer or union-based group health plan, the benefits and premiums under your Medicare Supplement policy can be suspended, if requested, while you are covered under the employer or union-based group health plan. If you suspend your Medicare Supplement policy under these circumstances, and later lose your employer or union-based group health plan, your suspended Medicare Supplement policy (or, if that is no longer available, a substantially equivalent policy) will be reinstituted if requested within 90 days of losing your employer or union-based group health plan. If the Medicare Supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstituted policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension.

6. Counseling services may be available in your state to provide advice concerning your purchase of Medicare Supplement insurance and concerning medical assistance through the state Medicaid program, including benefits as a Qualified Medicare Beneficiary (QMB) and a Specified Low- Income Medicare Beneficiary (SLMB).

[Questions]

If you lost or are losing other health insurance coverage and received a notice from your prior insurer saying you were eligible for guaranteed issue of a Medicare Supplement insurance policy, or that you had certain rights to buy such a policy, you may be guaranteed acceptance in one or more of our Medicare Supplement plans. Please include a copy of the notice from your prior insurer with your application. PLEASE ANSWER ALL QUESTIONS.
[Please mark Yes or No below with an "X"]

To the best of your knowledge,

1. **(a)** Did you turn age 65 in the last 6 months?
Yes_____ No _____

(b) Did you enroll in Medicare Part B in the last 6 months?
Yes_____ No _____

(c) If yes, what is the effective date? _____

2. Are you covered for medical assistance through the state Medicaid program?
[NOTE TO APPLICANT: If you are participating in a "Spend-Down Program" and have not met your "Share of Cost," please answer NO to this question.]
Yes_____ No _____

If yes,

(a) Will Medicaid pay your premiums for this Medicare Supplement policy?
Yes_____ No _____

(b) Do you receive any benefits from Medicaid OTHER THAN payments toward your Medicare Part B premium?
Yes_____ No _____

3. **(a)** If you had coverage from any Medicare plan other than original Medicare within the past 63 days (for example a Medicare Advantage plan, or a Medicare HMO or PPO), fill in your start and end dates below. If you are still covered under this plan, leave "END: blank.
START /__/___ END /__/_____

(b) If you are still covered under the Medicare plan, do you intend to replace your current coverage with this new Medicare Supplement policy?
Yes_____ No _____

(c) Was this your first time in this type of Medicare plan?
Yes_____ No _____

(d) Did you drop a Medicare Supplement policy to enroll in the Medicare plan?
Yes_____ No _____

4. **(a)** Do you have another Medicare Supplement policy in force?

Yes_____ No _____

(b) If so, with what company, and what plan do you have [optional for Direct Mailers]?

(c) If so, do you intend to replace your current Medicare Supplement policy with this policy?

Yes_____ No _____

5. Have you had coverage under any other health insurance within the past 63 days? (For example, an employer, union, or individual plan)

Yes_____ No _____

(a) If so, with what company and what kind of policy?

_____

_____

_____

(b) What are your dates of coverage under the other policy?

START /__/ END /__/_____

(If you are still covered under the other policy, leave "END" blank.)

B. Other policies sold to this applicant. Agents shall list any other health insurance policies they have sold to the applicant.

(1) List policies sold which are still in force.

(2) List policies sold in the past five years that are no longer in force.

C. Signed form. In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the insurer, shall be returned to the applicant by the insurer upon delivery of the policy.

D. Replacement notice. Upon determining that a sale will involve replacement of Medicare Supplement coverage, any issuer, other than a direct response issuer, or its agent, shall furnish the applicant, prior to issuance or delivery of the Medicare Supplement policy or certificate, a notice regarding replacement of Medicare Supplement coverage. One copy of the notice signed by the applicant and the agent, except where the coverage is sold without an agent, shall be provided to the applicant and an additional signed copy shall be retained by the issuer. A direct response issuer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of Medicare Supplement coverage.

E. Format for notice. The notice required by the preceding Subsection for an issuer shall be provided in substantially the following form in no less than 12 point type:

NOTICE TO APPLICANT REGARDING REPLACMENT
OF MEDICARE SUPPLEMENT INSURANCE
OR MEDICARE ADVANTAGE

[Insurance company's name and address]

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to [your application] [information you have furnished], you intend to terminate existing Medicare Supplement or Medicare Advantage insurance and replace it with a policy to be issued by [Company Name] Insurance Company. Your new policy will provide 30 days within which you may decide without cost whether you desire to keep the policy.

You should review this new coverage carefully. Compare it with all accident and sickness coverage you now have. If, after due consideration, you find that purchase of this Medicare Supplement coverage is a wise decision, you should terminate your present Medicare Supplement or Medicare Advantage coverage. You should evaluate the need for other accident and sickness coverage you have that may duplicate this policy.

STATEMENT TO APPLICANT BY ISSUER, AGENT [BROKER OR OTHER REPRESENTATIVE]:

I have reviewed your current medical or health insurance coverage. To the best of my knowledge, this Medicare Supplement policy will not duplicate your existing Medicare Supplement or, if applicable, Medicare Advantage

coverage because you intend to terminate your existing Medicare Supplement coverage or leave your Medicare Advantage plan. The replacement policy is being purchased for the following reason (check one):

_____ Additional benefits.
_____ No change in benefits, but lower premiums.
_____ Fewer benefits and lower premiums.
_____ My plan has outpatient prescription drug coverage and I am enrolling in Part D.
_____ Disenrollment from a Medicare Advantage plan. Please explain reason for disenrollment. [optional only for Direct Mailers.]
_____ Other. (please specify)

1. **Note:** If the issuer of the Medicare Supplement policy being applied for does not, or is otherwise prohibited from imposing pre-existing condition limitations, please skip to statement 2 below. Health conditions that you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods or probationary periods. The insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

3. If, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical and health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, review it carefully to be certain that all information has been properly recorded. [If the policy or certificate is guaranteed issue, this paragraph must not appear.]

Do not cancel your present policy until you have received your new policy and are sure that you want to keep it.

_____
(Signature of Agent, Broker or Other Representative)*
[Typed Name and Address of Issuer, Agent or Broker]

_____
(Applicant's Signature

_____
(Date)
*Signature not required for direct response sales.

F. Paragraph (2) of the replacement notice (applicable to preexisting conditions) must be deleted by an issuer if the replacement does not involve application of a new preexisting condition limitation.
[13.10.25.24 NMAC - Rp, 13.10.25.24 NMAC, 1/1/2019]

13.10.25.25 FILING REQUIREMENTS FOR ADVERTISING: An issuer shall provide a copy of any Medicare Supplement advertisement intended for use in this state whether through written, radio or television medium to the superintendent for review and approval electronically in SERFF or as otherwise designated by the superintendent, pursuant to Subsection D of Section 59A-17-9, Subsection D of Section 59A-18-12 and Subsection B of Section 59A-18-13 NMSA 1978. Advertisements must comply with the requirements set forth in 13.10.4 NMAC.
[13.10.25.25 NMAC - Rp, 13.10.25.25 NMAC, 1/1/2019]

13.10.25.26 STANDARDS FOR MARKETING:

A. Issuer's procedures. An issuer, directly or through its producers, shall:

(1) establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate;

(2) establish marketing procedures to assure excessive insurance is not sold or issued;

(3) display prominently by type, stamp or other appropriate means, on the first page of the policy the following: "Notice to buyer: This policy may not cover all of your medical expenses"

(4) inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for Medicare Supplement insurance already has accident and sickness insurance and the types and amounts of any such insurance; and

(5) establish auditable procedures for verifying compliance with this Subsection A of this section.

B. Unfair trade practices prohibited. In addition to the practices prohibited in Section 59A-16-1 et seq. NMSA 1978 and Section 57-12-1 et seq. NMSA 1978 and accompanying regulations, the following acts and practices are prohibited:

(1) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(2) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

C. Use of terms. The terms "Medicare Supplement," "Medigap," "Medicare Wrap-Around" and words of similar import shall not be used unless the policy is issued in compliance with this regulation.

[13.10.25.26 NMAC - Rp, 13.10.25.26 NMAC, 1/1/2019]

13.10.25.27 APPROPRIATENESS OF RECOMMENDED PURCHASE AND EXCESSIVE INSURANCE:

A. Agent's responsibility. In recommending the purchase or replacement of any Medicare Supplement policy or certificate an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

B. Duplicate policies prohibited. Any sale of a Medicare Supplement policy or certificate that will provide an individual more than one Medicare Supplement policy or certificate is prohibited.

C. Duplicate Part C prohibited. An issuer shall not issue a Medicare Supplement policy or certificate to an individual enrolled in Medicare Part C unless the effective date of the coverage is after the termination date of the individual's Part C coverage.

[13.10.25.27 NMAC - Rp, 13.10.25.27 NMAC, 1/1/2019]

13.10.25.28 REPORTING OF MULTIPLE POLICIES:

A. Appendix B due date. On or before March 1 of each year, an issuer shall report to the superintendent the following information for every individual resident of this state for which the issuer has in force more than one Medicare Supplement policy or certificate using the form referenced in Subsection B of 13.10.26.31 NMAC:

(1) policy and certificate number; and

(2) date of issuance.

B. Report organization. The items set forth in Subsection A of this section must be grouped by individual policyholder.

[13.10.25.28 NMAC - Rp, 13.10.25.28 NMAC, 1/1/2019]

13.10.25.29 PROHIBITION AGAINST PREEXISTING CONDITIONS, WAITING PERIODS, ELIMINATION PERIODS AND PROBATIONARY PERIODS IN REPLACEMENT POLICIES OR CERTIFICATES:

A. If a Medicare Supplement policy or certificate replaces another Medicare Supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the new Medicare Supplement policy or certificate to the extent such time was spent under the original policy.

B. If a Medicare Supplement policy or certificate replaces another Medicare Supplement policy or certificate which has been in effect for at least six months, the replacing policy shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods and probationary periods for benefits similar to those contained in the original policy or certificate.

13.10.25.30 PROHIBITION AGAINST USE OF GENETIC INFORMATION AND REQUESTS FOR GENETIC TESTING:

This Section applies to all policies with policy years beginning on or after May 21, 2009.

A. Use of genetic testing – exclusion and discrimination. An issuer of a Medicare Supplement policy or certificate;

(1) Shall not deny or condition the issuance or effectiveness of the policy or certificate (including the imposition of any exclusion of benefits under the policy based on a pre-existing condition) on the basis of the genetic information with respect to such individual; and

(2) Shall not discriminate in the pricing of the policy or certificate (including the adjustment of premium rates) of an individual on the basis of the genetic information with respect to such individual.

B. Use of disease or disorder in setting group premium rates. Nothing in Subsection A shall be construed to limit the ability of an issuer, to the extent otherwise permitted by law, from

(1) Denying or conditioning the issuance or effectiveness of the policy or certificate or increasing the premium for a group based on the manifestation of a disease or disorder of an insured or applicant; or

(2) Increasing the premium for any policy issued

to an individual based on the manifestation of a disease or disorder of an individual who is covered under the policy (in such case, the manifestation of a disease or disorder in one individual cannot also be used as genetic information about other group members and to further increase the premium for the group).

C. Request for genetic testing prohibited. An issuer of a Medicare Supplement policy or certificate shall not request or require an individual or a family member of such individual to undergo a genetic test.

D. Permitting use of genetic testing. Subsection C of this section shall not be construed to preclude an issuer of a Medicare Supplement policy or certificate from obtaining and using the results of a genetic test in making a determination regarding payment (as defined for the purposes of applying the regulations promulgated under part C of title XI and section 264 of the *Health Insurance Portability and Accountability Act of 1996*, as may be revised from time to time) and consistent with Subsection A.

E. For purposes of carrying out Subsection D of this section, an issuer of a Medicare Supplement policy or certificate may request only the minimum amount of information necessary to accomplish the intended purpose.

F. Notwithstanding Subsection C of this section, an issuer of a Medicare Supplement policy may request, but not require, that an individual or a family member of such individual undergo a genetic test if each of the following conditions is met:

(1) The request is made pursuant to research that complies with part 46 of title 45, Code of Federal Regulations, or equivalent federal regulations, and any applicable state or local law or regulations for the protection of human subjects in research.

(2) The issuer clearly indicates to each individual, or in the case of a minor child, to the legal guardian of such child, to whom the request is made that:

(a) compliance with the request is voluntary; and

(b) non-compliance will have no effect on enrollment status or premium or contribution amounts.

(3) No genetic information collected or acquired under this subsection shall be used for underwriting, determination of eligibility to enroll or maintain enrollment status, premium rates, or the issuance, renewal, or replacement of a policy or certificate.

(4) The issuer notifies the secretary in writing that the issuer is conducting activities pursuant to the exception provided for under this subsection, including a description of the activities conducted.

(5) The issuer complies with such other conditions as the secretary may by regulation require for activities conducted under this subsection.

G. An issuer of a Medicare Supplement policy or certificate shall not request, require, or purchase genetic information for underwriting purposes.

H. An issuer of a Medicare Supplement policy or certificate shall not request, require, or purchase genetic information with respect to any individual prior to such individual's enrollment under the policy in connection with such enrollment.

I. If an issuer of a Medicare Supplement policy or certificate obtains genetic information incidental to the requesting, requiring, or purchasing of other information concerning any individual, such request, requirement, or purchase shall not be considered a violation of Subsection H of this section if such request, requirement, or purchase is not in violation of Subsection G of this section.

J. For the purposes of this section only:

(1) "Issuer of a Medicare Supplement policy or certificate" includes third-party administrator, or other person acting for or on behalf of such issuer.

(2) "Family member" means, with respect to an individual, any other individual who is a first-degree, second-degree, third-degree, or fourth-degree relative of such individual.

(3) "Genetic information" means, with respect to any individual, information about such individual's genetic tests, the genetic tests of family members of such individual, and the manifestation of a disease or disorder in family members of such individual. Such term includes, with respect to any individual, any request for, or receipt of, genetic services, or participation in clinical research, which includes genetic services, by such individual or any family member of such individual. Any reference to genetic information concerning an individual or family member of an individual who is a pregnant woman, includes genetic information of any fetus carried by such pregnant woman, or with respect to an individual or family member utilizing reproductive technology, includes genetic information of any embryo legally held by an individual or family member. The term "genetic information" does not include information about the sex or age of any individual.

(4) "Genetic services" means a genetic test, genetic counseling (including obtaining, interpreting, or assessing genetic information), or genetic education.

(5) "Genetic test" means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detect genotypes, mutations, or chromosomal changes. The term "genetic test" does not mean an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

(6)
"Underwriting purposes" means,

(a)
Rules for, or determination of, eligibility (including enrollment and continued eligibility) for benefits under the policy;

(b)
The computation of premium or contribution amounts under the policy;

(c)
The application of any pre-existing condition exclusion under the policy; and

(d)
Other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.
[13.10.25.30 NMAC - Rp, 13.10.25.30 NMAC, 1/1/2019]

13.10.25.31 SEPARABILITY: If any provision of this regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances shall not be affected thereby.
[13.10.25.31 NMAC - Rp, 13.10.25.31 NMAC, 1/1/2019]

13.10.26.32 APPENDICES:

A. Appendix A - medicare supplement refund calculation form. For the required *Medicare Supplement Refund Calculation Form* for each calendar year, use the form so named and instructions provided in Appendix A of the *Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017, except that on line 7, in place of "(see worksheet for Ratio 1)" use "(sixty-five percent for Individual, seventy-five percent for Group)".

B. Appendix B - form for reporting medicare supplement policies. Use the *Form For Reporting Medicare Supplement Policies* provided in Appendix B of the *Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651,* as adopted in 2017.

C. Appendix C - disclosure statements.

(1)
Instructions for use of the disclosure statements for health insurance policies sold to Medicare beneficiaries that duplicate Medicare.

(a)
Section 1882 (d) of the federal Social Security Act [42 U.S.C. 1395ss] prohibits the sale of a health insurance policy (the term policy includes certificate) to Medicare beneficiaries that duplicates Medicare benefits unless it will pay benefits without regard to a beneficiary's other health coverage and it includes the prescribed disclosure statement on or together with the application for the policy.

(b)
All types of health insurance policies that duplicate Medicare shall include one of the attached disclosure statements, according to the particular policy type involved, on the application or together with the application. The disclosure statement may not vary from the attached statements in terms of language or format (type size, type proportional spacing, bold character, line spacing, and usage of boxes around text).

(c)
State and federal law prohibits insurers from selling a Medicare Supplement policy to a person that already has a Medicare Supplement policy except as a replacement policy.

(d)
Property/casualty and life insurance policies are not considered health insurance.

(e)
Disability income policies are not considered to provide benefits that duplicate Medicare.

(f)
Long-term care insurance policies that coordinate with Medicare and other health insurance are not considered to provide benefits that duplicate Medicare.

(g)
The federal law does not preempt state laws that are more stringent than the federal requirements.

(h)
The federal law does not preempt existing state form filing requirements.

(i)
Section 1882 of the federal Social Security Act was amended in Subsection (d)(3)(A) to allow for alternative disclosure statements. The disclosure statements already in Appendix C remain. Carriers may use either disclosure statement with the requisite insurance product. However, carriers should use either the original disclosure statements or the alternative disclosure statements and not use both simultaneously.

(2) For the required disclosure statements refer to the various options that are provided in Appendix C of the *Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act – NAIC Model #651*, as adopted in 2017.
[13.10.25.32 NMAC - Rp, 13.10.25.32 NMAC, 1/1/2019]

HISTORY OF 13.10.25 NMAC:
13.10.25 NMAC - 2010 Medicare Supplement Insurance Standards, filed 8/13/2009 was repealed and replaced by 13.10.25 NMAC - Medicare Supplement Insurance Minimum Standards, effective 1/1/2019.

SUPERINTENDENT OF INSURANCE

This is an emergency short form amendment to 13.10.25 NMAC, Paragraph (2) of Subsection G. of Section 11, effective 1/1/2019. Subsections A. through F. and Paragraph (1) of Subsection G. were not published as no changes were made.

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(2) Plan L.
Standardized Medicare Supplement benefit Plan L shall consist of the following:

(a) the benefits described in Subparagraphs

(a), (b) (c) and (i) of Paragraph (1) of this subsection;

(b) the benefit described in Subparagraphs (d) (e), (f), (g), and (h) of Paragraph (1) of this subsection, but substituting seventy-five percent for fifty percent; and

(c) the benefit described in Subparagraph (j) of Paragraph (1), but substituting $2000 for $4000.

[13.10.25.11 NMAC - Rp, 13.10.25.11 NMAC, 1/1/2019; A/E 1/1/2019]

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SUPERINTENDENT OF INSURANCE

This is an amendment to 13.14.9 NMAC, Section 18, effective December 27, 2018, previously issued as an emergency amendment 7/1/2018.

13.14.9.18 PREMIUM RATES FOR ORIGINAL OWNER'S POLICIES: The following schedule of premium rates for original owner's policies shall be in effect from the effective date of this rate rule until modified by the superintendent:

Liability Charge Up to:	Total Charge:	Liability Charge Up to:	Total Charge:	Liability Charge Up to:	Total Charge:
10,000	176	24,000	290	38,000	388
11,000	184	25,000	296	39,000	395
12,000	193	26,000	304	40,000	402
13,000	201	27,000	311	41,000	407
14,000	210	28,000	320	42,000	414
15,000	218	29,000	327	43,000	421
16,000	227	30,000	334	44,000	428
17,000	235	31,000	342	45,000	434
18,000	244	32,000	348	46,000	440
19,000	252	33,000	356	47,000	447
20,000	260	34,000	361	48,000	454
21,000	265	35,000	368	49,000	460
22,000	273	36,000	376	50,000	468
23,000	281	37,000	381		

For amounts of insurance (in thousands)	Portion of rate (per thousand) subject to agent commission, add	Agent retention percentage	Additional rate per $1000 to be collected on policy amounts in excess of $10 million (solely for underwriter)	Total Charged to Consumer
over $50 to $100	$5.68	80%		$5.68
over $100 to $500	$4.47	80%		$4.47
over $500 to $2,000	$3.50	80%		$3.50
over $2,000 to $5,000	$2.82	75%		$2.82
over $5,000 to $10,000	$2.34	70%		$2.34
over $10,000 to $25,000	$2.01	65%	$0.25	$2.26
over $25,000 to $50,000	$1.76	60%	$0.25	$2.01
over $50,000	$1.40	50%	$0.25	$1.65

[6/16/1986...4/3/1995; A, 5/1/1999; 13.14.9.18 NMAC - Rn, 13 NMAC 14.9.8.11 & A, 5/15/2000; A, 5/31/2000; A, 8/1/2000; A, 3/1/2002; A, 7/1/2003; A, 7/1/2004; A, 7/1/2005; A, 7/1/2006; A, 9/1/2007; A, 7/1/2008; A, 8/1/2009; A, 10/1/2012; A, 8/15/2014; A/E, 7/1/2018; A, 12/27/2018]

TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.2.1 NMAC, Section 11, effective 12/27/2018.

3.2.1.11 CONSTRUCTION:

A. Construction service as distinguished from other services.

(1) The term "construction" is limited to the activities, or management of the activities, which are listed in Section 7-9-3.4 NMSA 1978 and which physically change the land or physically create, change or demolish a building, structure or other facility as part of a construction project.

(2) "Construction" does not include services that do not physically change the land or physically create, change or demolish a building, structure or other facility as part of a construction project, even though they may be related to a construction project. The fact that a service may be a necessary prerequisite or ancillary to construction or a construction project does not in itself make the service a construction service. Excluded from the meaning of "construction" are activities such as, but not limited to: hauling to or from the construction site, maintenance work, landscape upkeep, the repair of equipment or appliances, laboratory work or accounting, architectural, engineering, surveying, traffic safety or legal services. Some of these activities may qualify as construction-related services; see Section 7-9-52 NMSA 1978.

B. Construction includes: Pursuant to Section 7-9-3.4 NMSA 1978 the term "construction" includes the painting of structures, the installation of sprinkler systems and the building of irrigation pipelines.

C. Construction does not include:

(1) The term "construction" does not include the installation of carpets or the installation of draperies, but see 3.2.209.25 NMAC.

(2) The term "construction", as defined in Section 7-9-3.4 NMSA 1978, does not include leasing or renting tangible personal property, such as construction equipment, with or without an operator but see Section 7-9-52.1 NMSA 1978 for transactions on or after January 1, 2013.

D. Oil and gas industry construction:

(1) "Construction", as this term is used in Section 7-9-3.4 NMSA 1978, includes the following activities related to the oil and gas industry:

(a) building and altering of gas compression plant facilities and pump stations, including: clearing of property sites; excavating for foundations; building and setting foundation forms; mixing, pouring, and finishing concrete foundations for buildings and plant equipment on foundations; fabricating and installing piping; installing electrical equipment, insulation, and instruments; erecting buildings; placing sidewalks, drives, parking areas; installing storage tanks; and dismantling equipment and reinstalling elsewhere;

(b) building of or extension of gas-gathering pipelines, including: connecting gathering lines to lease separators, fabricating and installing meter runs, digging trenches, beveling pipe, welding pipe, wrapping pipe, backfilling trenches, testing pipelines, fabricating and installing pipeline drips and installing conduit for pipelines crossing roads or railroads;

(c) building of or extension of product pipelines, including: building pressure-reducing stations; connecting pipelines to storage tanks, fabricating and installing valve assemblies, digging trenches, beveling pipe, welding pipe, wrapping pipe, laying pipe, backfilling trenches, testing pipelines and installing conduit for pipeline crossing roads or railroads;

(d) building secondary-recovery systems, including: excavating and building foundations, installing engines and water pumps, installing pipelines for water intake, installing pipelines for carrying pressured water to input wells, installing instruments and controls and erecting buildings;

(e) installing lease facilities, including: installing wellheads, flow lines, chemical injectors, separators, heater-treaters, tanks, stairways and walkways; building foundations; and setting pump units and engines, central power units and rod lines;

(f) demolishing pipelines, including: digging trenches to uncover pipelines, dismantling and removing drips and meter runs, backfilling trenches, tamping and smoothing right-of-way;

(g) increasing pipeline capacity, including: removing small pipelines and replacing with larger lines, and digging adjoining trenches and laying new pipelines;

(h) repairing plant, including: replacing tubing in atmospheric condensers, replacing plugged boiler tubing; removing cracked, broken or damaged portions of foundations and replacing anew; replacing compressors, compressor engines, or pumps; and regrouting and realigning compressors;

(i) drilling wells, including: drilling ratholes, excavating cellars and pits, casing crew services, cementing services, directional drilling, drill stem testing and fishing jobs in connection with drilling operations;

(j) general dirt work, including: building roads, paving with caliche or other surfacing materials; digging pits, trenches, and disposal ponds, building firewalls and foundation footing; and constructing pads from caliche or other materials.

(2) "Construction", as the term is used in Section 7-9-3.4 NMSA 1978, does not include the following activities related to the oil and gas industry:

(a) well servicing, including: acidizing and fracturing formations; pulling and

rerunning rods or tubing; loading or unloading a well; shooting; scraping paraffin; steaming flow lines and tubing; inspecting equipment; fishing jobs, other than in connection with drilling operations; bailing cave-ins; reverse circulating and resetting packers;

(b) lease and plant maintenance, including: cleaning; weed-control; preventive care of machinery, pipelines, gathering systems, and engines; tank cleaning; testing of flow lines by pressure or X-ray means; cleaning lines and tubing by acid treatment or mechanical means, or replacing and restoring machinery components;

(c) transporting equipment, including: transporting drilling rigs, rigging-up and rigging-down, and hauling water and mud;

(d) salvaging of materials from a "production unit", as defined in the Oil and Gas Emergency School Tax Act, such as: killing the gas pressure, removing casing heads, welding pull nipples on the casing, cutting or shooting casing strings, pulling casings from the well bore, cementing to fill the abandoned well or plug the well, filling the cellar, and welding steel pipe markers;

(e) rental of equipment such as: power tongs, blowout preventors, tanks, pipe racks, core barrels, integral parts of a drilling rig or integral parts of a circulation unit, for transactions on or after January 1, 2013, see Section 7-9-52.1 NMSA 1978;

(f) measuring, "logging" and surveying services in connection with the drilling of an oil or gas well are construction-related services as of January 1, 2013, see Section 7-9-52 NMSA 1978. "Logging" as that term is used in this subsection is a method of testing or measuring an oil or gas well by recording various aspects of the geological formations penetrated by the well.

E. Construction includes prefabricated buildings; prefabricated versus modular buildings:

(1) The sale of prefabricated buildings, whether constructed from metal or other material, is the sale of construction. A prefabricated building is a building designed to be permanently affixed to land and manufactured (usually off-site) in components or sub-assemblies which are then assembled at the building site. Prefabricated buildings are not designed to be portable nor are they capable of being relocated.

(2) A portable building or a modular building is a building manufactured (usually off-site) which is designed to be moveable or is capable of being relocated and, when delivered to the installation site, generally requires only blocking, levelling and, in the case of modular buildings, joining of modules. For the purposes of Subsection F of 3.2.1.11 NMAC, neither portable buildings, modular buildings nor manufactured homes defined as vehicles by Section 66-1-4.11 NMSA 1978 are prefabricated buildings.

F. Construction materials and services; landscaping:

(1) Landscaping items, such as ornaments, rocks, trees, plants, shrubs, sod and seed, which are sold to a person engaged in the construction business, that are an integral part of the construction project, are construction materials. Persons who seed, lay sod or install landscape items in conjunction with a construction project are performing construction services.

(2) Receipts from selling landscaping items to, and from seeding, laying sod or installing landscape items for, persons engaged in the construction business may be deducted from gross receipts if the buyer delivers a nontaxable transaction certificate to the seller as provided in Section 7-9-51 and Section 7-9-52 NMSA 1978, respectively.

G. Nontaxable transaction certificates:

(1) Nontaxable transaction certificates are available from the department for persons who are engaged in the construction business and performing activities, as set forth in Sections 7-9-3.4, 7-9-52 and 7-9-52.1 NMSA 1978 to execute to providers of construction materials, construction services, construction-related services and lessors of construction equipment. See 3.2.201.11 NMAC for additional requirements on construction contractors to obtain nontaxable transaction certificates.

(2) Only persons who are licensed by the state of New Mexico as construction contractors may apply for and execute nontaxable transaction certificates under the provisions of Sections 7-9-51 NMSA 1978, 7-9-52 NMSA 1978, and 7-9-52.1 NMSA 1978, except that a person who performs construction activities as defined in Section 7-9-3.4 NMSA 1978 in the ordinary course of business, and who is exempt from the laws of the state of New Mexico requiring licensing as a contractor may apply for and execute such certificates.

[~~H. Fixtures:~~

~~(1)~~ ~~Construction includes the sale and installation of "fixtures" such as kitchen equipment, library equipment, science equipment and other miscellaneous equipment installed so that it becomes firmly attached to the realty. Fixtures are considered to be items of tangible personal property which are necessary or essential to the intended use of a construction project and which are so firmly attached to the realty as to constitute a part of the construction project.~~

~~(2)~~ ~~Receipts from the sale of furniture, kitchen equipment, library shelves and other furniture or equipment sold on an assembled basis that does not become a "fixture" is a sale of tangible personal property and not construction.~~]

[~~I~~] H. Construction materials; general:

(1) The term "construction materials" means tangible personal property which is intended to become an ingredient or component part of a construction project.

(2) Tangible personal property intended ultimately to become an ingredient or component part of a construction project although not purchased for a specific project is nonetheless a construction material. *Example:* A government agency makes bulk purchases of asphalt which is stored by the agency for use in future road construction or repair projects. The asphalt is a construction material.

(3) Tools, equipment and other tangible personal property not designed or intended to become ingredients or component parts of a construction project are not construction materials if such materials accidentally become part of a construction project. *Example:* A workman accidentally drops a pair of gloves and a hammer into a form into which concrete is being poured. Because the gloves and the hammer are not intended to be included in the concrete structure, they are not construction materials.

~~[**J. Meaning of "building":**~~

~~**(1)** As used in Section 7-9-3.4 NMSA 1978, the noun "building" means a roofed and walled structure designed for permanent use but excludes an enclosure so closely combined with the machinery or equipment it supports, houses or serves that it must be replaced, retired or abandoned contemporaneously with the machinery or equipment.~~

~~**(2)** A "building" includes the structural components integral to the building and necessary to the operation or maintenance of the building but does not include equipment, systems or components installed to perform, support or serve the activities and processes conducted in the building and which are classified for depreciation purposes as 3-year property, 5-year property, 7-year property, 10-year property or 15-year property by Section 168 of the Internal Revenue Code or, if the Internal Revenue Code is amended to rename or replace these depreciation classes, would have been classified for depreciation purposes as 3-year property, 5-year property, 7-year property, 10-year property or 15-year property but for the amendment.~~

~~**(3)** *Example:* A building may include any of the following equipment, systems or components:~~

~~**(a)** elevators and escalators used in whole or in part to move people;~~

~~**(b)** heating, cooling and air conditioning systems except for air conditioning and air handling systems and components, separately depreciated under Section 168, installed to meet temperature, humidity or cleanliness requirements for the operation of machinery or equipment or the manufacture, processing or storage of products;~~

~~**(c)** electrical systems except for electrical systems and components, separately depreciated under Section 168, installed to power machinery or equipment operated as part of the activities and processes conducted in the building and not necessary to the operation or maintenance of the building; and~~

~~**(d)** plumbing systems except for plumbing systems and components, separately depreciated under Section 168, installed to perform, serve or support the activities and processes conducted in the building, such as for the handling, transportation or treatment of ingredients, chemicals, waste or water for a manufacturing or other process.~~]

[9/29/1967, 12/5/1969, 3/9/1972, 3/20/1974, 7/26/1976, 6/18/1979, 11/8/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 3/19/1992, 1/13/1996, 11/15/1996, 5/15/1997, 9/15/1997, 3.2.1.11 NMAC - Rn & A, 3 NMAC 2.1.11, 10/31/2000; A, 12/30/2003; A, 12/14/2012; A, 12/27/2018]

TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.2.209 NMAC, Sections 9, 11-15, 18, 22, 23 and adding 26, effective 12/27/2018.

3.2.209.9 ITEMS THAT ARE INGREDIENT OR COMPONENT PARTS - OIL FIELDS:

Receipts from the sale of casing, cement, shoes and float equipment, casing heads and well heads may be deducted from gross receipts if the other requirements of Section 7-9-51 NMSA 1978 are met and a nontaxable transaction certificate [~~is issued~~] or alternative evidence is provided by a well drilling company performing a turnkey project, as these items become ingredient or component parts of the construction project.

[12/5/1969, 3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.9 NMAC - Rn, 3 NMAC 2.51.9 & A, 5/31/2001; A, 12/27/2018]

3.2.209.11 SALE OF WATER:

Receipts from selling water to a construction company may be deducted from gross receipts if the sale is made to a person engaged in the construction business who delivers a nontaxable transaction certificate or alternative evidence and if the water becomes an ingredient or component part of the finished product such as in concrete or in moistening fill. However, if the water is used as merely a lubricating agent, such as in well drilling, it is not a component part of the finished product and [~~is~~] the receipts are not deductible.

[12/5/1969, 3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.11 NMAC - Rn, 3 NMAC 2.51.11, 5/31/2001; A, 12/27/2018]

3.2.209.12 FORMS AND FUEL:

A. Receipts from selling lumber for forms and fuel

for trucks to a person engaged in the construction business may not be deducted from gross receipts because neither the lumber nor the fuel actually becomes an ingredient or component part of the finished product. However, if the form lumber is later used for sheeting in the construction project, the form lumber may be purchased with a nontaxable transaction certificate (nttc) or alternative evidence pursuant to Section 7-9-51 NMSA 1978.

B. [~~If, in the situation described in Subsection A of Section 3.2.209.12 NMAC, the person engaged in the construction business delivered an nttc to a supplier for the purchase of lumber and the buyer converts some to use as forms and if the supplier did not pay the gross receipts tax on those receipts, the person engaged in the construction business will be subject to the compensating tax.~~

~~**C.**~~] The receipts from selling screed pins used in plastering and forms which must, by reason of design, be left in place after concrete has been poured over them may be deducted from gross receipts if the sale is made to a person engaged in the construction business who delivers [~~an~~] a nontaxable transaction certificate (nttc) or alternative evidence.

[12/5/1969, 3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.12 NMAC - Rn, 3 NMAC 2.51.12 & A, 5/31/2001; A, 12/27/2018]

3.2.209.13 WELDING RODS:

Receipts from selling welding electrodes (welding rods), which melt to provide filler or fused metal, to a person engaged in the construction business may be deducted from gross receipts if the buyer delivers a nontaxable transaction certificate (nttc) or alternative evidence to the seller [~~If~~] and the buyer delivering the nttc [~~does not use~~] uses the welding electrodes in such a way that they become an ingredient or component part of the construction project [~~or comply with other requirements of Section 7-9-51 NMSA 1978, compensating tax will be imposed upon the buyer~~].

[3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.13 NMAC - Rn, 3 NMAC 2.51.13 & A, 5/31/2001; A, 12/27/2018]

3.2.209.14 PAINT AND PAINTING SUPPLIES:

A. The receipts from the sale of paint, filler, thinner, varnish or similar items to a person engaged in the painting business who delivers a nontaxable transaction certificate (nttc) or alternative evidence to the seller may be deducted from the seller's gross receipts.

B. [~~If the person engaged in the painting business does not use the items purchased with the nttcs as required by Paragraphs (1) and (2) of Subsection B of Section 7-9-51 NMSA 1978, the compensating tax is due.~~

~~**C.**~~] Receipts from the sale of brushes, sandpaper, scrapers, sand for sandblasting, machinery and similar items used in the painting business to persons engaged in the painting business may not be deducted from gross receipts because such items do not become an ingredient or component part of the construction project.

[3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.14 NMAC - Rn, 3 NMAC 2.51.14 & A, 5/31/2001; A, 12/27/2018]

3.2.209.15 SPRINKLER SYSTEMS:

Receipts from selling pipes, joints, nozzles and similar items of tangible personal property which become ingredient or component parts of a sprinkler system to a person engaged in the business of selling and installing sprinkler systems may be deducted from gross receipts if the buyer delivers a nontaxable transaction certificate or alternative evidence.

[3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.15 NMAC - Rn, 3 NMAC 2.51.15, 5/31/2001; A, 12/27/2018]

3.2.209.18 WINDOWS AND DOORS:

A. Receipts from the sale of screens, screen doors and windows to a person engaged in the construction business may be deducted from the seller's gross receipts if the buyer delivers a nontaxable transaction certificate (nttc) or alternative.

B. [~~If the person engaged in the construction business does not use the screens, screen doors and windows purchased with the nttc as required by Paragraphs (1) and (2) of Subsection B of Section 7-9-51 NMSA 1978, the compensating tax is due.~~

~~**C.**~~] Receipts from the sale of aluminum panel, aluminum T bar, aluminum angle, bulk or roll screen stock and jalousie glass to a person who produces screens, screen doors or windows and sells them installed in a construction project may be deducted from the seller's gross receipts pursuant to Section 7-9-51 NMSA 1978 if the buyer delivers an nttc or alternative evidence.

[~~**D.** If the person engaged in the construction business does not use the items described in Subsection C of Section 3.2.209.18 NMAC and purchased with the nttc as required by Paragraphs (1) and (2) of Subsection B of Section 7-9-51 NMSA 1978, the compensating tax is due.~~]

[3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.18 NMAC - Rn, 3 NMAC 2.51.18 & A, 5/31/2001; A, 12/27/2018]

3.2.209.22 INGREDIENT AND COMPONENT PARTS OF A CONSTRUCTION PROJECT:

In determining whether tangible personal property will become an ingredient or component part of a

construction project, the department will use the following criteria, but not exclusively:

A. [~~Did the tangible personal property become "fixtures" as defined under Subsection I of Section 3.2.1.11 NMAC.~~

~~**B.**~~] Was the person performing the work using the tangible personal property required to be licensed under the Construction Industries Licensing Act, Sections 60-13-1 to 60-13-59 NMSA 1978.

[~~C.~~] B. Did the work for which the tangible personal property was used require a permit from one or more of the trade boards established by the Construction Industries Licensing Act or from a municipal building or mechanical department. [6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.209.22 NMAC - Rn, 3 NMAC 2.51.22 & A, 5/31/2001; A, 12/27/2018]

3.2.209.23 CONSTRUCTION MATERIALS USED IN NONTAXABLE CONSTRUCTION PROJECTS:

A. A seller of [~~tangible personal property~~] construction material may not claim the deduction from gross receipts provided by Section 7-9-51 NMSA 1978, or accept a nontaxable transaction certificate (NTTC) in good faith as required by Section 7-9-43 NMSA 1978, when the seller can reasonably determine that the [~~tangible personal property~~] construction material sold will be incorporated into a construction project which will not be subject to gross receipts tax upon completion because it is located outside New Mexico.

B. A seller can reasonably determine that a project is located outside New Mexico when the seller has documents identifying the location of the project.

C. No construction project located outside New Mexico will be subject to gross receipts tax upon completion.

[~~D.~~ ~~This version of 3.2.209.23 NMAC applies retroactively to transactions occurring on or after March 7, 2000.~~] [1/24/1986, 4/2/1986, 11/26/1990, 11/15/1996, 3.2.209.23 NMAC - Rn & A, 3 NMAC 2.51.23, 10/31/2000; A, 12/27/2018]

3.2.209.26 MATERIALS USED IN GOVERNMENT OR NON-PROFIT PROJECTS:

Receipts from the sale to a person engaged in the construction business who delivers a nontaxable transactions certificate or alternative evidence to the seller of construction materials that are tangible personal property, whether removable or non-removable, that is or would be classified for depreciation purposes as three-year property, five-year property, seven-year property or 10-year property by Section 168 of the Internal Revenue Code of 1986 as that section may be amended or renumbered, may be deducted if the construction material will ultimately be deductible pursuant to Section 7-9-54 or 7-9-60 NMSA 1978 provided that the remaining construction services portion of the project is subject to gross receipts tax. [3.2.209.26 NMAC - N, 12/27/2018]

TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.2.212 NMAC, Sections 10, 14, 22 and 24, effective 12/27/2018.

3.2.212.10 CONSTRUCTION PERFORMED FOR A GOVERNMENTAL AGENCY:

A. [~~The~~] Except as provided in Subsection B, receipts from performing a construction project for a governmental agency are receipts derived from performing a service and are not deductible pursuant to Section 7 9 54 NMSA 1978. The deduction is not available for construction materials whether the materials are billed separately on the same contract as the construction services or are billed under a separate contract.

[~~**B.** Example: M, a construction company, contracts to build a building for the New Mexico general services department. M fails to include in its contract the cost of the gross receipts tax and therefore does not report the tax. After the tax has been assessed, M, in a hearing before the department, contends that it does not owe the tax. M says:~~

~~**(1)** that the tax is not applicable because, if it were, it would only mean that M would include the applicable tax in making its bid; that it would then pay the tax and bill the state the cost of the tax which only results in taking money from one state fund and putting it in another, a useless process;~~

~~**(2)** that it is actually selling tangible personal property to the state in the form of the materials which make up the building. The answer to M's first contention is simply that the law does not allow such a deduction. This is true even though the effect of the tax is simply to transfer money from one state fund to another. The answer to the second contention is that the law specifically bars application of the deduction provided by Section 7 9 54 NMSA 1978 for receipts from selling construction materials, whether separately stated under a contract for construction services or billed under a contract for materials only. Even absent the specific prohibition, the deduction is applicable only upon the sale of tangible personal property to the state. By definition M is selling the state a service. The gross receipts derived from performing the service for the state are not deductible, and it is of no consequence that construction materials may be billed separately.~~

~~**C.** Section 3.2.212.10 NMAC applies to transactions occurring on or after July 1, 1989.~~]

B. Receipts from the sale of construction material that is tangible personal property, whether removable or non-removable, that is or would be classified for depreciation purposes as three-year property, five-year property, seven-year property or 10-year property, including indirect costs related to the asset basis, by Section 168 of the Internal Revenue Code of 1986, as that section may

be amended or renumbered, are deductible. The amount of the deduction is the asset basis, as those terms are defined by the Internal Revenue Code of 1986, as that code may be amended or renumbered.

C. Example: A contractor enters a contract with a municipality to construct a building and to furnish and equip it. Construction is a service, and receipts from selling construction, including construction materials except for certain tangible personal property, are not deductible under Section 7-9-54 NMSA 1978. An analysis is performed to distinguish the value of the construction, construction materials and tangible personal property included in the project. The contractor's receipts from the sale of tangible personal property, whether removable or non-removable, that is or would be classified for depreciation purposes as three-year property, five-year property, seven-year property or 10-year property including the indirect costs related to the asset basis, pursuant to Section 168 of the Internal Revenue Code, as that section may be amended or renumbered, are deductible provided the analysis includes sufficient information to demonstrate that the requirements of Section 7-9-54 NMSA 1978 are met.
[9/29/1967, 12/5/1969, 3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.212.10 NMAC - Rn & A, 3 NMAC 2.54.10, 5/31/2001; A, 12/27/2018]

3.2.212.14 LANDSCAPING:

A. Except when the landscape items are part of a construction project, receipts from selling and installing landscape items such as plants, shrubs, sod, seed, trees, rocks and ornaments are receipts from the sale of tangible personal property. Therefore, the receipts from the sale and installation of these landscape items pursuant to a contract with a governmental agency may be deducted from gross receipts pursuant to Section 7 9 54 NMSA 1978. Receipts from selling and installing these landscape items as part of a construction project may not be deducted pursuant to Section 7 9 54 NMSA 1978. This version of Subsection A of Section 3.2.212.14 NMAC applies to transactions occurring on or after [~~July 1, 2000~~] March 2, 2018.

B. Receipts from the installation of sprinkler systems are receipts from the performance of a service and are not receipts from selling tangible personal property. Therefore, receipts from the installation of sprinkler systems for a governmental agency may not be deducted from gross receipts pursuant to Section 7 9 54 NMSA 1978.
[3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996, 3.2.212.14 NMAC - Rn & A, 3 NMAC 2.54.14, 10/31/2000; A, 12/27/2018]

3.2.212.22 TANGIBLE PERSONAL PROPERTY IN PROJECTS FINANCED BY INDUSTRIAL REVENUE OR SIMILAR BONDS:

A. For the purposes of this section, a "bond project" is an arrangement entered into under the authority of the Industrial Revenue Bond Act, the County Industrial Revenue Bond Act or similar act in which a private person agrees:

(1) to arrange for the constructing and equipping of a facility for a state or local government by acting as agent for the government in procuring construction services, other services, tangible personal property which becomes an ingredient or component part of a construction project and other tangible personal property necessary for constructing and equipping the facility;

(2) to lease the completed facility from the government; and

(3) to buy the facility upon repayment of the bonds. The government agrees to own the facility, to finance the project in whole or in part through the issuance of bonds, to designate the private person as its agent in procuring the necessary property and services, to lease the facility to the private person and to sell the facility to the private person upon repayment of the bonds.

B. Receipts from the sale of tangible personal property to the private person who is acting as agent for the government with respect to the bond project are deductible under Section 7 9 54 NMSA 1978 if the tangible personal property is not [~~an ingredient or component part of a construction project~~] construction material excluding tangible personal property whether removable or non-removable, that is or would be classified for depreciation purposes as three-year property, five-year property, seven-year property or 10-year property, including indirect costs related to the asset basis, by Section 168 of the Internal Revenue Code of 1986, as that section may be amended or renumbered. To be deductible, [~~the cost of the bond project tangible personal property must meet all of the following criteria:~~

~~**(1)**~~] the cost of the bond project tangible personal property [~~does~~] must not increase the basis, as determined under the provisions of Section 1011 of the Internal Revenue Code in effect on the date the bond project commences, of the structure or other facility included in the definition of construction [~~and~~

~~**(2)** the tangible personal property is:~~

~~**(a)** not included in, or similar to, the list of structures and facilities specifically itemized in the definition of construction at Section 7 9 3 NMSA 1978; and~~

~~**(b)** classified for depreciation purposes as 3-year property, 5-year property, 7-year property, 10-year property or 15-year property by Section 168 of the Internal Revenue Code in effect on the date the bond project commences or, if the Internal Revenue Code is amended to rename or replace these depreciation classes, would have been classified for depreciation purposes as 3 year property, 5-year property, 7-~~

~~year property, 10-year property or 15-year property but for the amendment.~~]

C. A bond project commences when the governing body of the state or local government takes official action to enter into the arrangement, but no earlier than the adoption of an inducement resolution.

D. [~~Receipts from the sale of tangible personal property which becomes an ingredient or component part of a construction project, whether the sale is to the private person acting as agent for the government or to the government itself, are not deductible under Section 7 9 54 NMSA 1978.~~] This version of 3.2.212.22 NMAC applies to transactions occurring on or after March 2, 2018.

[2/22/1995, 11/15/1996; 3.2.212.22 NMAC - Rn & A, 3 NMAC 2.54.22, 5/31/2001; A, 12/27/2018]

3.2.212.24 CUSTOM SOFTWARE:

A. Because it is a service, receipts from developing or selling custom software for governmental entities are not deductible under Section 7 9 54 NMSA 1978.

B. Example 1: X contracts with the United States to develop software to test certain devices which the United States is considering purchasing. X is performing a service under this contract.

C. Example 2: Same facts as in Example 1 except that X is to modify an existing software test program. X is nonetheless performing a service under the contract.

D. Example 3: X enters into a qualifying research and development contract with a signatory agency of the United States. The contract is to develop software to test certain devices which the United States is considering purchasing. X is performing a service under this contract. To create the testing program X buys several pieces of packaged software and develops new programming to interconnect the packaged software into a coherent testing program. X may execute, and the vendors may accept in good faith, Type 15 [~~nttes~~] non-taxable transaction certificates or alternative evidence as provided by Section 7-9-43 NMSA 1978 for the purchase of the packaged software.

[4/30/1997; 3.2.212.24 NMAC - Rn & A, 3 NMAC 2.54.24, 5/31/2001; A, 12/27/2018]

TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.2.218 NMAC, Sections 9, 11, 13 and 14, effective 12/27/2018.

3.2.218.9 SERVICES, LEASES, CONSTRUCTION SERVICES

A. Receipts from services performed for and from leases entered into with 501(c)(3) organizations are [~~fully taxable. Such receipts are~~] not deductible pursuant to Section 7-9-60 NMSA 1978. [~~Only receipts from selling tangible personal property to a 501(c)(3) organization are deductible.~~]

B. [~~Receipts~~] Except as provided in Subsection C, receipts from [~~performing a construction project for~~] selling construction, including construction material to a 501(c)(3) organization, [~~including the construction services and the value of all property used in the construction project,~~] are receipts derived from performing a service and are [~~fully taxable.~~] not eligible for the deduction pursuant to Section 7-9-60 NMSA 1978.

C. Receipts from selling construction material that is tangible personal property, whether removable on non-removable, that is or would be classified for depreciation purposes as three-year property, five-year property, seven-year property or 10-year property, including indirect costs related to the asset basis, by Section 168 of the Internal Revenue Code of 1986, as that section may be amended or renumbered, may be deducted from gross receipts when the sale is made to a 501(c)(3) organization.

[3/16/1979, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.218.9 NMAC - Rn, 3 NMAC 2.60.9 & A, 6/14/01; A, 12/27/2018]

3.2.218.11 SALE OF MEALS:

Meals are tangible personal property. Therefore receipts from selling meals to a 501(c)(3) organization are receipts from selling tangible personal property. Such receipts may be deducted from gross receipts under Section 7 9 60 NMSA 1978 if the organization delivers a properly executed Type 9 [~~nttc with~~] non-taxable transaction certificate or alternative evidence to the seller. Sales of meals directly to members of a 501(c)(3) organization may not be deducted under Section 7 9 60 NMSA 1978 even if the meals are served at a function of the organization. The 501(c)(3) organization is an entity distinct from its members.

[10/29/1999; 3.2.218.11 NMAC - Rn, 3 NMAC 2.60.11 & A, 6/14/2001, 12/27/2018]

3.2.218.13 - SALE OF GASES:

Gases, such as natural gas, nitrogen, carbon dioxide, helium, oxygen, propane, acetylene and nitrous oxide, are tangible personal property. Therefore receipts from selling gases to a 501(c)(3) organization may be deducted from gross receipts under Section 7 9 60 NMSA 1978 if the organization delivers a properly executed [~~nttc~~] non-taxable transaction certificate or alternative evidence to the seller.

[3.2.218.13 NMAC - N, 3/15/2010; A, 12/27/2018]

3.2.218.14 SINGLE MEMBER LIMITED LIABILITY COMPANY WHOSE SOLE MEMBER IS A 501(c)(3) ORGANIZATION:

A. A single member limited liability company (llc) whose sole member is a 501(c)(3) organization will be treated like a 501(c)(3) organization and receive the same treatment for purposes of Section 7-9-60 NMSA 1978 so long

as the llc is recognized by the internal revenue service as a disregarded entity for federal income tax purposes.

B. Receipts from the sale of tangible personal property to an llc described in Subsection A above when the property is employed in the conduct of an unrelated trade or business as defined in Section 513 of the Internal Revenue Code of 1986, as amended or renumbered, are not deductible pursuant to Subsection A of Section 7-9-60 NMSA 1978. If the llc, or its 501(c)(3) single member, delivering the [~~nttc~~] non-taxable transaction certificate or alternative evidence employs the tangible personal property in the conduct of an unrelated trade or business, the [~~compensating tax is due.~~] llc, or its 501(c)(3) single member, is liable for the seller's gross receipts tax plus penalty and interest pursuant to Section 7-9-43 NMSA 1978.

[3.2.218.14 NMAC - N, 1/15/2015; A, 12/27/2018]

END OF ADOPTED RULES

Other Material Related to Administrative Law

NOTICE OF MINOR, NONSUBSTANTIVE CORRECTION

The New Mexico Workforce Solutions Department gives Notice of Minor, Nonsubstantive Correction.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all published and electronic copies of the following rules:

In Subparagraph (b) of Paragraph (1) of Subsection E of 11.1.2.21 NMAC, the word “none” is changed to “nine”.

A copy of this Notification was filed with the official version of the above rule.

END OF OTHER MATERIAL RELATED TO ADMINISTRATIVE LAW

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