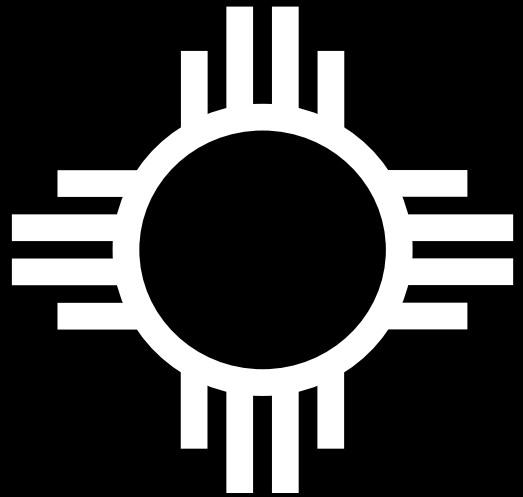


**NEW  
MEXICO  
REGISTER**



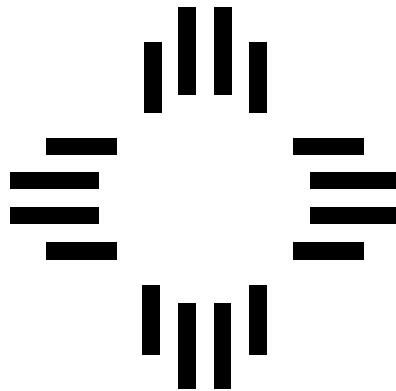
Volume XV  
Issue Number 15  
August 13, 2004



# **New Mexico Register**

**Volume XV, Issue Number 15**

**August 13, 2004**



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

The Commission of Public Records  
Administrative Law Division  
Santa Fe, New Mexico  
2004

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# New Mexico Register

Volume XV, Number 15

August 13, 2004

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#### 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 by the State Rules Act. Unless a later date is otherwise provided by law, the effective date of a rule shall be the date of publication in the New Mexico register." Section 14-4-5 NMSA 1978.

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## Notices of Rulemaking and Proposed Rules

### NEW MEXICO DEPARTMENT OF AGRICULTURE

#### Notice of Hearing

The South Central New Mexico Cotton Boll Weevil Control District will hold a public hearing under the Cotton Boll Weevil Control Act, 76-6A-1 to 76-6A-16, NMSA 1978, to consider reducing the assessment rate collected to support cotton boll weevil control within the South Central New Mexico Cotton Boll Weevil District.

The hearing will be held in the New Mexico Department of Agriculture conference room located at 3190 South Espina (corner of Gregg and Espina), Las Cruces, New Mexico, beginning at 3:00 p.m. on September 6, 2004.

Written statements in support or opposition, signed by the submitting person, will be accepted if received prior to 5:00 p.m. on September 6, 2004. Written statements, inquiries, or requests for copies of the rule should be directed to the South Central New Mexico Cotton Boll Weevil Control Committee in care of Robert Sloan, 1946 South Valley Drive, Las Cruces, New Mexico 88005.

### NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS

#### Legal Notice

Notice is hereby given that the New Mexico Board of Chiropractic Examiners will convene a Rule Hearing to amend:

Title 16, Chapter 4, Part 1  
General Provisions  
Title 16, Chapter 4, Part 3  
Requirements for Licensure by  
Examination  
Title 16, Chapter 4, Part 4  
Licensure by Endorsement  
Title 16, Chapter 4, Part 9  
Licensure Renewal Procedures  
Title 16, Chapter 4, Part 10 Continuing  
Education  
Title 16, Chapter 4, Part 17 Supervision  
of Interns  
Title 16, Chapter 4, Part 18 Practice  
Procedures

The Board will also be proposing a new rule titled Impaired Practitioner's Program.

This Hearing will be held at the West

Capital Complex, Regulation and Licensing Department, Rio Grand Conference Room, 2550 Cerrillos Rd., Santa Fe, NM, September 17, 2004 at 8:30 a.m.

Following the Rule Hearing the New Mexico Board of Chiropractic Examiners will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Chiropractic Examiners will then hold examinations on September 18, 2004 at the same location beginning at 9:00 a.m.

Copies of the proposed rules are available on request from the Board office, P. O. Box 25101, Santa Fe, New Mexico, 87504-5101, or phone (505) 476-4695.

Anyone wishing to present their views on the proposed rules may appear in person at the Hearing, or may send written comments to the Board office. Written comments must be received by August 30, 2004 to allow time for distribution to the Board and Committee members. Individuals planning on testifying at the hearing must provide (9) nine copies of their testimony.

Final action on the proposed rules will be taken during the Board meeting. Portions of the Board meeting may be closed to the public while the Board is in Executive Session to discuss licensing matters. Copies of the agenda will be available 24 hours in advance of the meeting from the Board office.

Disabled members of the public who wish to attend the meeting or hearing and are in need of reasonable accommodations for their disabilities should contact the Board Administrative Assistant at least one week prior to the meeting.

### NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

#### NOTICE OF PUBLIC HEARING HUMAN SERVICES DEPARTMENT LOW INCOME HOME ENERGY ASSIS- TANCE PROGRAM PLAN

A public hearing to receive testimony on the proposed regulation will be held on Tuesday September 14, 2004 at 1:00 PM. The hearing will be held at Pollon Plaza, 2009 S. Pacheco St. Santa Fe, NM 87505 in the Law Library. Room 101, located on the ground level.

The LOW-INCOME HOME ENERGY ASSISTANCE ACT OF 1981 (Title XXVI

of the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, as amended), Section 2605 (a) (2), directs states to "conduct public hearings with respect to the proposed use and distribution of funds". Each year states are required by the statute to have meaningful public participation in the development of the LIHEAP plan.

The Human Services Department proposes to administer the LIHEAP program for federal fiscal year (FFY) 2005 with only mandatory income changes. The income limits will be amended to reflect the FFY 04 federal poverty guidelines. See 8.150.524 NMAC.

Individuals wishing to request a copy of the current regulations should contact the Income Support Division, P O Box 2348, Santa Fe, New Mexico 87504 -2348 or by calling 1 800 648-7167. The current regulations can also be viewed on the internet at <http://policymanuals.hsd.state.nm.us/dscgi/ds.py/View/Collection-90>.

Publication of these proposed changes was approved on July 26, 2004. The effective date of the change will be October 1, 2004.

Individuals wishing to testify may contact the Income Support Division, P.O. Box 2348, Santa Fe, NM 87504-2348, or by calling toll free 1-800-432-6217. Interested persons may address written or recorded comments to: Pamela S. Hyde, J.D., Secretary Human Services Department P.O. Box 2348 Pollon Plaza Santa Fe, NM 87504-2348. Interested persons may also address comments via electronic mail to: [Loretta.Williams@state.nm.us](mailto:Loretta.Williams@state.nm.us)

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the NM Human Services Department toll free at 1 800 432-6217, in Santa Fe at 827-9454, or through the New Mexico Relay system, toll free at 1-800-659-8331. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

### NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

#### NOTICE

The New Mexico Human Services Department (HSD) will hold 5 separate public hearings in September 2004, all of

the hearings will be held at the New Mexico State Library, Room 2027 (1205 Camino Carlos Rey), Santa Fe, New Mexico.

**September 10, 2004 from 9:30 - 10:30 a.m. the subject of the hearing will be EPSDT Case Management Services.** Due to the need to reduce procedural barriers to prompt approval and delivery of behavioral health services for children, the New Mexico Medicaid program and the Children, Youth and Families Department (CYFD) propose to eliminate the requirement that providers of case management services for children with serious emotional disturbances be certified by CYFD. In order to achieve this innovation, it is proposed to delete section MAD-744.13.

**September 10, 2004 from 10:30 - 11:30 a.m. the subject of the hearing will be Mental Health Professional Services.** Due to the increasing shortage of board-certified psychiatrists enrolled in the New Mexico Medicaid program, the Medical Assistance Division (MAD) proposes to revise policy MAD-717 to allow board-eligible psychiatrists, as well as board-certified psychiatrists, to serve New Mexico Medicaid recipients.

**September 10, 2004 from 1:30 - 2:30 p.m. the subject of the hearing will be Federally Qualified Health Center Services.** Due to the increasing shortage of board-certified psychiatrists enrolled in the New Mexico Medicaid program, the Medical Assistance Division (MAD) proposes to revise policy MAD-713 to allow board-eligible psychiatrists as well as board-certified psychiatrists, to serve New Mexico Medicaid recipients.

**September 13, 2004 from 9:30 - 10:30 a.m. the subject of the hearing will be Dialysis Services.** The proposed changes are to reflect clarification of medically necessary renal dialysis services and the reimbursement methodology for these services. The Human Services Department (HSD) is proposing these changes in order to be consistent in terms of coverage by utilizing the Centers for Medicare and Medicaid (CMS) procedure as a guide for the renal service regulation, and clarifies that the reimbursement level is determined by the Medicaid program.

**September 13, 2004 from 10:30 - 11:30 a.m. the subject of the hearing will be Ambulatory Surgical Centers.** The proposed changes are to reflect clarification of the covered services furnished in ambulatory surgical centers and the reimbursement methodology for these services. The Human Services Department (HSD) is proposing these changes in order to be more

consistent in terms of coverage by utilizing Centers for Medicare and Medicaid Services (CMS) procedures as a guide for the ambulatory surgical center regulation, and clarifies that the reimbursement level is determined by the Medicaid program.

Interested persons may submit written comments no later than 5:00 p.m., September 13, 2004, to Pamela S. Hyde, J.D., Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in any HSD public hearing, program or services, please contact the NM Human Services Department toll-free at 1-888-997-2583, in Santa Fe at 827-3156, or through the department TDD system, 1-800-609-4833, in Santa Fe call 827-3184. The Department requests at least **10 days advance notice** to provide requested alternative formats and special accommodations.

Copies of the Human Services Register are available for review on our Website at [www.state.nm.us/hsd/mad.html](http://www.state.nm.us/hsd/mad.html) or by sending a **self-addressed stamped envelope** to Medical Assistance Division, Planning & Program Operations Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

## NEW MEXICO BOARD OF PSYCHOLOGIST EXAMINERS

### Legal Notice

Notice is hereby given that the New Mexico Board of Psychologist Examiners will convene a Rule Hearing to adopt the following rules:

- \* Amend Part 13

The Rule Hearing will be held at the University of Phoenix, 7471 Pan American Freeway NE, Journal Center, Rooms 101 and 102, Albuquerque New Mexico at 9:00 a.m. on September 17, 2004.

Immediately following the Rule Hearing the New Mexico Board of Psychologist Examiners will convene a regular meeting. The Board will consider adoption of the rules at that meeting.

Copies of the proposed rules are available on request from the Board office, P. O. Box 25101, Santa Fe, New Mexico, 87504-

5101, telephone (505) 476-4657 or 476-4607 and the Board's website at [www.rld.state.nm.us](http://www.rld.state.nm.us).

Anyone wishing to present their views on the proposed rules may appear in person at the Hearing, or may send written comments to the Board office. Written comments must be received by September 3, 2004 to allow time for distribution to the Board members.

Copies of the agenda will be available 24 hours in advance of the meeting from the Board office.

Disabled members of the public who wish to attend the meeting or hearing and are in need of reasonable accommodations for their disabilities should contact the Board office at (505) 476-4657, no later than September 3, 2004.

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

### NOTICE OF REGULAR MEETING

The NM Commission of Public Records has scheduled a regular meeting for Tuesday, August 24, 2004, at 9:00 A.M. The meeting will be held at the NM State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, NM. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Ruben Rivera at 476-7902 by August 16, 2004. Public documents, including the agenda and minutes, can be provided in various accessible formats. A final copy of the agenda will be available 24 hours before the hearing.

### NOTICE OF RULEMAKING

The Commission of Public Records may consider the following items of rulemaking at the meeting:

#### Repeal and Replace

1.18.305 NMAC E R R D S ,  
Office of the Attorney General

#### New

1.18.465 NMAC E R R D S ,  
Gaming Control Board



**NEW MEXICO PUBLIC  
REGULATION  
COMMISSION**

BEFORE THE NEW MEXICO PUBLIC  
REGULATION COMMISSION

IN THE MATTER )  
OF THE PETITION )  
OF THE UTILITY )  
DIVISION STAFF )  
OF THE PUBLIC )  
REGULATION )  
COMMISSION FOR )  
A RULEMAKING ) Case No.  
TO AMEND RULE ) 04-00211-UT  
572 TO CONFORM )  
TO THE )  
NEW MEXICO )  
RENEWABLE )  
ENERGY ACT )  
)  
UTILITY DIVISION )  
STAFF OF THE )  
PUBLIC )  
REGULATION )  
COMMISSION, )  
)  
Petitioner. )

NOTICE OF PROPOSED RULEMAKING

**NOTICE** is hereby given that the New Mexico Public Regulation Commission (“NMPRC” or the “Commission”) is commencing a rulemaking proceeding for the purpose of repealing NMPRC Rule No. 572 [17.9.572 NMAC] *Renewable Energy as a Source of Electricity*, and replacing it with a new Rule 572. The proposed new rule would be adopted under authority granted to the Commission by the Legislature pursuant to NMSA 1978 Sections 8-8-4(B)(10) (1999) and 8-8-15 (2001).

**THE COMMISSION FINDS AND CONCLUDES:**

1. On June 28, 2004, Commission Utility Division Staff filed a Petition for Rulemaking and to Docket a Cost Threshold Case. Staff requested that the Commission commence a rulemaking proceeding to adopt certain amendments to NMPRC Rule No. 572. The proposed amendments to Rule 572 involve bringing this Rule into conformance with a new act entitled “Renewable Energy Act” that was enacted by the 46th Legislature for the State of New Mexico during its second session. Chapter 65, Laws of 2004. In effect, Staff asks the Commission to repeal existing Rule 572 and replace it with a new Rule 572. The changes to the existing Rule are too extensive to make them by amendment. The Commission proposes to repeal Rule

572 and replace it with proposed new Rule 572, attached as Exhibit 1.

2. The Commission will take written comments on the proposed new Rule 572 from any interested person. Interested persons shall file their written comments no later than August 27, 2004. Any person wishing to respond to such comments may do so by submitting written response comments no later than September 14, 2004. Comments suggesting changes to the proposed new Rule 572 shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the proposed new Rule 572 shall be in legislative format. Copies of the proposed Rule in electronic format may be obtained from the Commission’s web site ([www.nmprc.state.nm.us](http://www.nmprc.state.nm.us)) to facilitate this requirement. Any proposed changes to the new Rule shall be submitted in hard copy, and the Commission strongly encourages all persons proposing such changes to file an additional copy in electronic format (3.5-inch floppy disk in Microsoft Word 95 or Microsoft Office 97 formats). The label on the floppy disk shall clearly designate the name of the person submitting the proposed changes and the docket number of this proceeding.

3. All pleadings, including comments, shall bear the caption and case number contained at the top of this notice. Comments on the proposed new rule, shall be sent to:

Ron X. Montoya, Records  
Manager  
Attn: Case No. 04-00211-UT  
NMPRC-Utility Division  
Marian Hall  
224 East Palace Avenue  
Santa Fe, New Mexico 87501  
Telephone: (505) 827-6940

Additional copies of the proposed Rule may also be downloaded from the Commission’s web site, [www.nmprc.state.nm.us](http://www.nmprc.state.nm.us), by first clicking on “Meetings,” then clicking on “Public Notices,” and finally clicking “Notice of Proposed Rulemaking, Case No. 04-00211-UT.”

The Commission will review and consider all timely submitted written comments and responses that are filed pursuant to this NOPR. The Commission will hold a public hearing to take oral comment regarding the proposed Rule. The hearing will be held at the following time and place:

Wednesday, September 29, 2004,  
at 10:00 a.m., at Marian Hall, 2nd floor  
hearing room, 224 East Palace Avenue,  
Santa Fe, New Mexico.  
Interested persons should contact the  
Commission to confirm the date, time and

place of any public hearing, since hearings are occasionally rescheduled.

Any person with a disability requiring special assistance in order to participate in the hearing should contact Deanna Vigil at (505) 827-4084 at least 48 hours prior to the commencement of the hearing. Copies of this NOPR should be sent to all person on the service list in Case No. 3619, and to any other person requesting service. This NOPR should be published in two newspapers of general circulation in the state and in the *New Mexico Register*.

Copies of any Final Order adopting the proposed new Rule will be sent to all affected utilities, commenters in the case, and individuals requesting such copies.

The Renewable Energy Act, Chapter 65, Laws of 2004, requires that by December 31, 2004, the Commission establish, after notice and hearing, the reasonable cost threshold above which level a public utility shall not be required to add renewable energy to its electric energy supply portfolio pursuant to the renewable portfolio standard. In its Petition Staff asks the Commission to docket an expedited case to establish the cost threshold as required by the Renewable Energy Act. The Commission should docket such a case.

**IT IS THEREFORE ORDERED:**

A. The new Rule 572 attached to this NOPR as Exhibit 1 is proposed for adoption as a permanent rule as provided by this NOPR. It is proposed that existing Rule 572 be repealed.

B. Interested persons shall file their written comments on the proposed Rule as provided in this NOPR. Responses to any such comments may be filed as provided in this NOPR.

C. Staff of the Legal Division (“Staff”) shall mail a copy of this NOPR to all persons on the mailing list for Utility Case 3619, and to any other person requesting service. Staff shall cause this NOPR to be published, without Exhibit 1, in two newspapers of general circulation and in the *New Mexico Register*, shall provide this NOPR by e-mail or by facsimile transmission to any persons who have so requested, and shall post a copy of the proposed Rule 572 on the Commission’s Web Site.

D. This NOPR is effective immediately.

E. The Commission docket a new case to establish the required reasonable cost threshold. The case will be assigned to a Hearing Examiner and will have the following caption:

IN THE MATTER OF ) Case No. 04-  
THE COMMISSION’S ) 00253-UT  
DETERMINATION OF )

THE REASONABLE )  
COST THRESHOLD FOR )  
RENEWABLE ENERGY. )

ISSUED under the Seal of the  
Commission at Santa Fe, New Mexico  
this 27th day of July, 2004.  
NEW MEXICO PUBLIC REGULA-  
TION COMMISSION

DAVID W. KING, CHAIRMAN

HERB H. HUGHES, VICE CHAIRMAN

JEROME D. BLOCK,  
COMMISSIONER

LYNDA M. LOVEJOY,  
COMMISSIONER

E. SHIRLEY BACA,  
COMMISSIONER

**NEW MEXICO PUBLIC  
REGULATION  
COMMISSION**

BEFORE THE NEW MEXICO PUBLIC  
REGULATION COMMISSION

IN THE MATTER )  
OF THE CUSTOMER )  
PROTECTION RULE )  
(17.11.16 NMAC) )  
AND THE QUALITY ) Utility  
OF SERVICE ) Case No.  
STANDARDS ) 3567  
RULE (17.11.22 NMAC) )  
ADOPTED IN UTILITY )  
CASE NO. 3437. )

**SECOND SUPPLEMENTAL NOTICE  
OF PROPOSED RULEMAKING**

**NOTICE IS HEREBY GIVEN**  
that the New Mexico Public Regulation  
Commission ("Commission") proposes to  
amend 17.11.16 NMAC, Customer  
Protection, and 17.11.22 NMAC, Quality of  
Service Standards. These rules, which are  
applicable to local telecommunications  
service in New Mexico, were adopted in  
NMPRC Utility Case No. 3437. This mat-  
ter comes before the Commission on its  
own Motion after review of the comments  
previously submitted in this proceeding,  
and further deliberation regarding the rules  
under consideration. Being fully advised,

**THE COMMISSION FINDS  
AND CONCLUDES:**

1. Among other things,  
House Bill 400 (being N.M. Laws 2000, Ch.  
102; codified in pertinent part as NMSA  
1978, Section 63-9A-8.2) required the  
Commission to adopt, by no later than  
January 1, 2000, a rule that would "establish  
consumer protection and quality of service  
standards" for local telecommunications  
services in New Mexico. House Bill 400,  
Section 4(B)(1); Section 63-9A-8.2(B)(1).  
In accordance with this requirement of  
House Bill 400, the Commission issued a  
Notice of Proposed Rulemaking in Case  
No. 3437 that proposed the adoption of such  
a rule.

2. In its Final Order  
Adopting 17.11.16 NMAC and 17.11.22  
NMAC, entered on December 12, 2000, the  
Commission approved, respectively, rules  
regarding Customer Protection and Quality  
of Service Standards.

3. By January 11, 2001,  
seven of the commentors in Case No. 3437  
had filed motions for rehearing regarding  
one or both rules, and certain related  
motions. Also by that date, a Notice of  
Appeal was filed at the New Mexico  
Supreme Court in its Docket No. 26,756 by  
AT&T Wireless PCS, LLC, and Verizon  
Wireless LLC. The Attorney General of  
New Mexico filed a Notice of Cross-Appeal  
in that docket on February 21, 2001. After  
considering a Joint Motion to Hold Appeal  
in Abeyance that was filed in Docket No.  
26,756, the Court granted that Motion in its  
Order of April 30, 2001 (as amended on  
May 4, 2001). Pursuant to 17.1.2.37.D(1)  
NMAC, the Commission takes administra-  
tive notice of the record in Case No. 3437,  
and the record in Docket Nos. 26,756 and  
26,811 (which have been consolidated by  
the Court).

4. Collectively, the  
motions for rehearing in Case No. 3437  
made numerous recommendations for the  
revision of both 17.11.16 and 17.11.22  
NMAC. Those motions raised the funda-  
mental issue of whether the Commission  
should consider revising one or both of  
these rules.

5. Although the appeals  
precluded the Commission from granting  
the relief requested by the motions for  
rehearing in Case No. 3437 (see, e.g., **Kelly  
Inn No. 102, Inc. v. Kapnison**, 113 N.M.  
231, 824 P.2d 1033 (1992)), the  
Commission concluded that it was in the  
public interest to begin an inquiry into  
whether 17.11.16 and 17.11.22 NMAC  
should, consistent with the outcome of the  
pending appeals and Supreme Court  
requirements, ultimately be revised. The  
Commission recognized that no such revis-  
ions could be made while the appeal was  
pending, or unless otherwise permitted by  
the Supreme Court. Nonetheless, the

Commission found that the public interest  
and administrative efficiency would best be  
served by beginning such an inquiry while  
the appeal was pending, and while the  
issues raised in Case No. 3437 and the  
record in that case were still fresh in every-  
one's mind.

6. For these reasons, the  
Commission began this Case No. 3567 by  
issuing a Notice of Inquiry on February 6,  
2001. Among other things, that Notice  
invited written comments on whether  
17.11.16 NMAC, Customer Protection, or  
17.11.22 NMAC, Quality of Service  
Standards, or both, should be revised.

7. The Commission con-  
sidered all of the Comments and Response  
Comments that were filed in this case in  
accordance with the Notice of Inquiry. Also  
considered was a pertinent statutory change  
that has occurred since the Notice of Inquiry  
was issued. The legislature amended  
NMSA, Section 63-9A-8.2 (see N.M. Laws  
2001, Ch. 52, Section 1) by adding the fol-  
lowing Subsection D: Rules adopted pur-  
suant to this section [including the  
Customer Protection and Quality of Service  
Standards Rules under consideration] shall  
not be applied to incumbent rural telecom-  
munications carriers as that term is defined  
in Subsection I of Section 63-9H-3 NMSA  
1978. Taking all these into account, the  
Commission drafted revised versions of  
both rules that incorporate the statutory  
change, certain of the changes proposed by  
the Commentors, and other changes that the  
Commission is proposing on its own initia-  
tive. Those rules were formally proposed in  
a Notice of Proposed Rulemaking  
("NOPR") that was issued on January 8,  
2002.

8. The proposed revised  
rules would be adopted under the authority  
granted the Commission by the Public  
Regulation Commission Act, NMSA 1978,  
Sections 8-8-4 and 8-8-15, the New Mexico  
Telecommunications Act, NMSA 1978,  
Section 63-9A-8.2, and the Cellular  
Telephone Services Act, NMSA 1978,  
Section 63-9B-4.

9. On November 20,  
2002, the Supreme Court entered an Order  
Granting Motion for Remand to PRC and to  
Hold Appeal in Abeyance in its  
Consolidated Docket Nos. 26,756 and  
26,811. The Court remanded the appeals of  
the rules under consideration herein to the  
Commission for further proceedings. The  
Court's remand of those rules restores to  
this Commission the jurisdiction to revise  
those rules, subject to possible further  
appeal.

10. A Supplemental NOPR  
was issued on December 19, 2002, due to  
insufficiency of prior notice.

11. After review and con-  
sideration of the comments received,

including those from the parties to the Supreme Court appeals, the Commission is proposing further revisions to the rules proposed in this case. The Consumer Protection and Quality of Service rules proposed by this Second Supplemental NOPR have been revised to an extent that requires these rules to be re-noticed and further public comment to be permitted.

12. The Commission will take written comments on the proposed revised rules from any interested person. Interested persons shall file their written comments no later than August 27, 2004. Any person wishing to respond to such comments may do so by submitting written response comments no later than September 10, 2004. Comments suggesting changes to the proposed rules shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the proposed rules shall be in legislative format. Copies of the proposed rules in electronic format may be obtained from the Commission's web site ([www.nmprc.state.nm.us](http://www.nmprc.state.nm.us)) to facilitate this requirement. Any proposed changes to Attachments A or B shall be submitted in hard copy, and the Commission strongly encourages all persons proposing such changes to file an additional copy in electronic format (3.5-inch floppy disk in Microsoft Word 95 or Microsoft Office 97 formats). The label on the floppy disk shall clearly designate the name of the person submitting the proposed changes and the docket number of this proceeding. All pleadings, including comments and suggested changes to the proposed rules, shall bear the caption and docket number contained at the top of this NOPR.

13. Comments on the proposed revised Consumer Protection rule and/or the proposed revised Quality of Service Standards rule shall be sent to, and additional copies of the proposed rules can be obtained from:

Ron X. Montoya  
ATTN: Proposed Rules in Case No. 3567  
New Mexico Public Regulation Commission  
224 East Palace Avenue  
Santa Fe, NM 87501  
Telephone: (505) 827-6940

Additional copies of the proposed rules may also be downloaded from the Commission's web site, [www.nmprc.state.nm.us](http://www.nmprc.state.nm.us), by first clicking on "Meetings," then clicking on "Public Notices," and finally clicking on "Second Supplemental Notice of Proposed Rulemaking, Utility Case No. 3567."

Copies of the original Customer Protection and Quality of Service Standards rules approved in Case No. 3437 may also be obtained from the Commission's web site, and at the New Mexico Administrative Code web site as follows: [www.nmcp.state.nm.us/nmac/title17/T17CO11.htm](http://www.nmcp.state.nm.us/nmac/title17/T17CO11.htm).

14. The Commission will review and consider all timely submitted written comments and responses that are filed pursuant to this Second Supplemental NOPR. The Commission will hold a public hearing to take oral comment regarding the proposed rules. The hearing will be held at the following time and place:

Wednesday, September 15, 2004, at 10:00 a.m., at Marian Hall, 2nd floor hearing room, 224 East Palace Avenue, Santa Fe, New Mexico.

15. Interested persons should contact the Commission to confirm the date, time and place of any public hearing, since hearings are occasionally rescheduled.

16. Any person with a disability requiring special assistance in order to participate in the hearing should contact Deanna Vigil at (505) 827-4084 at least 48 hours prior to the commencement of the hearing.

17. Copies of this Second Supplemental NOPR should be sent to all persons on the Telecommunications Service List, to all persons who filed motions for rehearing in Case No. 3437, and to any other person requesting service. This Second Supplemental NOPR should be published in two newspapers of general circulation in the state and in the New Mexico Register.

**IT IS THEREFORE ORDERED:**

A. The revised Consumer Protection rule, and the revised Quality of Service rule attached to this Second Supplemental NOPR as, respectively, Attachments A and B, are proposed for adoption as permanent rules as provided by this Second Supplemental NOPR.

B. Interested persons shall file their written comments on the proposed rules as provided in this Second Supplemental NOPR. Responses to any such comments may be filed as provided in this Second Supplemental NOPR.

C. Staff of the Legal Division ("Staff") shall mail a copy of this Second Supplemental NOPR to all persons on the telecommunications mailing list, to all persons who filed motions for rehearing in Case No. 3437, and to any other person requesting service. Staff shall cause this

Second Supplemental NOPR to be published, without Attachments A and B, in two newspapers of general circulation and in the New Mexico Register, shall provide this Second Supplemental NOPR by e-mail or facsimile transmission to any persons who have so requested, and shall post a copy of the proposed rules on the Commission's website.

D. This Second Supplemental NOPR is effective immediately.

**ISSUED under the seal of the Commission at Santa Fe, New Mexico, this 27th day of July 2004.**

**NEW MEXICO PUBLIC REGULATION COMMISSION**

**HERB H. HUGHES, CHAIRMAN**

**DAVID W. KING, VICE-CHAIRMAN**

**JEROME D. BLOCK, COMMISSIONER**

**LYNDA M. LOVEJOY, COMMISSIONER**

**E. SHIRLEY BACA, COMMISSIONER**

**NEW MEXICO  
REGULATION AND  
LICENSING DEPARTMENT  
CONSTRUCTION INDUSTRIES  
DIVISION**

**STATE OF NEW MEXICO  
REGULATION AND LICENSING  
DEPARTMENT  
CONSTRUCTION INDUSTRIES  
DIVISION**

**NOTICE OF PUBLIC HEARING**

A public meeting for the purpose of receiving comments on rules adopting the 2003 New Mexico Earthen Building Code, the 2003 New Mexico Baled Straw Standards, the 2002 New Mexico Electrical Safety Code, Uniform Plumbing Code, Appendix G, and an amendment to the numbering of the rule containing the 2002 New Mexico Electrical Code will be held at the following time and place:

**September 14, 2004, from 9:00 a.m. to  
12:00 Noon  
in the new**

**Construction Industries Offices  
near the intersection of I-25 and  
Alameda  
5200 Oakland NE, Albuquerque, New  
Mexico 87113**

The public is invited to attend and comment on the adoption of the above-referenced proposed rules. If you cannot attend the meeting, you may send Construction Industries Division, 2550 Cerrillos Road, Santa Fe, New Mexico 87505. No comments will be received after 12:00 noon, September 14, 2004.

Copies of the draft rules will be available at the Construction Industries Division Offices and on the CID web site after August 15, 2004.

**If you require special accommodations, please notify the Division of such needs no later than September 3, 2004, by calling (505) 476-4681.**

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**End of Notices and  
Proposed Rules Section**

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## Adopted Rules

### ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

This is an amendment to 20.11.100 NMAC, Sections 1; 2; 3; 5; 6; 7; and 26, effective 9/1/04. This regulatory change includes a trigger that would remove the current contingency measure, requiring annual vehicle testing, if an EPA-confirmed violation (two exceedances) of the federal ambient carbon monoxide standards occurs within Bernalillo County.

**20.11.100.1 ISSUING AGENCY:** Albuquerque-Bernalillo County Air Quality Control Board, c/o Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600. [10/19/82. . .12/1/95; 20.11.100.1 NMAC - Rn, 20 NMAC 11.100.I.1, 10/1/02; A, 9/1/04]

**20.11.100.2 SCOPE:**

**A. Applicability (vehicles to be inspected):** All motor vehicles, as defined in 20.11.100.7 NMAC, shall be inspected for compliance with the requirements of this part unless otherwise exempted. A vehicle shall not be registered or re-registered until the vehicle has passed the applicable on-board diagnostics (OBDII) inspection, exhaust emissions inspection, tampering inspection, pressurized gas cap test and visible emissions inspection prescribed by 20.11.100.14 NMAC or the program has issued a time extension for repairs of the vehicle, unavailability for testing, or reciprocity for a test from another state.

**B. Commuter vehicles:** All motor vehicles, which are more than four years old and are driven into, operated, or are otherwise present in Bernalillo county for 60 or more days per year but are registered in another county or state must comply with this part.

**C. Federal installations:** Vehicles, which are operated on federal installations located in Bernalillo county, shall comply with this part whether or not the vehicles are registered in New Mexico or Bernalillo county. The inspection requirement applies to all employee owned or leased vehicles as well as agency operated vehicles. The inspection requirements for federal installations are mandated by 40 CFR Part 51.356(a)(4).

**D. Fleet vehicles:** Fleet vehicles, which are registered outside of Bernalillo county but are primarily operated in Bernalillo county, shall comply with this part. The inspection requirements for fleet

vehicles are mandated by 40 CFR Part 51.356(a)(2).

**E. Municipalities and counties:** If the program enters into a joint powers agreement with a municipality or county to extend the enforcement of this part, all vehicles registered in that municipality or county must comply with this part. [5/20/88. . .12/1/95; 20.11.100.2 NMAC - Rn, 20 NMAC 11.100.I.2, 10/1/02; A, 5/1/04; A, 9/1/04]

**20.11.100.3 STATUTORY AUTHORITY:** This part is adopted pursuant to the, authority provided in the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5.C; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5 [Section] Sections 3 and 4; the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 [Section] Sections 9-5-1-3 and 9-5-1-4; and the City of Albuquerque and Bernalillo County Motor Vehicle Emissions Control Ordinances. It is adopted in order to comply with the Federal Clean Air Act Amendments of 1990 and 40 CFR Part 51, which are the environmental protection agency inspection/maintenance requirements.

[10/19/82. . .12/1/95; 20.11.100.3 NMAC - Rn, 20 NMAC 11.100.I.3, 10/1/02; A, 9/1/04]

**20.11.100.5 EFFECTIVE DATE:** Effective December 1, 1995, unless a later date is cited at the end of a section. If no EPA confirmed violation (two exceedances) of the federal ambient carbon monoxide standards has occurred within Bernalillo county, the vehicle inspection frequency shall be biennial. [If after July 1, 1995 any EPA confirmed] Until the later of June 13, 2006, or when the SIP revision, "second half of the carbon monoxide maintenance plan for Bernalillo county", is effective following EPA approval, if EPA confirms a violation of the federal ambient carbon monoxide standards [occurs], then, 120 days after the violation is confirmed by the EPA, the program shall require annual testing of vehicles and the program will be upgraded to meet the performance standards [as outlined] established in 40 CFR Part 51. Beginning on the later of June 13, 2006, or when the SIP revision, "second half of the carbon monoxide maintenance plan for Bernalillo county" is effective following EPA approval, if no EPA-confirmed violation of the federal ambient carbon monoxide standards has occurred, the vehicle inspection frequency shall be biennial.

[8/25/92. . .12/1/95; 20.11.100.5 NMAC -

Rn, 20 NMAC 11.100.I.5, & A, 10/1/02; A, 9/1/04]

**20.11.100.6 OBJECTIVE:** [~~The objective of this part is~~] To provide for the control and regulation of carbon monoxide (CO), hydrocarbon (HC), and particulate emissions above certain levels from motor vehicles, and for anti-tampering inspections.

[10/19/82. . .12/1/95; 20.11.100.6 NMAC - Rn, 20 NMAC 11.100.I.6, 10/1/02; A, 5/1/04; A, 9/1/04]

**20.11.100.7 DEFINITIONS:** In addition to the definitions in 20.11.100.7 NMAC the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in this part shall govern.

**A. "Air care inspection station"** means a private business authorized by certificate in accordance with 20.11.100.18 NMAC to inspect motor vehicles and issue certificates of inspection. It also means stations established by the city of Albuquerque and Bernalillo county, or other governmental entities for testing government owned or leased motor vehicles.

**B. "Air care inspector"** means an individual authorized by a certificate issued by the program to perform inspections of motor vehicles and who has met the requirements of 20.11.100.21 NMAC.

**C. "Air care station"** means both an *air care* inspection station and a fleet *air care* station.

**D.** [Reserved]

**E. "Biennial"** means every other year.

**F. "Chassis"** means the complete motor vehicle, including standard factory equipment, exclusive of the body and cab.

**G. "City"** means the city of Albuquerque, a New Mexico municipal corporation.

**H. "County"** means the county of Bernalillo, a political subdivision of the state of New Mexico.

**I. "Dealer"** means any person who sells or solicits or advertises the sale of new or used motor vehicles subject to registration in the state of New Mexico and as further defined in the Motor Vehicle Code Chapter 66, NMSA 1978.

**J. "Distributor"** means any person who distributes or sells new or used motor vehicles to dealers and who is not a manufacturer.

**K. "Division or VPMD"** means the vehicle pollution management division of the city environmental health

department, which provides the staff for the Albuquerque-Bernalillo county vehicle pollution management program.

**L. "Driver"** means every person who drives or is in actual physical control of a motor vehicle upon a highway or upon property used for inspections.

**M. "Essential parts"** means all integral and body parts of a vehicle of a type required to be registered under the Motor Vehicle Code, the removal, alteration or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model type or mode of operation.

**N. "Exhaust emissions"** means CO, HC and all other substances emitted through a motor vehicle's exhaust system, after passing downstream of the engine block exhaust ports and exhaust emissions control devices, if any.

**O. "Exhaust emission control device"** means equipment designed by the manufacturer of the vehicle and installed on a motor vehicle for the purpose of reducing pollutants emitted from the vehicle, or a system or engine modification designed by the manufacturer of the motor vehicle which causes a reduction of pollutants emitted from the vehicle, or equipment designed by the vehicle manufacturer to prevent damage to or tampering with other exhaust emission control devices.

**P. "Fast idle condition or unloaded 2500 rpm"** means an exhaust emissions inspection conducted with the engine of the vehicle running under an accelerated condition as required by 40 CFR Part 51.

**Q. "Field audit gas"** means a gas mixture with known concentrations of CO<sub>2</sub>, CO, and HC that is used by the program to check the accuracy of exhaust gas analyzers used by authorized inspection stations.

**R. "Fleet air care station"** means any person, business, government entity, firm, partnership or corporation which provides for the construction, equipping, maintaining, staffing, managing and operation of authorized inspection station for the sole purpose of inspecting its private fleet of motor vehicles subject to this part, and not offering inspection services to its employees or the general public.

**S. "Fuel"** means any material that is burned by the engine of a vehicle in order to propel the vehicle.

**T. "Gross vehicle weight"** means the weight of a vehicle without load, plus the weight of any load thereon.

**U. "Government vehicle"** means a motor vehicle exempt from the payment of a registration fee and owned or leased by any federal, state, local, or other

governmental entity.

**V. "Headquarters"** means the main office of the vehicle pollution management program.

**W. "Highway"** means every way or place generally open to the use of the public as a matter of right for the purpose of vehicular travel, even though it may be temporarily closed or restricted for the purpose of construction, maintenance, repair or reconstruction.

**X. "Idle mode test"** means an unloaded exhaust emissions test conducted only at the idle condition, as described in the VPMP procedures manual.

**Y. "Inspection or re-inspection or test"** means the mandatory vehicular anti-tampering and emissions inspection conducted both visually and with equipment or chemical sensing devices as required by this Part.

**Z. "Low emissions tune-up"** means adjustments and repairs, which can reduce motor vehicle emissions including but not limited to the following procedures:

(1) checking and setting to manufacturer's specifications, the idle mixture, idle speed, ignition timing and dwell, and

(2) checking for proper connection of vacuum lines, electrical wires, and for proper operation of pollution control devices, and

(3) checking and replacement of air breathing filters and positive crankcase ventilation valve as necessary, and

(4) replacement of spark plugs, points, wires, and

(5) for all motor vehicles equipped with computer controlled closed-loop feedback exhaust emission control devices and systems, inspecting the operation of the emission control system according to the motor vehicle manufacturer's specified procedures, including hose routing and on-board diagnostics, new vehicle warranty, and repair or replacement as necessary.

**AA. "Manufacturer"** means every person engaged in the business of constructing or assembling vehicles of a type required to be registered under the laws of the state of New Mexico.

**BB. "Manufacturer's certificate of origin or MCO"** means a certification, on a form supplied by or approved by the MVD, signed by the manufacturer, stating that the new vehicle described therein has been transferred to the New Mexico dealer or distributor named therein or to a dealer duly licensed or recognized as such in another state, territory or possession of the United States and that such transfer is the first transfer of such vehicle in ordinary trade and commerce. Every such certificate

contains a space for proper reassignment to a New Mexico dealer or to a dealer duly licensed or recognized as such in another state, territory or possession of the United States. The certificate also contains a description of the vehicle, the number of cylinders, type of body, engine number and the serial number or other standard identification number provided by the manufacturer of the vehicle, where such exists.

**CC. "Model year"** means the year of manufacture of the vehicle based on the annual production period of the vehicle as designated by the manufacturer and indicated on the title and registration of the vehicle. If the manufacturer does not designate a production period for the vehicle, then the model year means the calendar year of manufacture.

**DD. "Motor vehicle"** means any vehicle which:

(1) is propelled by a spark ignition, internal combustion engine, and

(2) has four or more wheels in contact with the ground, and

(3) is subject to registration with the MVD to an owner of record who is domiciled within Bernalillo county, or is a government vehicle which is assigned to a governmental unit within Bernalillo county, and

(4) has a GVW greater than 1,000 and less than 10,001 pounds, and

(5) is for use upon public roads and highways, and

(6) is a 1975 model year or newer, and

(7) is a vehicle not otherwise exempted by this part.

**EE. "New motor vehicle"** is a vehicle, which has undergone a transfer of ownership and is being registered for the first time to any person except in the sale to another licensed motor vehicle dealer for the purpose of resale as a new vehicle.

**FF. "Operator"** means driver, as defined in this part.

**GG. "Owner"** means a person who holds the legal title of the motor vehicle or, in the event a vehicle is the subject of an agreement for conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor.

**HH. "Pass fail criteria"** means those standards set by this part which specify the maximum allowable motor vehicle exhaust emissions under appropriate specified operating conditions.

**II. "Person"** means any individual, partnership, firm, public or private corporation, association, trust, estate,

political subdivision or agency, or any other legal entity or legal representative, agent, or assign.

**JJ. "Program or VPM program"** means the Albuquerque/Bernalillo county vehicle pollution management program.

**KK. "Program manager"** means a classified city employee selected in accordance with provisions of the Joint Powers Agreement between the city and the county to perform for the joint air quality control board those duties required to enforce and administer the provisions of this part, or the program manager's designee.

**LL. "Reconstructed vehicle"** means any vehicle which shall have been assembled or constructed largely by means of essential parts, new or used, derived from other vehicles or makes of vehicles of various names, models and types or which, if originally otherwise constructed, shall have been materially altered by the removal of essential parts, new or used, derived from other vehicles or makes of vehicles.

**MM. "Registration and re-registration"** means both original registration, and renewal of motor vehicles as provided in the New Mexico Motor Vehicle Code, Chapter 66 NMSA 1978.

**NN. "Shall be inspected"** means the vehicle shall be subjected to testing and inspection as applicable to model year and weight classification and shall satisfy the criteria of this part as evidenced by the issuance of a certificate of inspection.

**OO. "Standard gases"** means NIST certified emissions samples of gases maintained as primary standards for determining the composition of working gases, field audit gases, or the accuracy of analyzers.

**PP. "Truck"** means every motor vehicle designed, used or maintained primarily for the transportation of property. In addition, all vehicles with a GVW greater than 6000 pounds shall be considered a truck.

**QQ. "VEGAS"** means a program-certified, garage-type, computer controlled NDIR vehicle exhaust gas analyzer system which is capable of performing a preconditioned two-speed idle test on-board diagnostic test, and pressurized gas cap test on vehicles as required by 40 CFR Part 51 appendix B to Subpart S and meets or exceeds the specifications adopted by the program.

**RR. "VIR"** means vehicle inspection report, a program-certified document (VIR) signed by a certified *air care* inspector or other program authorized official stating that the vehicle described therein is either in compliance (pass), not in compliance (fail), or has an approved time

extension in order to achieve compliance through additional repairs or adjustments (time-limit extension).

**SS. "Visible emissions"** means any fume, smoke, particulate matter, vapor or gas, or combination thereof, except water vapor or steam.

**TT. "VPMP procedures manual or procedures manual"** means a compilation of procedures developed by the program manager pursuant to 20.11.100.12 NMAC.

**UU. "Wholesale"** means either any person selling or offering for sale vehicles of a type subject to registration in New Mexico to a vehicle dealer licensed under the Motor Vehicle Code, Chapter 66, NMSA 1978, or any person who is franchised by a manufacturer, distributor or vehicle dealer to sell or promote the sale of vehicles dealt in by such manufacturer, distributor or vehicle dealer, but does not include the act of selling a vehicle at retail as a dealer subject to the dealer-licensing provisions of the Motor Vehicle Code.

**VV. "Working gases"** means program-approved span gases maintained by an authorized *air care* inspection station to perform periodic calibration of approved exhaust gas analyzers.

**WW. Abbreviations and symbols**

- (1) A/F means air/fuel
- (2) ASE means the National Institute for Automotive Service Excellence
- (3) CO means carbon monoxide
- (4) CO<sub>2</sub> means carbon dioxide
- (5) DTC means diagnostic trouble code
- (6) EHD means the Environmental Health Department

~~[(6)](7)~~ EPA means the Environmental Protection Agency

~~[(7)](8)~~ GVW means gross vehicle weight

~~[(8)](9)~~ HC means hydrocarbon

~~[(9)](10)~~ HP means horsepower

~~[(10)](11)~~ LNG means liquefied natural gas

~~[(11)](12)~~ LPG means liquefied petroleum gas

~~[(12)](13)~~ MPH means miles per hour

~~[(13)](14)~~ MCO means manufacturer's certificate of origin

~~[(14)](15)~~ MVD means the Motor Vehicle Division of the New Mexico Taxation and Revenue Department

~~[(15)](16)~~ NDIR means non-dispersive infrared

~~[(16)](17)~~ NIST means National Institute of Standards and Technology

~~[(17)](18)~~ OBDII means On-Board Diagnostics second generation

~~[(18)](19)~~ % means percent

~~[(19)](20)~~ PCV means positive crankcase ventilation

~~[(20)](21)~~ ppm means parts per million by volume

~~[(21)](22)~~ VIN means vehicle identification number

~~[(22)](23)~~ 40 CFR Part 51 means the EPA regulations for inspection/maintenance programs published in the federal register on November 5, 1992 and mandated by the Federal Clean Air Act Amendments of 1990.

[10/12/82. . . 5/20/88, 11/13/91, 8/25/92, 9/23/94, 12/1/95; 20.11.100.7 NMAC - Rn, 20 NMAC 11.100.1.7, 10/1/02; A, 5/1/04; A, 9/1/04]

**20.11.100.26 DISCIPLINARY ACTION, DENIAL, SUSPENSION, OR REVOCATION OF CERTIFICATIONS:**

**A.** The program manager is authorized after reasonable investigation and showing of a violation of any provisions of this regulation to take disciplinary actions including monetary penalties and/or denial, suspension or revocation of certification to operate under the program as a certified *air care* station, certified fleet *air care* station, certified *air care* inspector or certified *air care* technician. In deciding on an appropriate action, the program manager may consider: past violations on file against the charged party; previous actions which may have been taken by the program against the charged party; settlement or consent agreements which document past violations; and judicial decisions if related to the requirements of this part, to the procedures manual, or other program guidelines or requirements.

**B.** Notwithstanding the provisions of Subsection C of 20.11.100.26 NMAC, the program manager may immediately suspend or revoke the certification of a certified *air care* station, certified fleet *air care* station, certified *air care* inspector or certified *air care* technician if the program manager determines that continued operation as an *air care* station, fleet *air care* station, *air care* inspector or *air care* technician would jeopardize the public health, safety and welfare; violate the VPMP procedures manual or this part; or compromise the program.

**C.** Prior to taking any action to suspend or revoke a certification, the program manager shall inform the inspector, technician or station owner of the charges. Any party so informed may request a hearing on the merits before the program manager. Such request must be made in writing to the program manager within 15 consecutive days of receipt of the notice of intent to suspend or revoke the

certification.

**D.** Upon receipt of a written request for a hearing on the merits, the program manager shall set a date, time and place for the hearing no more than 60 days from the date of receipt of the request. No fewer than 15 consecutive days before the hearing, the program manager shall inform the charged party of the date, time and place of the hearing. The program manager may appoint a hearing officer. At the hearing, the charged party may demonstrate why a monetary penalty should not be imposed and/or the certification should not be suspended or revoked.

**E.** At the hearing on the merits, based on the findings of the initial investigation and the evidence presented at the hearing, the program manager, with the approval of the environmental health department director, may take appropriate action including but not limited to any one or a combination of the following: monetary penalty; suspension or revocation of the certification; or dismissal of the charges. The program manager may issue monetary penalties as authorized by the City of Albuquerque and the Bernalillo County Joint Air Quality Control Board Ordinances, the City of Albuquerque and Bernalillo County Motor Vehicle Emissions Control Ordinances, and the New Mexico Air Quality Control Act. The program manager may consider: past violations on file against the charged party; previous actions which may have been taken by the program against the charged party; settlement or consent agreements which document past violations; and judicial decisions if related to the requirements of this part, to the procedures manual, or other program guidelines or requirements.

**F.** Any party whose application for certification is denied or certificate is suspended or revoked may appeal the decision of the program manager to the board. To perfect the appeal to the board, the appellant must deliver a written request to the headquarters within 15 consecutive days after receipt of the program manager's decision. The program shall inform the board at the next regular meeting of the board. The board may make its determination based on the record or may require a hearing de novo. The board may uphold, overturn or amend the program manager's decision. If the board decides to conduct a hearing de novo, the board may appoint a hearing officer, and the board shall set a date, time and place for the hearing and shall hold the hearing within 90 days of the headquarters' receipt of the written request. No fewer than 15 consecutive days before the hearing, the board shall inform the appellant of the date, time and place of the hearing. The decision of the board shall be final.

[5/20/88. . 11/13/91, 8/25/92, 9/23/94, 12/1/95, 20.11.100.26 NMAC - Rn, 20 NMAC 11.100.II.15, 10/1/02; A, 5/1/04; A, 9/1/04]

## ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

**This is an amendment to 20.11.102 NMAC, Sections 1; 3; 6; 7; 9; 11; 12; 13 and 14, effective 9/1/04. This regulatory change establishes a contingency measure that requires that the oxygenate content in fuels to be increased from 2.7% by weight to 3.0% by weight if carbon monoxide levels in Bernalillo County exceed 85% of the federal ambient carbon monoxide standards. The proposed revisions also include elimination of existing contingency measures.**

**20.11.102.1 ISSUING AGENCY:** Albuquerque-Bernalillo County Air Quality Control Board, c/o Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600. [11/1/89. . 12/1/95; 20.11.102.1 NMAC - Rn, 20 NMAC 11.102.I.1, 10/1/02; A, 9/1/04]

**20.11.102.3 S T A T U T O R Y AUTHORITY:** This part is adopted pursuant to the authority provided in the New Mexico Air Quality Control Act, NMSA 1978 [Section] Sections 74-2-4, 74-2-5.C; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5 [Section] Sections 3 and 4; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 [Section] Sections 9-5-1-3 and 9-5-1-4. [11/1/89. . 12/1/95; 20.11.102.3 NMAC - Rn, 20 NMAC 11.102.I.3, 10/1/02; A, 9/1/04]

**20.11.102.6 OBJECTIVE:** ~~[The objective of this part is to reduce tail pipe emissions from vehicles in Bernalillo county by providing for the use of oxygenated fuels in such vehicles.] To provide for the use of oxygenated fuels in Bernalillo county to reduce tail pipe emissions from gasoline powered motor vehicles and to establish a contingency measure in the event that monitored carbon monoxide levels in Bernalillo county exceed 85 percent of the federal ambient carbon monoxide standards.~~

[6/15/95. . 12/1/95; 20.11.102.6 NMAC - Rn, 20 NMAC 11.102.I.6, 10/1/02; A, 9/1/04]

**20.11.102.7 DEFINITIONS:** In

addition to the definitions in 20.11.102.7 NMAC the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in this part shall govern.

**A.** **"Department"** means the Albuquerque environmental health department or its successor agency.

~~[A.]~~ **B.** **"Ethanol"** means a colorless volatile flammable alcohol with the molecular composition of C<sub>2</sub>H<sub>6</sub>O.

~~[B.]~~ **C.** **"Facility or facilities"** means a place or places of business which sells or supplies for wholesale or retail purposes gasoline motor fuel, including fuel-transporting businesses.

~~[C.]~~ **D.** **"Gasoline motor fuels"** means for purposes of this part, any flammable liquid used primarily as fuel for the propulsion of motor vehicles, but does not include diesel engine fuel, kerosene, liquefied petroleum gas, natural gas and products specially prepared and sold for use in the turbo-prop or jet-type engines.

**E.** **"Manager"** means the manager of the vehicle pollution management division (VPMD).

~~[D.]~~ **F.** **"MTBE"** means methyl tertiary butyl ether.

~~[E.]~~ **G.** **"Methanol"** means a light volatile flammable poisonous liquid alcohol CH<sub>3</sub>OH formed by the destructive distillation of wood or manufactured from natural gas or coal, and used in combination with heavier co-solvent alcohols as an octane enhancer for addition to gasoline.

~~[F.]~~ **H.** **"Motor vehicle"** means any vehicle propelled by a spark ignited internal combustion engine which is designed primarily for travel on public highways and which is generally and commonly used to transport persons and property over the public highways.

~~[G.]~~ **I.** **"Oxygen content by weight"** means a measurement of the percentage of oxygen in an oxygenated fuel.

~~[H.]~~ **J.** **"Oxygenate"** means any oxygen-containing ashless, organic compound which may be used as a fuel or as a gasoline blending component and which was approved as a blending agent under the provisions of a waiver issued by the U.S. environmental protection agency pursuant to the Clean Air Act, Section 211 (f) (4).

~~[I.]~~ **K.** **"Oxygenated fuel"** means a motor vehicle fuel blend, whether leaded or unleaded, consisting primarily of gasoline and a substantial amount of one or more oxygenates, generally an alcohol or ether.

~~[J.]~~ **L.** **"Oxygenated fuels procedures manual or procedures manual"** means a compilation of procedures developed by the manager pursuant to 20.11.102.13 NMAC.



[11/10/93; 20.11.102.7 NMAC - Rn, 20 NMAC 11.102.I.7, 10/1/02; A, 9/1/04]

**20.11.102.9 SAVINGS CLAUSE:**

Any amendment of 20.11.102 NMAC [~~which~~ ~~that~~ is filed ~~is~~ with the state records center shall not affect actions pending for violation of a city or county ordinance, Air Quality Control Board Regulation 35, 20.11.102 NMAC, or the procedures manual. Prosecution for a prior violation shall be governed and prosecuted under the statute, ordinance, regulation, part, or procedures manual in effect at the time the violation was committed.

[11/10/93, 12/1/95; 20.11.102.9 NMAC - Rn, 20 NMAC 11.102.I.9, 10/1/02; A, 9/1/04]

**20.11.102.11 DOCUMENTS:**

Documents incorporated and cited in this part may be viewed at the Albuquerque environmental health department, 400 Marquette NW, Albuquerque, NM, 87102. [12/1/95; 20.11.102.11 NMAC - Rn, 20 NMAC 11.102.I.11 & A, 10/1/02; A, 9/1/04]

**20.11.102.12 OXYGENATED FUELS:**

Oxygenated fuels shall be used in all gasoline powered motor vehicles as a wintertime air pollution control strategy for reduction of carbon monoxide emissions in Bernalillo county.

**A. Annual program duration and minimum oxygen content:**

(1) Beginning November 1 and ending the last day of February of 1991 and every year thereafter no person shall supply or sell any gasoline motor fuel intended as a final product for fueling of motor vehicles within Bernalillo county, or sell at retail, or sell to a private or government fleet for consumption; or introduce such fuels into a motor vehicle in Bernalillo county unless the fuel contains a minimum 2.7 [~~%~~ ~~per-~~ ~~cent~~] percent oxygen content by weight, except as required pursuant to 20.11.102.14 NMAC.

(2) ~~The department shall establish the blending tolerance for oxygenated fuels [shall be established by the department].~~

(3) The board, after considering EPA guidelines, all available information, reports, data, and testimony, shall make a determination by July of each year whether the oxygenate levels should be modified or remain the same.

(4) Oxygenates approved for use in this program shall be blended per unit volume of gasoline motor fuel, and blended up to a 10 [~~per-cent~~ ~~per-~~ ~~cent~~] percent by volume for ethanol, and up to 15 [~~per-cent~~ ~~per-~~ ~~cent~~] percent by volume MTBE or at the volume for any other gasoline motor fuel additive which has been issued a waiver by the EPA pursuant to the Clean Air Act, Section 211 (f)

(4).

(5) No gasoline motor fuel blended with methanol and intended as a final product for fueling of motor vehicles shall be sold at retail or to a private or government fleet within Bernalillo county.

**B. Labeling and notice to the public:**

(1) All oxygenated motor fuel sold shall be labeled at each dispensing pump identifying the type of oxygenate, in accordance with labeling criteria developed by the department. Each gasoline pump stand at retail dispensing facilities must have a label stating, "The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles."

(2) All retail gasoline vending facilities shall keep readily available all pamphlets, brochures, fact sheets, and other written information provided to them by the department for information and dissemination to the public.

(3) The department shall develop a public education plan to inform the public of the commencement of the program, encourage compliance, and answer questions during the duration of the program. The board may review the plan and provide guidance and advice to the department on its implementation.

**C. Enforcement:**

(1) To determine compliance with this regulation, the department shall develop sampling frequency and testing criteria for gasoline motor fuel. The department, upon presentation of proper identification shall be allowed to enter a facility during reasonable times. The department may collect those samples deemed appropriate after paying for or offering to pay for these samples at any facility.

(2) The department may enter into any agreement as appropriate with any agency of the state, or other local government entities, to assist in the monitoring, compliance, and enforcement of 20.11.102 NMAC and the procedures manual.

(3) Any person selling or supplying, or offering to sell or supply gasoline motor fuels not meeting the provisions of 20.11.102 NMAC shall be subject to penalties and other civil, criminal, and equitable actions authorized by the Air Quality Control Act, NMSA 1978, 74-2-1 et seq.

**D. Suspension of program due to oxygenate shortage:**

Should extreme and unusual circumstances occur in the marketplace preventing the blending of oxygenates at the levels designated by this part, the manager may take the necessary steps as a temporary emergency measure to relax or suspend this part. The manager shall inform the members of the board of such action taken within seven days of this occurrence. At its next regular meeting, or

at a special meeting if so called, the board shall review the manager's action.

**E. Program review:** By the regular meeting of the board in July of each program year, the department shall provide a report to the board reviewing the results of the program, which shall include an analysis of costs and benefits to the consumer, investigations of complaints, compliance and quality assurance activities, and other findings and recommendations.

[11/10/93, 12/1/95; 20.11.102.12 NMAC - Rn, 20 NMAC 11.102.I.12 & Repealed, 10/1/02; Rn, 20 NMAC 11.102.II.1, 10/1/02; A, 9/1/04]

**20.11.102.13 OXYGENATED FUELS PROCEDURES MANUAL:**

**A.** The manager shall develop an official document entitled *oxygenated fuels procedures manual* outlining in sufficient detail the procedures necessary for complying with this part. Upon approval by the board, the vehicle pollution management division manager shall publish the official *oxygenated fuels procedures manual* and within ~~ten~~ 10 days of publication provide general notice of its availability.

**B.** The procedures, details, and specifications contained in the *oxygenated fuels procedures manual* are a part of and are incorporated into this part and are binding upon each person governed by this part.

**C.** The procedures manual shall be reviewed and amended as required, and kept updated by the manager. Notice of manual amendments, shall be provided by the manager with copies made available to the users. It is the responsibility of the user to obtain and incorporate amendments as made available by the manager.

[11/10/93; 20.11.102.13 NMAC - Rn, 20 NMAC 11.102.II.2, 10/1/02; A, 9/1/04]

**20.11.102.14 CONTINGENCY MEASURES:**

**A.** Beginning July 1, 1995, until the later of June 13, 2006, or when the SIP revision, "second half of the carbon monoxide maintenance plan for Bernalillo county" is effective following EPA approval [In the event that], if Bernalillo county [experiences a violation of] violates the national ambient air quality standard for carbon monoxide [after July 1, 1995], the following additional carbon monoxide control measures will take effect:

[ ~~A.~~ (1) the minimum oxygen content by weight of 2.7 [~~%~~ ~~per-~~ ~~cent~~] percent required in Paragraph (1), of Subsection A of 20.11.102.12 NMAC, will be increased to 3.0 [~~%~~ ~~per-~~ ~~cent~~] percent for ethanol beginning November 1 of the immediately following winter pollution season and continuing through the last day of the immedi-

ately following February and resuming every winter pollution season (November through February) thereafter; and [ B.] (2) in addition to the blending requirements referenced in Paragraph (4), of Subsection A of 20.11.102.12 NMAC, oxygenated fuel shall be blended prior to removal by tank truck from primary supply points (refineries and terminals).

B. Beginning on the later of June 13, 2006, or when the SIP revision, "second half of the carbon monoxide maintenance plan for Bernalillo county" is effective following EPA approval, if monitored carbon monoxide levels in Bernalillo county exceed 85 percent of the federal ambient carbon monoxide standards, then the minimum oxygen content by weight of 2.7 percent required in Paragraph (1), of Subsection A of 20.11.102.12 NMAC, will be increased to 3.0 percent for ethanol beginning November 1 of the immediately following winter pollution season and continuing through the last day of the immediately following February and resuming every winter pollution season (November through February) thereafter. [11/10/93 . . 6/15/95; 20.11.102.14 NMAC - Rn, 20 NMAC 11.102.II.3, 10/1/02; A, 9/1/04]

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

This is an amendment to 19.5.1 NMAC, Section 21 is a new section added, effective 08-13-04.

**19.15.1.21 SPECIAL PROVISIONS FOR SELECTED AREAS OF SIERRA AND OTERO COUNTIES:**

A. The selected areas comprise:

(1) all of Sierra county except the area west of Range 8 West NMPM and north of Township 18 South, NMPM; and

(2) all of Otero county except the area included in the following townships and ranges:

(a) township 11 south, range 9 1/2 east and range 10 east NMPM;

(b) township 12 south, range 10 east and ranges 13 east through 16 east, NMPM;

(c) township 13 south, ranges 11 east through 16 east, NMPM;

(d) township 14 south, ranges 11 east through 16 east, NMPM;

(e) township 15 south, ranges 11 east through 16 east, NMPM;

(f) township 16 south, ranges 11 east through 15 east, NMPM;

(g) township 17 south, range 11 east (surveyed) and ranges 12 east through 15 east, NMPM;

(h) township 18 south, ranges 11 east through 15 East, NMPM;

(i) township 20 1/2 south, range 20 east, NMPM;

(j) township 21 south, range 19 east and range 20 east, NMPM; and

(k) township 22 south, range 20 east, NMPM; and also excepting also the unsurveyed area bounded as follows:

(i) beginning at the most northerly northeast corner of Otero county, said point lying in the west line of range 13 east (surveyed);

(ii) thence west along the north boundary line of Otero county to the point of intersection of such line with the east line of range 10 east NMPM (surveyed);

(iii) thence south along the east line of range 10 east NMPM (surveyed) to the southeast corner of township 11 south, range 10 east NMPM (surveyed);

(iv) thence west along the south line of township 11 south, range 10 east NMPM (surveyed) to the more southerly northeast corner of township 12 south, range 10 east NMPM (surveyed);

(v) thence south along the east line of range 10 east NMPM (surveyed) to the inward corner of township 13 south, range 10 east NMPM (surveyed) (said inward corner formed by the east line running south from the more northerly northeast corner and the north line running west from the more southerly northeast corner of said township and range);

(vi) thence east along the north line of township 13 south NMPM (surveyed) to the southwest corner of township 12 south, range 13 east, NMPM (surveyed);

(vii) thence north along the west line of range 13 east, NMPM (surveyed) to the point of beginning.

B. The division shall not issue permits under 19.15.2.50 NMAC or 19.15.9.711 NMAC for pits located in the selected areas.

C. Produced water injection wells located in the selected areas are subject to the following requirements in addition to those set out in 19.15.9.701 NMAC through 19.15.9.710 NMAC.

(1) Permits shall be issued under 19.15.9.701 NMAC only after notice and hearing.

(2) The radius of the area of review shall be the greater of:

(a) one-half mile; or

(b) one and one-third times the radius of the zone of endangering influence, as calculated under environmental protec-

tion agency regulation 40 CFR Part 146.6(a) or by any other method acceptable to the division; but in no case shall the radius of the area of review exceed one and one-third miles.

(3) Operators shall demonstrate the vertical extent of any fresh water aquifer(s) prior to using a new or existing well for injection.

(4) All fresh water aquifers shall be isolated throughout their vertical extent with at least two cemented casing strings. In addition,

(a) existing wells converted to injection shall have continuous, adequate cement from casing shoe to surface on the smallest diameter casing, and

(b) wells drilled for the purpose of injection shall have cement circulated continuously to surface on all casing strings, except the smallest diameter casing shall have cement to at least 100 feet above the casing shoe of the next larger diameter casing.

(5) Operators shall run cement bond logs acceptable to the division after each casing string is cemented, and file the logs with the appropriate district office of the division. For existing wells the casing and cementing program shall comply with 19.15.9.702 NMAC.

(6) Produced water transportation lines shall be constructed of corrosion-resistant materials acceptable to the division, and shall be pressure tested to one and one-half times the maximum operating pressure prior to operation, and annually thereafter.

(7) All tanks shall be placed on impermeable pads and surrounded by lined berms or other impermeable containment device having a capacity at least equal to one and one-third times the capacity of the largest tank, or, if the tanks are interconnected, of all interconnected tanks.

(8) Operators shall record injection pressures and volumes daily or in a manner acceptable to the division, and make the record available to the division upon request.

(9) Operators shall perform a mechanical integrity tests as described in Paragraph 2, Subsection A of 19.15.9.704 NMAC annually, shall advise the appropriate district office of the division of the date and time each such test is to be commenced in order that the test may be witnessed, and shall file the pressure chart with the appropriate district office of the division.

[19.15.1.21 NMAC - N, 08-13-04]

**NEW MEXICO  
DEPARTMENT OF  
FINANCE AND  
ADMINISTRATION  
LOCAL GOVERNMENT DIVISION**

This is an amendment to 2.110.2 NMAC, Sections 2, 8, 10 through 14 and 17 through 20, effective August 13, 2004.

**2.110.2.2 SCOPE:** All counties and incorporated municipalities, except the cities of Albuquerque, Farmington, Las Cruces, Santa Fe and Rio Rancho. [2.110.2.2 NMAC - Rp 2 NMAC 110.2.2, 08-30-01; A, 08-13-04]

**2.110.2.8 INTRODUCTION**

**A.** The New Mexico community development council is responsible for allocating grants under the Small Cities Community Development Block Grant (CDBG) program to assist local communities with basic infrastructure and community development needs.

**B.** These application regulations will govern the [~~FY 2002~~] CDBG appropriation from the U.S. department of housing and urban development.

**C.** As part of their administrative responsibility, the council and the local government division will continue to provide technical assistance to prospective applicants and grantees. The nature of these programs requires a thorough outreach effort to ensure that units of local government are aware of program requirements.

**D.** The council and the division assure local entities and citizens of the state of New Mexico that public comment will be solicited should the council choose to make any substantial changes to these application regulations.

[2.110.2.8 NMAC - Rp 2 NMAC 110.2.8, 08-30-01; A, 08-13-04]

**2.110.2.10 ELIGIBLE APPLICANTS**

**A.** All counties and incorporated municipalities are eligible to apply except: the city of Albuquerque, the city of Farmington, the city of Las Cruces, the city of Santa Fe and the city of Rio Rancho who cannot apply since they receive funding directly from the department of housing and urban development (Title I, Section 106) as entitlement cities.

**B.** Other entities such as water associations, sanitation districts, public nonprofit groups, etc., cannot apply directly for assistance.

**C.** However, these entities may be involved in the execution of an approved CDBG project if the eligible applicant chooses to operate the program

through such an entity under a contractual agreement.

**D.** Indian pueblos and tribes receive funding directly from the department of housing and urban development (Title I, Section 107). Native American tribes are encouraged to submit applications to the Albuquerque HUD Office of Native American Programs, 201 3rd St., N.W., Suite 1830, Albuquerque, New Mexico 87102-3368, (505) 346-6923. [2.110.2.10 NMAC - Rp 2 NMAC 110.2.10, 08-30-01; A, 08-13-04]

**2.110.2.11 ELIGIBLE ACTIVITIES/CATEGORIES**

**A. Applicants may apply for funding assistance under the following categories:**

- (1) community infrastructure;
- (2) housing;
- (3) public [~~service~~] facility capital

outlay;

- (4) economic development;
- (5) emergency;
- (6) colonias;
- (7) planning.

**B. Eligible activities under each of the categories are listed below.**

**C. Community infrastructure:** Eligible activities may include, but are not limited to, the following:

- (1) real property acquisition
- (2) construction and/or rehabilitation of the following:
  - (a) water systems;
  - (b) sewer systems;
  - (c) municipal utilities;
  - (d) roads;
  - (e) streets;
  - (f) highways;
  - (g) curbs;
  - (h) gutters;
  - (i) sidewalks;
  - (j) storm sewers;
  - (k) street lighting;
  - (l) traffic control devices;
  - (m) parking facilities;
  - (n) solid waste disposal facilities.

**D. Housing:** Eligible activities may include, but are not limited to, the following:

- (1) real property acquisition;
- (2) rehabilitation;
- (3) clearance;
- (4) demolition and removal of

privately-owned or acquired property for use or resale in the provision of assisted housing;

(5) provision of public facilities to increase housing opportunities;

(6) financing the repair, rehabilitation and in some cases reconstruction of privately-owned residential or other properties through either loan or grant programs;

(7) certain types of housing modernization;

(8) temporary relocation assistance;

(9) code enforcement;

(10) historic preservation activities;

(11) [~~a maximum of \$20,000~~] an average of \$30,000 in CDBG funds per home can be used on home rehabilitation/repair activities.

**E. Public [~~service~~] facility capital outlay:** Eligible activities may include, but are not limited to, such items as:

- (1) real property acquisition;
- (2) construction or improvement of community centers;
- (3) senior citizen centers;
- (4) nonresidential centers for the handicapped such as sheltered workshops;
- (5) other community facilities designed to provide health, social, recreational or similar community services for residents.

**F. Economic development:** The economic development category is established to assist communities in the promotion of economic development and is described in detail in Section 26.

**G. Emergency:** The emergency fund provides funding for emergency projects which address life threatening situations resulting from disasters or imminent threats to health and safety.

(1) Applications under this category will be accepted throughout the year.

(2) An appropriate state agency must concur and provide written verification and adequate documentation with the applicant's assessment of the life threatening situation and the need for the emergency project.

(3) An applicant for emergency funding must verify that it does not have sufficient local resources to address the life threatening condition; and that other federal or state resources have been explored and are unavailable to alleviate the emergency.

**H. Planning:** In addition to municipalities and counties, water associations, including water and sanitation districts, as defined in Section 2.110.2.7, Subsection L; are eligible to apply directly for planning grants only. Water associations are not subject to the comprehensive plan standard and may apply for development of other eligible planning studies. Grant assistance from the CDBG program must be used for a comprehensive plan, if a community or county does not have a current comprehensive plan (adopted or updated within the last five years) [~~and~~] that includes at a minimum the following [~~six~~] seven elements:

- (1) land use;

(2) housing;  
 (3) transportation;  
 (4) infrastructure;  
 (5) economic development; and  
 (6) implementation, a compilation of programs and specific actions to be completed in a stated sequence;

(7) water

~~(7)~~ (8) development of additional elements of a comprehensive plan may include but are not limited to:

- (a) drainage;
- (b) parks, recreation and open space;
- (c) tourism;
- (d) growth management;
- (e) fiscal impact analysis;
- (f) intergovernmental cooperation;

(g) social services.

(h) historic preservation

~~(8)~~ (9) if the entity has a current comprehensive plan, it may apply for funding assistance for any of the following:

~~(9)~~ (10) data gathering analysis and special studies;

~~(10)~~ (11) base mapping, aerial photography, geographic information systems, or global positioning satellite studies;

~~(11)~~ (12) improvement of infrastructure capital improvement plans and individual project plans;

~~(12)~~ (13) development of codes and ordinances, to further refine the implementation of the comprehensive plan;

~~(13)~~ (14) other functional or comprehensive planning activities;

~~(14)~~ (15) related citizen participation or strategic planning processes;

~~(15)~~ (16) applicants may apply for funding assistance throughout the year as long as funds are available.

(17) preliminary engineering reports will follow the USDA/RUS guidelines.

**I. Colonias:**

(1) The colonias category is established in the amount of 10% of the annual CDBG allocation for specific activities including water, sewer and housing improvements, which are the three conditions which qualify communities for designation to be carried out in areas along the U.S. - Mexican border.

(2) Eligible applicants for the colonias setaside are municipalities and counties located within 150 miles of the U.S.- Mexico border.

(3) Colonias must be designated by the municipality or county in which it is located. The designation must be on the basis of objective criteria, including:

- (a) lack of potable water supply;
- (b) lack of adequate sewage systems;

(c) lack of decent, safe and sanitary housing;

(d) must have been in existence as a colonia prior to November, 1990.

(4) Appropriate documentation to substantiate these conditions must be provided along with the application for funding.

[2.110.2.11 NMAC - Rp 2 NMAC 110.2.11, 08-30-01; A, 08-13-04]

**2.110.2.12 OTHER ELIGIBLE ACTIVITIES**

**A.** Administrative costs associated with implementing a program such as preparing environmental reviews, and other costs for services are eligible activities.

**B.** Although the costs of conducting program audits are considered an eligible activity, it is recommended that they be paid by the applicant in order to expedite grant closeout.

**C.** Applicants may use 15% of a CDBG funding request and subsequent grant for public ~~service~~ facility program activities including those concerned with:

- (1) employment;
- (2) crime prevention;
- (3) child care;
- (4) drug abuse prevention;
- (5) education;
- (6) energy conservation;
- (7) welfare and recreation.

**D.** The community development council may pledge future CDBG allocations to guarantee repayment of loans to nonentitlement cities and counties for CDBG eligible projects in accordance with Section 108 of the Housing and Community Development Act of 1974, as amended.

[2.110.2.12 NMAC - Rp 2 NMAC 110.2.12, 08-30-01; A, 08-13-04]

**2.110.2.13 I N E L I G I B L E ACTIVITIES:** The following are among the activities that are not eligible for CDBG funding assistance:

**A.** construction or rehabilitation of buildings used for the general conduct of government, such as city halls or county courthouses; compliance with Americans with Disabilities Act is an eligible activity;

**B.** general operation and maintenance expenses associated with public facilities or services;

**C.** income maintenance;

**D.** housing allowance payments and mortgage subsidies;

(1) expenditures for the use of equipment or premises for political purposes, sponsoring or conducting candidates' meetings, engaging in voter registration, voter transportation or other political activities;

(2) costs involved in the preparation of applications and securing of funding.

[2.110.2.13 NMAC - Rp 2 NMAC 110.2.13, 08-30-01; A, 08-13-04]

**2.110.2.14 RURAL ALLOCATION**

**A.** A minimum of fifteen percent (15%) of the CDBG allocation will be awarded to counties with a population of less than 25,000 and municipalities with a population of less than 3,000.

**B.** Rural applicants will compete among themselves for assistance in the community infrastructure, housing, and public ~~service~~ facility capital outlay categories.

**C.** Rural and nonrural applicants will compete for funding from the economic development, emergency, planning and colonias categories on an equal basis.

**D.** See attachments of rural/urban counties and municipalities

[2.110.2.14 NMAC - Rp 2 NMAC 110.2.14, 08-30-01; A, 08-13-04]

**2.110.2.17 APPLICATION REQUIREMENTS**

**A.** Number of applications - All eligible applicants may submit one application for CDBG funding assistance in the infrastructure, housing or public ~~service~~ facility capital outlay.

(1) ~~Eligible colonias and~~ Planning applicants may submit an additional application for funding.

(2) Requests for assistance from eligible applicants in the economic development, emergency and planning categories can be submitted at any time, subject to funding availability.

(3) Counties may submit multiple applications for planning grants for water associations.

**B.** Single purpose application -An application for CDBG funding must be limited to a project specific activity or set of activities which address a particular need in a designated target area of a unit of local government. The target area may not be the entire municipality or county.

**C.** Joint applications -Joint applications will be allowed when two or more eligible applicants within reasonable proximity of each other wish to address a common problem.

(1) One community will be designated to serve as the lead applicant and will be subject to administrative requirements and to the application limit requirements.

(2) However, other parties to the joint application may submit another application.

(3) Joint applications must satisfy certain federal criteria and must receive division approval prior to submitting an application for funding assistance.

(4) It should be noted that satisfy-

ing the required criteria, which is available from the division upon request, may take a significant period of time.

**D.** Applications limit - Applications are limited to the amount of funding necessary to complete a basic, meaningful and targeted project within a 24 month period.

(1) Applications may not exceed [~~\$400,000 in FY 2002 or \$500,000 in FY 2003.~~] \$500,000 and planning applications may not exceed [~~\$25,000~~] \$50,000.

(2) If, after conducting the required public hearing, an applicant determines that the previous year's CDBG application is still a priority, the applicant may ask the council to reconsider the previous year's application.

(3) The applicant need only submit a current year's resolution, updated project budget and schedule and any other information required by division staff.

**E.** Threshold requirements - To encourage timely completion of projects and to maximize participation the following threshold requirements must be met by the application deadline.

~~(1) Fourth and older year grants must be officially closed or closed pending audit~~

~~(2) Third year grants must have a minimum of 85% funds drawdown.~~

~~(3) Second year grants must have a minimum of 60% funds drawdown.~~

~~(4) First year grants must have an executed grant agreement and the environmental review completed and authority to use grant funds issued, (HUD form 701516), if needed.~~

~~(a) In addition, construction grants must have an executed engineer/architect contract.~~

~~(b) Housing grants must have guidelines approved by the division.~~

~~(c) Planning grants must have executed a professional services agreement or assigned in-house staff to prepare the plan.~~

~~(5) Audit and monitoring findings, especially in general program administration for CDBG projects, must be resolved.~~

~~(6) Any grantee with two or more active grants in 2002 in the infrastructure, public service, capital outlay and housing categories cannot apply for funding assistance. Beginning with 2003 cycle, any grantee with one or more active grants in the infrastructure, public service, capital outlay and housing categories cannot apply for funding assistance.~~

~~(7) The following setaside categories are exempt from threshold requirement: Planning, economic development, emergency, colonias and water association pilot planning program.]~~

(1) All projects must be complet-

ed at the time of application. (certificate of occupancy and/or certification of operation must be in place).

(2) Audit and monitoring findings, especially in general program administration for CDBG projects, must be resolved.

(3) The following setaside categories are exempt from threshold requirement: planning, economic development, and emergency.

**F.** Matching requirements - In order to assist the council in making funding resources go further and to ensure there is a local investment in applications submitted to the council for funding consideration, the following will be required:

(1) Rural applicants must provide, at a minimum, a 5% cash match during the project period from local, state, federal or other resources, this cannot include local work force or local equipment.

(2) Non-rural applicants must provide, at a minimum, a 10% cash match during the project period from local, state, federal or other resources, this cannot include local work force or local equipment.

(3) Consistent with Section 26 of these regulations, all applications in the economic development category must provide at least two private dollars for each dollar of CDBG funds requested.

(4) Local funds expended by eligible applicants for engineering, architectural design or environmental reviews prior to project approval can be applied towards the required match.

(5) Applicants may request a waiver of the matching requirement from the council if documentation can be provided which demonstrates the absence of local resources to meet the required match. Criteria used to recommend approval/disapproval will be as follows:

(a) the required match must exceed 5% of the applicant's general fund budget;

(b) the required match must equal or exceed the non-earmarked balance of funds in the applicant's budget.

**G.** Matching loan fund - In order to assist communities who do not have the resources to comply with the matching requirement for their project, a matching fund is available to provide money at appropriate interest rates.

(1) The council will use NMCA reversions as a funding source for the loan fund.

(2) Payment schedules will be developed by the division with appropriate payment amounts and due dates.

**H.** Other funding commitments - If other funding is necessary to make a proposed project feasible, funding commitments or commitments subject to CDBG approval, must be in place and let-

ters of commitments from the funding agency must be submitted with the application.

**I.** Water conservation and drought commitments - In order to make the state's water supplies go further and to ensure proper levels of preparations are taken locally for periodic droughts, the following is encouraged:

(1) Applicants develop, adopt and submit to the state engineer a comprehensive water conservation ordinance.

(2) Applicants develop, adopt and submit to the state engineer a drought management plan.

(3) The ordinance and plan shall be accompanied by a program for its implementation.

(a) In developing a water conservation ordinance pursuant to this section: Applicants shall adopt ordinances and codes to encourage water conservation measures. They shall identify and implement best management practices in their operations to improve conservation of the resources; and

(b) Applicants shall consider and incorporate into its plan if appropriate, at least the following:

(i) water-efficient fixtures and appliances, including toilets, urinals, showerheads and faucets;

(ii) low-water-use landscaping and efficient irrigation;

(iii) water-efficient commercial and industrial water-use processes;

(iv) water reuse systems for both potable and non-potable water;

(v) distribution system leak repair;

(vi) dissemination of information regarding water-use efficiency measures, including public education programs and demonstrations of water-saving techniques;

(vii) water rate structures designed to encourage water-use efficiency and reuse in a fiscally responsible manner; and

(viii) incentives to implement water-use efficiency techniques, including rebates to customers or others, to encourage the installation of water-use efficiency and reuse measures.

(c) The council shall encourage the applicant to submit a copy of its water conservation plan with applications for construction of any facility.

[2.110.2.17 NMAC - Rp 2 NMAC 110.2.17, 08-30-01; A, 08-13-04]

**2.110.2.18 APPLICATION PROCEDURES AND CONTENT:** The application packet provided by local government division will be used for infrastruc-

ture, housing, public ~~service~~ facility, capital outlay, colonias, emergency categories, economic development and planning.

**A.** An applicant must submit an original and four copies of each application to the Department of Finance and Administration, Local Government Division, Bataan Memorial Building, Suite 201, Santa Fe, New Mexico 87501, and one copy to the appropriate council of governments.

**B.** Applications must be received at the local government division by 5 p.m. of the designated application deadline. Applications received after that time will be returned to the applicant unprocessed.

[2.110.2.18 NMAC - Rp 2 NMAC 110.2.18, 08-30-01; A, 08-13-04]

### 2.110.2.19 APPLICATION REVIEW AND EVALUATION PROCESS

**A.** Upon receipt of applications, division staff will review them for eligibility, completeness, feasibility, and compliance and to ensure that all other funding necessary to make the project functional is in place. Applications that are found to be incomplete, ineligible, not feasible or do not have other funding necessary to make the project functional, will be returned to the applicant and will not be considered for funding.

**B.** Applications will be forwarded to councils of governments and appropriate state agencies for technical review and comment. Review agencies include the environment department, energy, minerals and natural resources department, state highway and transportation department, department of health, state engineer's office, state agency on aging, economic development department, department of human services, and state fire marshal.

**C.** Applicants will be allowed to make presentations to the council and division staff at an official council hearing. Testimony related to the application will be presented by an official or designee of the applying entity who may be assisted by technical staff.

**D.** Division staff will receive comments from state agencies and councils of governments regarding specific projects.

**E.** The council and division have developed the following rating criteria for evaluation of CDBG applications submitted for funding consideration: infrastructure, housing, public ~~service~~ facility, capital outlay and colonias applications.

**(1) Description and need** — ~~[(23 points)]~~ (5 points) extent to which the project is needed. The more severe the need

as documented in the application, the higher the score. Colonias applicants must provide documentation to substantiate that a majority of the following conditions exist in the project area:

(a) lack of potable water;  
(b) lack of an adequate sewage system;

(c) lack of safe, sanitary housing;  
(d) source documentation must also be provided.

**(2) Benefit to low and moderate and appropriateness** - ~~[(23 points)]~~ (20 points) extent to which the CDBG application:

(a) documents the number and percentage of low and moderate income beneficiaries, also include race and gender;  
(b) addresses the prevention or removal of slum or blighting conditions;

(c) addresses conditions which pose a serious and immediate threat to the health and welfare of the community (for emergency applications only).

**(3) Leveraging** — ~~[(14 points)]~~ (15 points) extent to which federal, state, and local resources, in addition to the required match, are being used by the applicant for the proposed project. The greater the leveraging, in addition to the required match, the higher the score.

**(4) Citizen participation** - ~~[(5 points)]~~ (15 points) extent to which the applicant:

(a) has provided opportunities for public participation in the identification of community development needs;

(b) pledges opportunities for active citizen participation during the project, where applicable; and

(c) pledges opportunities for active citizen participation in the implementation of the project, where applicable.

**(5) Planning** - ~~[(8 points)]~~ (15 points) extent to which the applicant:

~~(a) has participated in the local Infrastructure Capital Improvements Plan (ICIP) submitted to the Division;~~

~~(b) ranks the project high on the ICIP list of projects; and references the project, and show consistency, to the local comprehensive plan.]~~

(a) (3) points: Applicant has adopted a local infrastructure capital improvement plan, which has qualified for publication in the most recent local infrastructure capital improvement plan (ICIP) published prior to the CDBG application deadline.

(b) (3) points: The proposed project has qualified for publication in the most recent ICIP prior to the CDBG application deadline and applicant has selected CDBG as one of its possible funding sources.

(c) (2) points: Degree to which applicant's proposed project shows consistency with applicant's comprehensive plan.

(d) (2) points: Adopting a drought contingency plan, setting in place various drought management stages and accompanying restrictions on water use.

(e) (3) points: Adopting a water conservation ordinance, setting in place various methods for conserving potable water.

(f) (2) points: Implementing a water conservation ordinance, accompanied by evidence of exercising at least two various methods for conserving potable water.

**(6) Feasibility/readiness** - ~~[(18 points)]~~ (20 points) extent to which the project is technically and economically feasible and ready to be implemented. (examples of actions that can be taken prior to submission of the application to receive maximum points are:

(a) acquire necessary property;  
(b) secure professional services;  
(c) complete plans, specifications, or preliminary engineering report, etc.

(d) complete the environmental review process.

**(7) Cost benefit** - ~~[(9 points)]~~ (10 points) number of direct beneficiaries of the project compared to the amount of funds requested. The higher the number of beneficiaries compared to the amount of funds requested, the higher the score.

### F. Planning criteria category

**(1) Consistency (25 points):** Document the degree to which the proposed planning project is consistent with the applicants current version of its comprehensive plan, its infrastructure capital improvement plan, and its planning region's consolidated plan.

**(2) Appropriateness (25 points):** Describe the impact the proposed project will have on at least one of the three national objectives of the CDBG program.

**(3) Public involvement (25 points):** Describe how the planning process will involve citizens in the preliminary identification of community needs, in the development and active participation in the planning process, and in the implementation of the plan.

**(4) Implementation strategy (25 points):** Describe the local commitment of resources to the planning process; commitment to adopt the plan, either by resolution, rule, policy or ordinance; and commitment to use the results of the planning process in the decision making process.

**G.** Economic development rating criteria is included in Section 2.110.2.26.

**H.** Site visits will be conducted as needed during the application review process to verify the information presented in an application.

**I.** Division staff will present its evaluations in high, medium and low groupings to the council at least seven days

prior to the allocation meeting.

**J.** Because emergency, economic development, and rural planning projects are received throughout the year, formal staff rating may not be necessary if all other federal and state requirements are met and other applications are not competing for funding assistance.

[2.110.2.19 NMAC - Rp 2 NMAC 110.2.19, 08-30-01; A, 08-13-04]

**2.110.2.20 SELECTION OF CDBG GRANTEES BY CDC**

**A.** The council will review staff evaluations and recommendations and make funding decisions in an open public meeting.  
**B.** In making its final determination, the council will consider the past performance of the applicant in administering active CDBG projects.

**C.** The council may adjust the scope and dollar amount of projects to bring the project within available funding, to enable the council to fund additional projects or for purposes of consistency.

**D.** The council will also consider current conditions such as the applicant presentation, the council summary of the project application, and the current economic and environmental conditions.

~~**D.**~~ **E.** The council may deviate from staff rankings, if the council by majority vote determines and substantiates that any of the following conditions apply:

**(1)** IN ORDER NOT TO FUND A PROJECT RECOMMENDED BY STAFF; other funding sources for the project are available.

**(2)** IN ORDER TO FUND A PROJECT NOT RECOMMENDED BY STAFF

**(a)** the health and safety of area residents is at stake;

**(b)** funding committed to the project from other sources may be jeopardized;

**(c)** significant economic benefits will be realized if the project is implemented;

**(d)** the need for the project is critical.

~~**E.**~~ **F.** The council ~~will~~ may fund the full amount requested for projects ranked in the top ten (10%) non-setaside of applications received each year.

~~**F.**~~ **G.** The council may ~~not~~ consider funding projects ranked in the bottom thirty-five (35%) of non-setaside applications received each year

~~**G.**~~ **H.** The council will make funding determinations by a majority vote.

~~**H.**~~ **I.** The council may waive or adjust any state-imposed rule or requirement relative to project selection and administration of the CDBG program as long as the waiver will not result in violation of state or federal statutes or regulations or penalize other applicants.

~~**I.**~~ **J.** The council may transfer funds from the economic development and emergency setasides at any time if there is limited demand for funding in these categories. The transferred funds or any reversions from previously approved projects may be used to fund projects which were submitted for funding previously.

[2.110.2.20 NMAC - Rp 2 NMAC 110.2.20, 08-30-01; A, 08-13-04]

Attachment to 2.110.2.14 NMAC

**RURAL COUNTIES**  
**PER 2000 HUD APPROVED U.S. CENSUS DATA**

<u>COUNTY</u>	<u>TOTAL PERSONS</u>
<u>CATRON</u>	<u>3,533</u>
<u>CIBOLA</u>	<u>24,524</u>
<u>COLFAX</u>	<u>13,767</u>
<u>DE BACA</u>	<u>2,168</u>
<u>GUADALUPE</u>	<u>4,154</u>
<u>HARDING</u>	<u>810</u>
<u>HIDALGO</u>	<u>5,847</u>
<u>LINCOLN</u>	<u>19,192</u>
<u>LOS ALAMOS</u>	<u>18,251</u>
<u>LUNA</u>	<u>24,746</u>
<u>MORA</u>	<u>5,122</u>
<u>QUAY</u>	<u>9,969</u>
<u>ROOSEVELT</u>	<u>17,249</u>
<u>SIERRA</u>	<u>13,005</u>
<u>SOCORRO</u>	<u>17,501</u>
<u>TORRANCE</u>	<u>16,377</u>
<u>UNION</u>	<u>4,158</u>

**URBAN COUNTIES**  
**PER 2000 HUD APPROVED U.S. CENSUS DATA**

<u>COUNTY</u>	<u>TOTAL PERSONS</u>
<u>BERNALILLO</u>	<u>106,749</u>
<u>CHAVES</u>	<u>60,089</u>
<u>CURRY</u>	<u>43,855</u>
<u>DONA ANA</u>	<u>97,616</u>
<u>EDDY</u>	<u>50,905</u>
<u>GRANT</u>	<u>30,399</u>
<u>LEA</u>	<u>53,708</u>
<u>McKINLEY</u>	<u>73,940</u>
<u>OTERO</u>	<u>61,059</u>
<u>RIO ARRIBA</u>	<u>40,729</u>
<u>SANDOVAL</u>	<u>37,912</u>
<u>SAN JUAN</u>	<u>112,593</u>
<u>SAN MIGUEL</u>	<u>28,735</u>
<u>SANTA FE</u>	<u>66,588</u>
<u>TAOS</u>	<u>29,681</u>
<u>VALENCIA</u>	<u>64,781</u>

**RURAL MUNICIPALITIES**  
**PER 2000 HUD APPROVED U.S. CENSUS DATA**

<u>MUNICIPALITIES</u>	<u>TOTAL PERSONS</u>
<u>ANGEL FIRE</u>	<u>1,018</u>
<u>ARTESIA</u>	<u>10,860</u>
<u>AZTEC</u>	<u>6,078</u>
<u>BAYARD</u>	<u>2,553</u>
<u>BELEN</u>	<u>6,643</u>
<u>BERNALILLO</u>	<u>6,503</u>
<u>BLOOMFIELD</u>	<u>6,144</u>
<u>BOSQUE FARMS</u>	<u>3,781</u>
<u>CAPITAN</u>	<u>1,453</u>
<u>CARRIZOZO</u>	<u>988</u>
<u>CAUSEY</u>	<u>43</u>
<u>CHAMA</u>	<u>1,319</u>
<u>CIMARRON</u>	<u>927</u>
<u>CLAYTON</u>	<u>2,523</u>
<u>CLOUDCROFT</u>	<u>779</u>
<u>COLUMBUS</u>	<u>1,790</u>
<u>CORONA</u>	<u>253</u>
<u>CORRALES</u>	<u>7,430</u>
<u>CUBA</u>	<u>639</u>
<u>DEMING</u>	<u>13,986</u>
<u>DES MOINES</u>	<u>253</u>
<u>DEXTER</u>	<u>1,181</u>
<u>DORA</u>	<u>127</u>
<u>EAGLE NEST</u>	<u>298</u>
<u>EDGEWOOD</u>	<u>2,024</u>



<u>ELEPHANT BUTTE</u>	<u>1,140</u>
<u>ELIDA</u>	<u>185</u>
<u>ENCINO</u>	<u>90</u>
<u>ESPANOLA</u>	<u>9,664</u>
<u>ESTANCIA</u>	<u>1,038</u>
<u>EUNICE</u>	<u>2,569</u>

**RURAL MUNICIPALITIES**  
**PER 2000 HUD APPROVED U.S. CENSUS DATA**

<b><u>MUNICIPALITIES</u></b>	<b><u>TOTAL PERSONS</u></b>
<u>FLOYD</u>	<u>79</u>
<u>FOLSOM</u>	<u>96</u>
<u>FORT SUMNER</u>	<u>1,160</u>
<u>GALLUP</u>	<u>19,504</u>
<u>GRADY</u>	<u>80</u>
<u>GRANTS</u>	<u>8,329</u>
<u>GRENVILLE</u>	<u>22</u>
<u>HAGERMAN</u>	<u>1,155</u>
<u>HATCH</u>	<u>1,665</u>
<u>HOPE</u>	<u>1,329</u>
<u>HOUSE</u>	<u>56</u>
<u>HURLEY</u>	<u>1,468</u>
<u>JAL</u>	<u>2,020</u>
<u>JEMEZ SPRINGS</u>	<u>429</u>
<u>LAKE ARTHUR</u>	<u>400</u>
<u>LAS VEGAS</u>	<u>13,874</u>
<u>LOGAN</u>	<u>1,065</u>
<u>LORDSBURG</u>	<u>3,296</u>
<u>LOS ALAMOS</u>	<u>11,822</u>
<u>LOS LUNAS</u>	<u>9,994</u>
<u>LOS RANCHOS DE ALBUQUERQUE</u>	<u>4,951</u>
<u>LOVING</u>	<u>1,327</u>
<u>LOVINGTON</u>	<u>9,307</u>
<u>MAGDALENA</u>	<u>940</u>
<u>MAXWELL</u>	<u>274</u>
<u>MELROSE</u>	<u>736</u>
<u>MESILLA</u>	<u>2,266</u>
<u>MILAN</u>	<u>1,911</u>
<u>MORIARTY</u>	<u>1,738</u>
<u>MOSQUERO</u>	<u>148</u>
<u>MOUNTAINAIR</u>	<u>1,136</u>

**RURAL MUNICIPALITIES**  
**PER 2000 HUD APPROVED U.S. CENSUS DATA**

<b><u>MUNICIPALITIES</u></b>	<b><u>TOTAL PERSONS</u></b>
<u>PECOS</u>	<u>1,507</u>
<u>PORTALES</u>	<u>10,143</u>
<u>QUESTA</u>	<u>1,880</u>
<u>RATON</u>	<u>7,061</u>

<u>RED RIVER</u>	<u>517</u>
<u>RESERVE</u>	<u>472</u>
<u>ROY</u>	<u>316</u>
<u>RUIDOSO</u>	<u>7,581</u>
<u>RUIDOSO DOWNS</u>	<u>1,806</u>
<u>SAN JON</u>	<u>286</u>
<u>SAN YSIDRO</u>	<u>159</u>
<u>SANTA CLARA</u>	<u>1,927</u>
<u>SANTA ROSA</u>	<u>2,250</u>
<u>SILVER CITY</u>	<u>10,195</u>
<u>SOCORRO</u>	<u>8,445</u>
<u>SPRINGER</u>	<u>1,252</u>
<u>SUNLAND PARK</u>	<u>13,271</u>
<u>TAOS</u>	<u>4,621</u>
<u>TAOS SKI VALLEY</u>	<u>90</u>
<u>TATUM</u>	<u>717</u>
<u>TEXICO</u>	<u>1,059</u>
<u>TIJERAS</u>	<u>414</u>
<u>T O R C</u>	<u>7,029</u>
<u>TUCUMCARI</u>	<u>5,879</u>
<u>TULAROSA</u>	<u>2,828</u>
<u>VAUGHN</u>	<u>599</u>
<u>VIRDEN</u>	<u>135</u>
<u>WAGON MOUND</u>	<u>365</u>
<u>WILLARD</u>	<u>239</u>
<u>WILLIAMSBURG</u>	<u>490</u>

**URBAN MUNICIPALITIES  
PER 2000 HUD APPROVED U.S. CENSUS DATA**

<u>MUNICIPALITIES</u>	<u>TOTAL PERSONS</u>
<u>ALAMOGORDO</u>	<u>34,966</u>
<u>CARLSBAD</u>	<u>25,287</u>
<u>CLOVIS</u>	<u>31,940</u>
<u>FARMINGTON</u>	<u>37,104</u>
<u>HOBBS</u>	<u>27,522</u>
<u>ROSWELL</u>	<u>44,261</u>

**NEW MEXICO  
DEPARTMENT OF GAME  
AND FISH**

**TITLE 19 N A T U R A L  
RESOURCES AND WILDLIFE  
CHAPTER 31 HUNTING AND  
FISHING REGULATIONS  
PART 5 UPLAND GAME**

**19.31.5.1 ISSUING AGENCY:**  
New Mexico Department of Game and Fish.  
[19.31.5.1 NMAC - Rp, 19.31.5.1 NMAC, 8-29-2004]

**19.31.5.2 SCOPE:** Hunters of

Upland Game. Additional requirements may be found in Chapter 17 NMSA 1978 and Chapters 30 and 32 through 36 of Title 19.  
[19.31.5.2 NMAC - Rp, 19.31.5.2 NMAC, 8-29-2004]

**19.31.5.3 S T A T U T O R Y  
AUTHORITY:** 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds, and fish.  
[19.31.5.3 NMAC - Rp, 19.31.5.3 NMAC, 8-29-2004]

**19.31.5.4 DURATION:** August 29, 2004-March 31, 2005.  
[19.31.5.4 NMAC - Rp, 19.31.5.4 NMAC, 8-29-2004]

**19.31.5.5 EFFECTIVE DATE:** August 29, 2004 unless a later date is cited at the end of individual sections.  
[19.31.5.5 NMAC - Rp, 19.31.5.5 NMAC, 8-29-2004]

**19.31.5.6 O B J E C T I V E :** Establishing seasons on Blue-winged teal, Green-winged teal, Cinnamon teal, pheasant, Blue grouse, Lesser prairie-chicken, Montezuma quail, Northern bobwhite, Scaled quail, Gambel's quail, Mourning

dove, White-winged dove, Eurasian-collared dove, Band-tailed pigeon, Sandhill crane, Abert's squirrel, Red squirrel, and setting falconry seasons.

[19.31.5.6 NMAC - Rp, 19.31.5.6 NMAC, 8-29-2004]

**19.31.5.7 DEFINITIONS:**

**A. "Area GS-1"** (GS-1), as used herein, shall mean the area bounded by the following: beginning at the New Mexico-Colorado border at NM 551, south on NM 551 to U.S. 64/87, west on U.S. 64/87 to I-25, south on I-25 to U.S. 285, south on U.S. 285 to N.M. 41, south on N.M. 41 to U.S. 60, west on U.S. 60 to I-25, north on I-25 to N.M. 550, northwest on N.M. 550 to the southeastern border of the Jicarilla Apache Indian reservation, north on the Jicarilla Apache Indian reservation border to the New Mexico-Colorado border, east to I-25.

**B. "Area GS-2"** (GS-2), as used herein, shall mean the area bounded by the following: beginning at the New Mexico-Arizona border at I-40, east on I-40 to I-25, south on I-25 to I-10, west on I-10 to N.M. 11, south on N.M. 11 to the New Mexico-Mexico border, west to the New Mexico-Arizona border, north to I-40.

**C. "Area S-3"** (S-3), as used herein, shall mean the area bounded by the following: beginning at the New Mexico-Texas border at U.S. 54, north on U.S. 54 to U.S. 285, south on U.S. 285 to the New Mexico-Texas border, east to U.S. 54.

**D. "Area S-4"** (S-4), as used herein, shall mean the area bounded by the following: beginning at the New Mexico-Arizona border at Four-corners south to I-40; east on I-40 to I-25; north on I-25 to N.M. 550; northwest on N.M. 550 to the southern reservation boundary of the Jicarilla Apache reservation; north and west along the western reservation boundary to the New Mexico-Colorado border; west along the New Mexico-Colorado border to the four-corners.

**E. "Lesser prairie-chicken hunting area"**, as used herein, shall mean the area bounded by the following: beginning at the New Mexico-Texas border at U.S. 60, south along the New Mexico-Texas border to N.M. 234, west on N.M. 234 to N.M. 8, west on N.M. 8 to N.M. 176, west on N.M. 176 to U.S. 62-180, west on U.S. 62-180 to the Pecos river, north along the Pecos river to U.S. 60, east to the New Mexico-Texas border, including all Lesser prairie-chicken management areas owned by the state game commission.

**F. "Middle Rio Grande valley hunt area (MRGV)"**, as used herein, shall mean Valencia and Socorro counties.

**G. "Eastern New Mexico Sandhill crane hunt area (eastern)"**, as used herein, shall mean that area in the following counties: Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt.

**H. "Southwest New Mexico Sandhill crane hunt area (southwest)"**, as used herein, shall mean that area bounded on the south by the New Mexico/Mexico border; on the west by the New Mexico/Arizona border north to Interstate 10; on the north by Interstate 10 east to U.S. 180, north to N.M. 26, east to N.M. 27, north to N.M. 152, and east to Interstate 25; on the east by Interstate 25 south to Interstate 10, west to the Luna county line, and south to the New Mexico/Mexico border.

**I. "Southwest Band-tailed pigeon hunting area"** (southwest BPHA), as used herein, shall mean that portion of New Mexico both south of U.S. 60 and west of I-25.

**J. "Regular Band-tailed pigeon hunting area"** (regular BPHA), as used herein, shall mean that portion of New Mexico not included in the southwest band-tailed pigeon hunt area.

**K. "Central flyway"**, as used herein, shall mean that portion of New Mexico east of the Continental Divide, with the exception of the Jicarilla Apache Indian reservation.

**L. "Non-toxic shot"**, as used herein, shall mean that non-toxic shot approved for use by the U. S. fish and wildlife service.

**M. "Possession limit"**, as used herein, shall mean twice the daily bag limit except where otherwise defined.

**N. "Dove north zone"** (north zone), as used herein, shall mean that portion of New Mexico north of I-40 from the Arizona-New Mexico border to Tucumcari and U.S 54 at its junction with I-40 at Tucumcari to the New Mexico-Texas border.

**O. "Dove south zone"** (south zone), as used herein, shall mean that portion of New Mexico south of I-40 from the Arizona-New Mexico border to Tucumcari and U.S 54 at its junction with I-40 at Tucumcari to the New Mexico-Texas border.

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

**Q. "Valencia county pheasant north hunt area"**, as used herein, shall mean that area including the Rio Grande between the levee roads south of highway 40 to the state highways 309/47 intersection.

**R. "Valencia county pheasant south hunt area"**, as used herein, shall mean that area including the Rio Grande between the levee roads starting at the railroad bridge at Belen, south to the Valencia county line.

[19.31.5.7 NMAC - Rp, 19.31.5.7 NMAC, 8-29-2004]

**19.31.5.8 OPEN AREAS, SPECIES, SEASONS DATES, AND DAILY BAG LIMITS:**

<u>SPECIES</u>	<u>OPEN AREAS</u>	<u>SEASON OPEN</u>	<u>DAILY BAG LIMIT</u>
Teal	central flyway portion of state	Sept. 18-26	4 (singly or in aggregate)
Pheasant	statewide, excluding Valencia county	Dec. 9-12	3 (males)
Special Permit Required *See information; Section 19.31.5.19	Valencia county	Dec. 11	3 (males)

Youth-only pheasant Hunt *See information; Section 19.31.5.14	Seven Rivers WMA and Bitter Lakes NWR	Dec. 4	3 (males)
Pheasant (special permit) *See information; Section 19.31.5.14	Seven Rivers WMA and W.S. Huey WMA	Dec. 11	3 (males)
Blue grouse	GS-1 GS-2	Sept. 1-30 Oct. 1-31	3 3
Lesser prairie-chicken	SEASON CLOSED		
Quail: Gambel's, scaled, Northern bobwhite and Montezuma (Mearns)	Statewide	Nov. 15 - Feb. 15, 2005	15 (singly or in aggregate; no more than 5 shall be Mearns)
Sandhill crane *Special permit required; See information Section 19.31.5.11	MRGV EV MRGV MRGV Southwest  MRGV	Oct. 30-31 Oct. 30-31 Nov. 20-21 Dec. 11-12 Nov. 6-7 and Jan. 8-9, 2005 Jan. 15-16, 2005	1 (2 per season) 2 (4 per season) 1 (2 per season) 1 (2 per season) 2 (8 per season)  1(2 per season) (possession-6, regular and special seasons combined)
Sandhill crane *Special permit required; See information Section 19.31.5.12	Eastern	Oct. 31- Jan. 31, 2005	3
Band-tailed pigeon	southwest. BPHA regular BPHA	Oct. 1-20 Sept. 1-20	5 5
Dove Mourning, White-winged, and Eurasian-collared doves	north zone south zone	Sept. 1-Oct.30 Sept. 1-30 & Dec. 1-30	15 (singly or in aggregate) 15 (singly or in aggregate)
Tree squirrel	GS-1 GS-2 S-3 S-4	Sept. 1-Oct. 31 Oct. 1-Nov. 30 Sept. 1-Oct. 31 Sept. 1-Oct. 31	8 (singly or in aggregate)

**A.** The William S. Huey WMA shall be open for dove, quail, and Sandhill crane hunting only on Monday, Wednesday, and Saturday during established statewide seasons. Use of vehicles will be restricted to designated areas.

**B.** The Brantley wildlife management area (excluding the Seven Rivers waterfowl management area portion, as posted) shall be open for dove, quail, pheasant, September teal, and Sandhill crane hunting during established statewide seasons. Use of vehicles will be restricted to designated areas.

**C.** The Seven Rivers WMA shall be open for dove, quail, September teal, and Sandhill crane hunting only on Monday, Wednesday, and Saturday during established statewide seasons. Use of vehicles will be restricted to designated areas.  
[19.31.5.8 NMAC - Rp, 19.31.5.8 NMAC, 8-29-2004]

**19.31.5.9 WATERFOWL AREAS, DAYS OPEN, AND HUNTING HOURS FOR HUNTING SEPTEMBER TEAL:**

**A.** That portion of the Bernardo WMA south of US-60 is open to teal hunting each day of the September Teal season.

**B.** The entire La Joya WMA is open to teal hunting each day of the September teal season.

**C.** The Seven Rivers waterfowl management area is open for hunting teal on Monday, Wednesday, and Saturday during the September Teal season.

**D.** The Brantley wildlife management area is open for hunting teal each day of the September teal season.

[19.31.5.9 NMAC - Rp, 19.31.5.9 NMAC, 8-29-2004]

**19.31.5.10 OTHER STATE WILDLIFE MANAGEMENT AREAS OPEN FOR HUNTING:**

**A.** The Edward Sargent, W. A. Humphries, Rio Chama, Urraca, Colin Neblett, Water canyon, Marquez, and Elliot S. Barker wildlife management areas shall be open for hunting species listed herein during established seasons.

**B.** The Sandia ranger district of the Cibola national forest shall be open to archery only hunting of species listed herein during established seasons.

**C.** The Lesser prairie-chicken management areas shall be open to hunt quail and dove during established seasons.

**D.** The Big Hatchet mountain wildlife management area shall be open for quail hunting.

[19.31.5.10 NMAC - Rp, 19.31.5.10 NMAC, 8-29-2004]

**19.31.5.11 REQUIREMENTS AND PERMITS FOR THE SPECIAL MIDDLE RIO GRANDE, SOUTHWEST NEW MEXICO AND ESTANCIA SANDHILL CRANE SEASONS:**

**A.** Six separate Sandhill crane seasons are scheduled with up to a total of 340 permits available. The permits will be allocated by season as follows:

**(1) 2004-2005 season:**

Season Dates	Hunt Code	Hunt Location	No. of permits
October 30-31	SCR-0-101	MRGV	65
October 30-31	SCR-0-102	EV	40
November 20-21	SCR-0-103	MRGV	60
December 11-12	SCR-0-104	MRGV	55
November 6-7 and January 8-9, 2005	SCR-0-105	southwest	60
January 15-16, 2005	SCR-0-106	MRGV	60

**(2)** [RESERVED]

**B.** [RESERVED]

**C.** Only non-toxic shot may be in possession of hunters using shotguns.

**D.** While hunting Sandhill cranes, hunters participating in these seasons must have in their possession a special permit issued by the department. This permit will include tags that must be properly notched and attached to the leg of a harvested bird before removing it from the field.

**E.** Hunters who participate in the MRGV and EV seasons shall be required to check-out at designated check stations when they harvest any Sandhill cranes. Those hunters participating in the southwest seasons will be requested to check-out only at designated check stations at the end of each hunt date.

**F.** Hunters participating in the MRGV and EV seasons who do not submit a questionnaire within five days of the close of their hunt will be considered ineligible to receive a permit the following year. Hunters participating in the southwest seasons who do not submit a questionnaire within five days of the close of their November and January hunts will be considered ineligible to receive a permit the following year.

**G.** Applications for Sandhill crane permits shall be submitted on the appropriate application form. A six-dollar application fee shall be required by each applicant. Applicants may apply for a first and second choice of seasons. A maximum of one season will be awarded to successful applicants. The deadline date for application shall be the second Saturday in September. All applications must be mailed to the Santa Fe office. Applications that have been mailed and postmarked but not delivered by the deadline date will be accepted by the Santa Fe office up to 5 working days after that deadline.

**H.** No more than four persons may apply per application.

**I.** Applications for permits may be returned to the sender if such applications are not on the proper form or do not supply adequate information.

**J.** It shall be unlawful to submit more than one application for a special MRGV, Southwest or EV sandhill crane season permit. If any permits remain after the original deadline, the director may authorize a new deadline. A person who is not awarded a permit for which he applied may submit a new application for a permit if such permits remain available.

**K.** If applications for permits exceed the number of available permits, as herein established, the available permits shall be allotted by means of a random public drawing in the Santa Fe office of the department of game and fish.

[19.31.5.11 NMAC - Rp, 19.31.5.11 NMAC, 8-29-2004]

**19.31.5.12 REQUIREMENTS AND PERMITS FOR THE EASTERN SANDHILL CRANE HUNT:**

Hunters shall have in their possession a federal Sandhill crane hunting permit. A person desiring a permit shall apply in person to the department in Santa Fe, Albuquerque, Raton, Las Cruces, or Roswell, or by mail only to the Santa Fe office. Applicants shall submit their name, address, and the number of their general hunting license, or general hunting and fishing license, or small game license, or senior general hunting license, or handicapped general hunting license. There shall be no limit on the number of federal permits available for issue.

[19.31.5.12 NMAC - Rp, 19.31.5.12 NMAC, 8-29-2004]

**19.31.5.13 REQUIREMENTS AND PERMITS FOR BAND-TAILED PIGEON:**

Hunters shall have in their possession a Band-tailed pigeon hunting permit. A person desiring a permit shall apply in person to the department in Santa Fe, Albuquerque, Raton, Las Cruces, or Roswell, or by mail to the Santa Fe office only. Applicants shall submit their name, address, and the number of their general hunting license, or general hunting and fishing license, or small game license, or senior general hunting license, or handicapped general hunting license. Permits shall be free of charge and there shall be no limit on the number of permits available for issue.

[19.31.5.13 NMAC - Rp, 19.31.5.13 NMAC, 8-29-2004]

**19.31.5.14 REQUIREMENTS AND PERMITS FOR YOUTH-ONLY PHEASANT HUNT AND THE SEVEN RIVERS WMA AND W.S. HUEY WMA PHEASANT HUNTS:**

**A.** Up to 40 permits will be available for a youth-only pheasant hunt on the Seven Rivers WMA scheduled for the Saturday prior to the opening of the regular season. Up to 65 permits will be available on the Seven Rivers WMA hunt. Up to 40 permits will be available on the W.S. Huey WMA hunt.

**B.** Refer to the Hunting and Fishing License Application Rule (19.31.3 NMAC, Section 11-Restrictions) for criteria qualifying for this youth hunt license.

**C.** Applications for the PHE-0-001 Youth-only, PHE-0-002 Seven Rivers WMA and PHE -0-003 W.S. Huey WMA permits shall be submitted on the appropriate application form. A six-dollar application fee shall be required by each applicant. The deadline date for application shall be the second Saturday in September.

All applications must be mailed to the Santa Fe office. Applications that have been mailed and postmarked but not delivered by the deadline date will be accepted by the Santa Fe office up to 5 working days after that deadline.

**D.** No more than four persons may apply per application.

**E.** Applications for permits may be returned to the sender if such applications are not on the proper form or do not supply adequate information.

**F.** It shall be unlawful to submit more than one application for a permit for the youth-only pheasant or the special permit Seven Rivers WMA and W.S. Huey WMA pheasant hunts. If any permits remain after the original deadline, the director may authorize a new deadline. A person who is not awarded a permit for which he applied may submit a new application for a permit if such permits remain available.

**G.** If applications for permits exceed the number of available permits, as herein established, the available permits shall be allotted by means of a random public drawing in the Santa Fe office of the department of game and fish.

**H.** Youth hunters participating in this hunt must be accompanied by a non-hunting adult.

[19.31.5.14 NMAC - Rp, 19.31.5.14 NMAC, 8-29-2004]

**19.31.5.15 REQUIREMENTS AND PERMITS FOR LESSER PRAIRIE-CHICKEN:**

**A.** [RESERVED]

**B.** [RESERVED]

**C.** The season for the Lesser prairie-chicken is closed for the 2004-2005 season.

[19.31.5.15 NMAC - Rp, 19.31.5.15 NMAC, 8-29-2004]

**19.31.5.16 FALCONRY SEASONS:**

**A.** Open areas and season dates.

**(1)** 2004-2005 season, all dates are 2004 unless otherwise specified.

**(a)** The season for pheasants, Blue grouse, quail, Abert's squirrel, and red squirrel shall be statewide and shall be open September 1 through February 28, 2005

**(b)** The season for dove shall be statewide and shall be open September 1 through November 12 and November 27 through December 30.

**(c)** The season for Band-tailed pigeon shall be September 1 through December 16 for the regular hunting area and October 1 through January 15, 2005 for the southwest hunting area.

**(d)** The season for Sandhill crane shall be in the eastern New Mexico Sandhill crane hunt area and shall be open from

October 17 through January 31, 2005.

**(e)** The season for any duck species and American coot during the September teal season within the central flyway portion of the state shall be open from September 18-26.

**(2)** [RESERVED]

**B.** Daily bag and possession limits.

**(1)** Daily bag limits shall be 3 birds (in the aggregate) and 3 squirrels (in the aggregate) and possession limits shall be: pheasant-6; Blue grouse-6; quail 30 (singly or in the aggregate); tree squirrel-16 (singly or in the aggregate) as listed herein.

**(2)** Daily bag limit for dove, ducks, Band-tailed pigeon, and Sandhill crane shall be 3 birds (in the aggregate) and possession limits shall be 6 birds (in the aggregate) as listed herein.

**C.** Provisions for possession: The falconry hunter shall not retain nor possess any protected mammal taken by a raptor except Abert's squirrels and red squirrels legally taken during open falconry season. The falconry hunter shall not retain nor possess any protected birds taken by a raptor except those species listed herein that were legally taken during the open falconry season.

[19.31.5.16 NMAC - Rp, 19.31.5.16 NMAC, 8-29-2004]

**19.31.5.17 LEGAL HUNTING HOURS:** Hunting hours, as used herein, shall mean from one-half hour before sunrise to sunset except where listed otherwise.

**A.** [RESERVED]

**B.** On state game commission owned or managed waterfowl management areas (WMA)s, as listed herein, hunting hours shall mean from one-half hour before sunrise to 1:00 p.m. except for hunting September teal on Bernardo and La Joya WMAs where hunting hours are from one-half hour before sunrise to sunset; and for the special permit pheasant hunts on the Seven Rivers WMA, W.S. Huey WMA and the youth-only pheasant hunt, hunting hours shall be from one-half hour before sunrise to 4 pm.

[19.31.5.17 NMAC - Rp, 19.31.5.17 NMAC, 8-29-2004]

**19.31.5.18 PARTS TO REMAIN WITH EACH BIRD UNTIL STORAGE AT PERSONAL ABODE OR IN STORAGE FACILITY:** One foot shall remain attached to each quail taken until the bird has arrived at the personal abode of the possessor or storage facility.

[19.31.5.18 NMAC - Rp, 19.31.5.18 NMAC, 8-29-2004]

**19.31.5.19 REQUIREMENTS AND PERMITS FOR VALENCIA COUNTY PHEASANT HUNT:**

**A.** Pheasant hunting in Valencia county will be open by permit only. The Valencia county pheasant hunt is scheduled for one day in December with the date to be determined. Up to 25 permits will be available on the north hunt area. Up to 25 permits will be available on the south hunt area.

**B.** Refer to the Hunting and Fishing License Application Rule (19.31.3 NMAC, Section 11-Restrictions) for criteria qualifying for this hunt license.

**C.** Applications for the PHE-0-004 north hunt area and PHE-0-005 south hunt area draw permits shall be submitted on the appropriate application form. Applications for the private land Valencia county pheasant hunt (PHE-0-006) will be unlimited and must be obtained from the landowner. A six-dollar application fee shall be required by each applicant. The deadline date for application shall be the second Saturday in September. All applications must be mailed to the Santa Fe office. Applications that have been mailed and postmarked but not delivered by the deadline date will be accepted by the Santa Fe office up to 5 working days after that deadline.

**D.** No more than four persons may apply per application.

**E.** Applications for permits may be returned to the sender if such applications are not on the proper form or do not supply adequate information.

**F.** It shall be unlawful to submit more than one application for a permit for the Valencia county pheasant hunts. If any permits remain after the original deadline, the director may authorize a new deadline. A person who is not awarded a permit for which he applied may submit a new application for a permit if such permits remain available.

**G.** If applications for permits exceed the number of available permits, as herein established, the available permits shall be allotted by means of a random public drawing in the Santa Fe office of the department of game and fish.

**H.** Youth hunters participating in this hunt must be accompanied by an adult.

**I.** Landowners in the Valencia county pheasant hunt areas will maintain the ability to hunt and allow hunters on their private property with the purchase of an over-the-counter license less the \$6 dollar application fee. Landowners will be required to provide proof of ownership and sufficient acreage to accommodate a safe hunt at the northwest (Albuquerque) area office prior to the hunt date at which time the landowner will be issued unlimited application forms to distribute to hunters they choose. This will be a draw hunt with unlimited private land permits in Valencia

county only.  
[19.31.5.19 NMAC - N, 8-29-2004]

**NEW MEXICO  
DEPARTMENT OF GAME  
AND FISH**

**TITLE 19 N A T U R A L  
RESOURCES AND WILDLIFE  
CHAPTER 31 HUNTING AND  
FISHING REGULATIONS  
PART 6 WATERFOWL**

**19.31.6.1 ISSUING AGENCY:** New Mexico Department of Game and Fish.  
[19.31.6.1 NMAC - Rp, 19. 31.6.1 NMAC, 8-29-2004]

**19.31.6.2 SCOPE:** Hunters of Waterfowl. Additional requirements may be found in Chapter 17 NMSA 1978 and Chapters 30 and 32 through 36 of Title 19.  
[19.31.6.2 NMAC - Rp, 19. 31.6.2 NMAC, 8-29-2004]

**19.31.6.3 S T A T U T O R Y  
AUTHORITY:** 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds, and fish.  
[19.31.6.3 NMAC - Rp, 19. 31.6.3 NMAC, 8-29-2004]

**19.31.6.4 DURATION:** August 29, 2003-March 31, 2004.  
[19.31.6.4 NMAC - Rp, 19.31.6.4 NMAC, 8-29-2004]

**19.31.6.5 EFFECTIVE DATE:** August 29, 2003 unless later date is cited at end of individual sections.  
[19.31.6.5 NMAC - Rp, 19.31.6.5 NMAC, 8-29-2004]

**19.31.6.6 O B J E C T I V E :** Establishing seasons on ducks, geese, Virginia Rail, Sora, common moorhen, American coot, common snipe, and setting falconry seasons.  
[19.31.6.6 NMAC - Rp, 19.31.6.6 NMAC, 8-29-2004]

**19.31.6.7 D E F I N I T I O N S :** Areas, species, non-toxic shot, and possession limit defined.

**A.** "Central flyway" as used herein, shall mean that portion of New Mexico east of the Continental Divide, with the exception of the Jicarilla Apache Indian reservation.

**B.** "Pacific flyway" as

used herein, shall mean that portion of New Mexico west of the Continental Divide including the Jicarilla Apache Indian reservation.

**C.** "North zone" as used herein, shall mean that portion of the Pacific flyway north of I-40 from the Arizona-New Mexico border to the Continental Divide; and that portion of the central flyway north of I-40 from the Continental Divide to Tucumcari and U.S. 54 at its junction with I-40 at Tucumcari to the New Mexico-Texas border.

**D.** "South zone" as used herein, shall mean that portion of the Pacific flyway south of I-40 from the Arizona-New Mexico border to the Continental Divide; and that portion of the central flyway south of I-40 from the Continental Divide to Tucumcari and U.S. 54 at its junction with I-40 at Tucumcari to the New Mexico-Texas border.

**E.** "Nontoxic shot" as used herein, shall mean that non-toxic shot approved for use by the U. S. fish and wildlife service.

**F.** "Possession limit" as used herein, shall mean twice the daily bag limit except where otherwise defined.

**G.** "Dark goose" as used herein, shall mean Canada goose or Greater White-fronted goose.

**H.** "Bernardo north duck hunt are (BND)" as used herein, shall mean that area north of U.S. 60 and east of Unit 7 drain on Bernardo WMA.

**I.** "Adult/youth (A/Y)" as used herein, shall mean that hunt designation where the adult and youth are permitted to hunt together.  
[19.31.6.7 NMAC - Rp, 19.31.6.7 NMAC, 8-29-2004]

**19.31.6.8 SPECIES, OPEN AREAS, SEASON DATES, AND DAILY BAG LIMITS:**

**A.** 2004-2005 season; all dates are 2004 unless otherwise specified:

*[Please see chart on page 792]*

CENTRAL FLYWAY

<u>SPECIES</u>	<u>SEASON DATES</u>		<u>DAILY BAG LIMIT</u>
	<u>OPEN</u>	<u>CLOSED</u>	
Ducks: <u>North zone:</u>	Oct. 9	Jan. 12, 2005	6-- which consists of no more than 5 Mallard (of which only 2 may be female Mallard); 2 Scaup; 2 Redhead; 2 Wood duck; 1 Hooded Merganser.
Pintail and Canvasback	Oct. 9	Nov. 16	1 Pintail; 1 Canvasback may be in the bag
<u>South zone:</u>	Oct. 27	Jan. 30, 2005	
Pintail and Canvasback	Dec. 23	Jan. 30, 2005	1 Pintail; 1 Canvasback may be in the bag
American coot:	Same as above Zone dates		15
-----			
Common moorhen:	Oct. 16	Dec. 24	1
Common snipe	Oct. 16	Jan. 30, 2005	8
Virginia Rail & Sora	Sept. 18	Nov. 26	10 daily (singly or in the aggregate)
Dark goose: (Regular season closed in Bernalillo, Sandoval, Sierra, Socorro, and Valencia counties)	Oct. 17	Jan. 31, 2005	4
Special MRGV season *Special permit required; See information in Section 14	Jan. 17	Jan. 23, 2005	2 (2 per season)
Light goose:	Oct. 17	Jan. 31, 2005	20/80 possession



<u>SPECIES</u>	<u>PACIFIC FLYWAY SEASON DATES</u>		<u>DAILY BAG LIMIT</u>
	<u>OPEN</u>	<u>CLOSED</u>	
Ducks:	Oct. 18	- Jan. 30, 2005	7-- which consists of no more than 2 female Mallard; 2 Redhead; 2 Scaup.
Pintail and Canvasback	Oct. 18	- Dec. 16	1 Pintail; 1 Canvasback may be in the bag
American coot and Common moorhen:	Oct. 18	- Jan. 30, 2005	12 daily (singly or in the aggregate)
Common snipe:	Oct. 16	- Jan. 30, 2005	8
Virginia Rail & Sora:	Sept. 18	- Nov. 26	10 daily (singly or in the aggregate)
Goose: <u>North zone</u> :	Sept. 25	- Oct. 10 and Nov. 1 - Jan. 30, 2005	3 Dark geese, 1 Light goose
<u>South zone</u> :	Oct. 16	- Jan. 30, 2005	2 Dark geese, 1 Light goose

**B. Light goose conservation measures:** Under the Director's discretion the department may implement the light goose conservation measures approved by the U.S. fish and wildlife service (USFWS). Methods, bag and possession limits, and dates allowed shall be those as approved by the USFWS.

<u>SPECIES</u>	<u>CENTRAL FLYWAY SEASON DATES</u>		<u>DAILY BAG LIMIT</u>
	<u>OPEN</u>	<u>CLOSE</u>	
Light geese [19.31.6.8 NMAC - Rp, 19.31.6.8 NMAC, 8-29-2004]	Feb. 01, 2005	- Mar. 10, 2005	No bag or possession limit

**19.31.6.9 FALCONRY SEASONS:**

- A.** Species that can be taken, open areas, and hunting seasons:
  - (1)** 2004-2005 season, all dates are 2004 unless otherwise specified:
    - (a)** Duck and American coot: Central flyway seasons for duck and American coot shall be as follows: North zone - September 18 through September 26, October 2 - 3 (youth waterfowl days), and October 9 through January 12, 2005; South zone - September 18 through September 26, October 16-17 (youth waterfowl days), and October 27 through January 30, 2005. Pacific flyway seasons shall be as follows: October 9-10 (youth waterfowl days), and October 18 through January 30, 2005.
    - (b)** Light goose: Central flyway seasons shall be open October 17 through January 31, 2005. Pacific flyway season shall be North zone - September 25 through October 10, and November 1 through January 30, 2005; South Zone - October 16 through January 30, 2005.
    - (c)** Dark goose: Central flyway seasons shall be open October 17 through January 31, 2005. Pacific flyway season shall be North zone - September 25 through October 10 and November 1 through January 30, 2005; South Zone - October 16 through January 30, 2005.
    - (d)** Common snipe and Common moorhens: Central and Pacific Flyways seasons shall be: October 16- January 30, 2005.
    - (e)** Sora and Virginia rails: Central and Pacific Flyways seasons shall be: September 18 - January 2, 2005.
  - (2)** [RESERVED]
  - (3)** [RESERVED]
  - (4)** [RESERVED]
- B.** Falconry on managed waterfowl areas (WMAs).
  - (1)** Falconry hunting for waterfowl shall be permitted on those portions of the WMAs open to hunting during the seasons in paragraph A in this section, except for Jackson lake WMA.

(2) Falconry hunting for waterfowl shall be permitted on those portions of Jackson lake WMA open to hunting during the seasons in paragraph A in this section, including that portion east of N.M. 170.

C. Daily bag limits: shall be three birds (in the aggregate) and possession limits shall be six birds (in the aggregate) as established herein.

D. Provisions for possession: the falconry hunter shall not retain nor possess any protected species of bird taken by a raptor except those species of protected birds taken during open falconry season.

[19.31.6.9 NMAC - Rp, 19.31.6.9 NMAC, 8-29-2004]

**19.31.6.10 PARTS TO REMAIN WITH EACH BIRD UNTIL STORAGE AT PERSONAL ABODE OR IN STORAGE FACILITY:** One fully-feathered wing or the head shall remain attached to each goose, duck, Common moorhen, and American coot taken until the bird has arrived at the personal abode of the possessor or storage facility.

[19.31.6.10 NMAC - Rp, 19.31.6.10 NMAC, 8-29-2004]

**19.31.6.11 STATE WATERFOWL AREAS OPEN TO HUNTING, SPECIES THAT CAN BE HUNTED, AND DAYS HUNTING OPEN:**

A. State waterfowl areas open, species that can be hunted, and days hunting open:

**DAYS OF WEEK OPEN FOR HUNTING**

<u>AREA</u>	<u>SPECIES</u>	<u>SUN</u>	<u>MON</u>	<u>TUE</u>	<u>WED</u>	<u>THU</u>	<u>FRI</u>	<u>SAT</u>
Bernardo WMA (See note below) (600 feet S of US-60; W of unit 7 drain)	Group 1*	X				X		
(600 feet S of US-60; E of unit 7 drain)	Group 1		X		X			X
La Joya WMA (south portion of refuge)	Group 1	X				X		
La Joya WMA (north portion of refuge)	Group 1		X		X			X
Jackson lake WMA (W of NM-170)	Group 2**		X		X			X
William S. Huey WMA	Group 2		X		X			X
Seven Rivers WMA (portion of Brantley WMA-- see specific closure in 19.31.6.15.A.3)	Group 2		X		X			X
Tucumcari WMA	Group 2	X			X			X
Salt lake and Charette lake WMAs	Group 2		X		X			X
McAllister lake WMA	Group 3***		X		X			X

\*Group 1 Ducks, light geese, dark geese if in possession of a MRGV dark goose permit, Virginia Rail, Sora,

Common moorhen, American coot, and Common snipe.

\*\*Group 2 Ducks, geese, Virginia Rail, Sora, Common moorhen, American coot, and Common snipe.

\*\*\*Group 3 Ducks, light geese, Virginia Rail, Sora, Common moorhen, American coot, and Common snipe.

**Note:** Bernardo, and Casa Colorada WMAs will be open for light goose hunting by permit only, on the following dates: December 6, 8, 29, 31 and January 25, 27, and 29. On these dates all of Bernardo will be closed to duck hunting. For the remaining dates of the waterfowl seasons, hunting at Bernardo WMA, south of U.S. highway 60 only shall follow the schedule described in the table above. During the Light goose conservation order, designated areas north of U.S. highway 60 are open and shall follow the schedule described in the table above. **B.** The wildlife management areas open during the youth waterfowl days shall be Bernardo WMA (all portions south of U.S. highway 60), all portions of La Joya WMA, Seven Rivers WMA, William S. Huey WMA, Salt lake WMA, Charette lake WMA, McAllister lake WMA and Tucumcari WMA.

[19.31.6.11 NMAC - Rp, 19.31.6.11NMAC, 8-29-2004]

**19.31.6.12 REQUIREMENTS AND PERMITS FOR BERNARDO AND CASA COLORADA LIGHT GOOSE HUNT:**

**A.** The Bernardo and Casa Colorada WMAs will be open for light goose hunting by permit only on December 6, 8, 29, 31, and January 25, 27 and 29.

**B.** Up to 32 permits, at Bernardo WMA, and up to 32 permits, at Casa Colorada, per hunting day, will be available (except Bernardo WMA on December 29; see Section 19.31.6.13 below).

**C.** Applications for Bernardo/Casa Colorada light goose hunts shall be submitted on the appropriate application form. A six-dollar (\$6.00) application fee shall be required of each applicant. Up to four persons may apply per application. Applications for the LTG-0-105 hunt code must have a minimum of one adult and one youth hunter. Refer to the Hunting and Fishing License Application Rule (19.31.3 NMAC, Section 11-Restrictions) for criteria qualifying an applicant for a youth hunt license. Applicants may designate up to three hunt choices. Only one choice may be awarded. The deadline date for application shall be on the second Saturday in September. All applications must be mailed to the Santa Fe office. Applications that

have been mailed and postmarked by the deadline, but not delivered, will be accepted by the Santa Fe office up to five working days after that deadline.

Hunt packages for the Bernardo and Casa Colorada light goose hunts.

(B: refers to hunts on Bernardo WMA, C: refers to Casa Colorada WMA)

LTG-O-101 B-12/6 C-1/27

LTG-O-102 B-12/8 C-1/25

LTG-O-103 B-12/31 C-12/8

LTG-O-104 B-1/25 C-12/31

LTG-O-105 B-1/29 C-12/29

**D.** [RESERVED]

**E.** While hunting light geese, hunters participating in this season must have in their possession a valid hunting license and a special permit issued by the department.

**F.** While hunting, hunters shall have in their possession only nontoxic shot. Only 25 rounds per hunter will be allowed at the blinds.

**G.** Designated areas open for light goose hunting on Bernardo and Casa Colorada WMAs by permit only are Bernardo WMA and Casa Colorada WMA—all open.

[19.31.6.12 NMAC - Rp, 19.31.6.12 NMAC 8-29-2004]

**19.31.6.13 REQUIREMENTS AND PERMITS FOR BERNARDO YOUTH-ONLY LIGHT GOOSE HUNT:**

**A.** Up to 16 permits will be available for the youth-only light goose hunt at Bernardo WMA. A six-dollar fee shall be required by each applicant for each permit purchased.

**B.** Refer to the Hunting and Fishing License Application Rule (19.31.3 NMAC, Section 11-Restrictions) for criteria qualifying an applicant for this youth hunt license.

**C.** Applications for the December 29 (YLG-O-101) Bernardo youth-only light goose hunt shall be submitted on the appropriate application form. A six-dollar (\$6.00) application fee shall be required of each applicant. Up to three youth hunters may apply per application. The deadline date for application shall be on the second Saturday in September. All applications must be mailed to the Santa Fe office. Applications that have been mailed and postmarked by the deadline, but not delivered, will be accepted by the Santa Fe office up to 5 working days after that deadline.

**D.** [RESERVED]

**E.** While hunting light geese, hunters participating in this season must have in their possession a valid hunting license and a special permit issued by the department.

**F.** While hunting, hunters shall have in their possession only nontoxic

shot. Only 25 rounds per hunter will be allowed at the blinds.

**G.** Designated areas open for light goose hunting on Bernardo WMA by permit only are—all areas.

[19.31.6.13 NMAC - Rp, 19.31.6.13 NMAC, 8-29-2004]

**19.31.6.14 REQUIREMENTS AND PERMITS FOR THE SPECIAL MIDDLE RIO GRANDE VALLEY DARK GOOSE SEASON:**

**A.** Unlimited permits obtained at department offices will be available to hunt dark geese in a selected portion of the middle Rio Grande valley with a daily bag limit of two dark geese and a season limit of two dark geese.

**B.** While hunting, hunters participating in this hunt must have in their possession a special permit issued by the department. This permit will include tags that must be properly notched and attached to the leg of a harvested bird before removing it from the field.

**C.** [RESERVED]

**D.** [RESERVED]

**E.** [RESERVED]

**F.** [RESERVED]

**G.** [RESERVED]

**H.** The area open for the special dark goose season shall be Sierra, Socorro and Valencia counties.

[19.31.6.14 NMAC - Rp, 19.31.6.14 NMAC, 8-29-2004]

**19.31.6.15 ADDITIONAL CLOSED AREAS:** No hunting of migratory game birds shall be permitted in the following areas:

**A.** That portion of the Canadian river arm of Ute reservoir lying between lines running parallel to and 100 feet above the high-water marks on each side of the Canadian arm and extending from the San Miguel and Quay county line to a posted buoy line across Horseshoe Bend.

**B.** 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 1/4 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.

**C.** The Old McMillan lake spillway arm of Brantley lake extending from the mouth of South Seven Rivers draw north to the railroad trestle shall be closed to all hunting from January 1 through February 28.

[19.31.6.15 NMAC - Rp, 19.31.6.15 NMAC, 8-29-2004]

**19.31.6.16 LEGAL HUNTING**

**HOURS:**

**A.** Hunting hours, as used herein, shall mean from one-half hour before sunrise to sunset except where listed otherwise. Hunting hours for light geese during the light goose conservation order are one-half hour before sunrise to one-half hour after sunset.

**B.** On state game commissioned owned or managed waterfowl management areas (WMA)s, as listed herein, hunting hours shall mean from one-half hour before sunrise to 1:00 p.m.

[19.31.6.16 NMAC - Rp, 19.31.6.16 NMAC, 8-29-2004]

**19.31.6.17 YOUTH WATERFOWL HUNTING DAYS:**

**A.** Requirements for youth hunters to participate in this hunt are as follows:

(1) Youth hunters must be under 16 years old.

(2) Youth hunters must be fully licensed as required to hunt waterfowl (hunters under 16 are not required to have the federal duck stamp).

(3) An adult, at least 18 years old, must accompany the youth hunter in the field (the adult may not hunt ducks; but may participate in other seasons that are open on the special youth day).

(4) Only ducks and coots may be taken by the youth hunter (Sandhill cranes, geese or any other waterfowl species may not be taken).

**B.** Season dates for youth waterfowl days:

Central Flyway: North Zone: October 2 -3

South Zone: October 16-17

Pacific Flyway: October 9-10

**C.** The bag limit for youth waterfowl days shall be the same as the regular season in the respective flyways.

[19.31.6.17 NMAC - Rp, 19.31.6.17 NMAC, 8-29-2004]

**19.31.6.18 REQUIREMENTS AND PERMITS FOR THE SPECIAL BERNARDO YOUTH/ADULT DUCK HUNTS:**

**A.** The Bernardo WMA ponds north of highway U.S. 60 will be open for duck hunting by permit only.

**B.** Up to 12 permits will be available per hunting day.

Hunt codes and dates for the Bernardo Youth/Adult duck hunts:

BND-0-101	Nov. 6
BND-0-102	Nov. 27
BND-0-103	Dec. 11
BND-0-104	Dec. 26
BND-0-105	Jan. 2
BND-0-106	Jan. 15
BND-0-107	Jan. 30

**C.** Applications for Bernardo Youth/Adult duck hunts shall be submitted on the appropriate application form. A six-dollar (\$6.00) application fee shall be required of each applicant. Up to four persons may apply per application with a minimum of one youth and one adult per application. No more than two adults may be on an application. Applicants may designate up to three hunt choices. Only one choice may be awarded. The deadline date for application shall be on the second Saturday in September. All applications must be mailed to the Santa Fe office. Applications that have been mailed and postmarked by the deadline, but not delivered, will be accepted by the Santa Fe office up to five working days after that deadline.

**D.** Refer to the Hunting and Fishing License Application Rule (19.31.3 NMAC, Section 11-Restrictions) for criteria qualifying an applicant for a youth hunting license.

**E.** While hunting ducks, hunters participating in this season must have in

their possession a valid hunting license and a special permit issued by the department.

**F.** While hunting, hunters shall have in their possession only nontoxic shot. Only 25 rounds per hunter will be allowed at the blinds.

**G.** Designated areas open for Bernardo youth/adult duck hunts are; north of highway U.S. 60 and east of Unit 7 drain.

**H.** Use of motorized motion decoys is prohibited.

[19.31.6.18 NMAC, 8-29-2004]

**NEW MEXICO  
DEPARTMENT OF GAME  
AND FISH**

**This is an amendment to 19.31.4.8 NMAC, 19.31.4.11 NMAC, 19.31.4.12 NMAC and 19.31.4.14 NMAC, effective August 13, 2004.**

**19.31.4.8 TROUT WATERS AND WARM WATERS:**

**A. Regular trout waters:**

The following are designated as regular trout waters: all streams, lakes and ponds lying within the following described areas except licensed class A lakes and lakes, ponds, and ranch tanks not fed by public waters and not open to public fishing.

(1) Northern area: That portion of New Mexico bounded by a line starting at the intersection of I-25 with the Colorado-New Mexico state line and running south along I-25 to its junction with U.S. 64; thence, south and west on U.S. 64 to its junction with N.M. 58 at Cimarron; thence, south and east on N.M. 21 to its junction with I-25; thence, south, west, and southwest on I-25 and U.S. 84-85 to its junction with U.S. 285-84 at Santa Fe; thence, north on U.S. 285-84 to its intersection with N.M. 502; thence, west on N.M. 502 to the west bank of the Rio Grande; thence, southwesterly along the west bank of the Rio Grande to its intersection with N.M. 44 at Bernalillo; thence, north and west on N.M. 44 to its intersection with U.S. 550; thence, west on U.S. 550 to the west bank of the Animas river; thence, north along the west bank of the Animas river to the Colorado-New Mexico state line; thence, east along the state line to its intersection with I-25. (Except the San Juan river from U.S. 64 bridge at Blanco downstream to N.M. 44 bridge at Bloomfield.)

(2) Ruidoso area: That portion of New Mexico bounded by a line starting at the junction of U.S. 54 and N.M. 506 and running north on U.S. 54 to its intersection with U.S. 380 at Carrizozo; thence, east on U.S. 380 to its junction with N.M. 246 at Capitan; thence, north and east on N.M. 246 to the eastern boundary of the Lincoln

national forest; thence, south to Tinnie; thence, west on U.S. 380 to Hondo; thence, south on a north-south line to the junction of N.M. 24 and U.S. 82 north of Dunken; thence south and west on N.M. 24 to Piñon; thence, south approximately one mile to N.M. 506; thence, west along N.M. 506 to its junction with U.S. 54 at Paxton.

(3) Gila area: That portion of New Mexico bounded by a line starting at the junction of U.S. 180 with the Arizona-New Mexico state line and running north along the state line to its intersection with U.S. 60; thence, east on U.S. 60 to its junction with N.M. 52 west of Magdalena; thence, south on N.M. 52 to Winston and west along the road to Chloride and the eastern boundary of the Gila national forest; thence, south along the forest boundary to its intersection with N.M. 152 east of Kingston; thence, west on N.M. 152 to its junction with U.S. 180 at Central; thence, west and northwest on U.S. 180 to its junction with the Arizona-New Mexico state line. (Except Bear canyon lake.)

(4) in Sandoval county: all of Las Huertas (Ellis creek);

(5) in San Juan county: the Animas river from the 550 highway bridge in the city of Aztec and downstream to its confluence with the San Juan river;

(6) in Torrance county: all of Tajiique creek;

(7) in Union county: all of Dry Cimarron;

(8) in Cibola county: Bluewater creek;

(9) Pecos river from I-25 south to the southeast boundary of Villanueva state park;

(10) the following lakes, ponds, and reservoirs: Alice, Bluewater, Blue Hole Park ponds, Chiuilla well, Clayton, lake Farmington, Jackson, Maloya, Maxwell lake 13, McAllister, McGaffey, Power dam, Perch, Manzano, and Ramah.

(11) In Sierra county, Rio Grande from Elephant Butte dam downstream to, and including, Caballo lake.

#### **B. Winter trout waters:**

The following are designated as winter trout waters from November 1 through March 31 of the effective years: Sumner lake stilling basin; that portion of the Black river extending from one mile upstream to one mile downstream of Higby hole and located in Sections 8 and 9, T. 24 S., R. 28 E., N.M.P.M., in Eddy county; that portion of the Pecos river from the southeast boundary of Villanueva state park downstream to, but not including Santa Rosa lake; the following drains: Albuquerque, Atrisco, Belen Riverside, Bernalillo, Corrales, Peralta, and Tome; and the following lakes: Bataan, Bear canyon, Bill Evans, Bosque Redondo, Bottomless lakes, Burn, Carlsbad municipi-

pal, Carrizozo, Chaparral, Conservancy park, Escondida, Eunice, Greene Acres, Green Meadow, ponds on Harry McAdams park, Jal, Ned Houk lakes, Oasis park, and Van.

**C. Warm waters:** "Warm waters", as used herein, shall include all streams, lakes, and ponds except those designated as trout waters above, and except licensed class A lakes.

[19.31.4.8 NMAC - Rp 19.31.4.8 NMAC, 4-15-02; A, 8-13-04]

#### **19.31.4.11 DAILY BAG AND POSSESSION LIMITS:**

##### **A. Trout**

##### **(1) Waters with reduced bag limit:**

No person shall fish waters regulated for reduced limits while having in excess of that limit in possession.

(2) Brown, rainbow, cutthroat, lake, Brook trout and Kokanee salmon:

(a) The daily bag limit shall be 5 trout and no more than 10 trout shall be in possession.

(b) The daily bag limit for cutthroat trout shall be 2 trout and no more than 2 cutthroat trout may in possession. Cutthroat trout are included in the bag and possession limits for trout explained in 19.31.4.11(A. 2.a) NMAC (above).

(3) Special Kokanee salmon season: During the special Kokanee salmon season, the daily bag limit shall be 12 Kokanee salmon in addition to the daily bag limit for trout, and no more than 24 Kokanee salmon may be possessed in addition to the possession limit for trout. It shall be unlawful to possess Kokanee salmon at Heron lake and Pine river during the closed Kokanee salmon season (October 1 through November 14).

(4) Special trout waters - On certain waters, hereafter referred to as "Special Trout Waters", the following exceptions shall apply:

(a) On those sections of the following waters the daily bag limit shall be 2 trout and no more than 2 trout shall be in possession. Anglers must stop fishing in those waters when the daily bag limit is reached: In Rio Arriba county: all waters lying within or adjacent to the Little Chama valley ranch (Edward Sargent wildlife area) including the Rio Chamito, Sexton creek, and Rio Chama, excluding Nabor creek and Nabor lake; In Colfax county: the Shuree lakes on the Valle Vidal; In Taos county: a posted portion of the Rio Pueblo between the bridge at mile marker 55 on state hwy. 518 upstream approximately 1 mile to the Canon Tio Maes trailhead; In San Miguel county: an approximately 1-1/2 mile posted portion of the Pecos river beginning approximately 1/2 mile above the confluence of the Mora river (Mora-Pecos) upstream to

approximately 1/4 mile above the bridge crossing at Cowles; In Rio Arriba county: a posted portion of the Chama river approximately 2.9 miles within the boundaries of the Rio Chama wildlife and fishing area; In Catron county: a posted portion of Gilita creek from the Gila wilderness boundary downstream approximately 5 miles to its confluence with Snow creek; In Rio Arriba county: a posted portion of the Rio de los Pinos from USFS Boundary 24 at the junction of forest road 284 and 87A, 2.5 miles upstream to the private property boundary; In Taos county: a posted portion of Red River from the confluence of Goose creek 1 mile upstream.

(b) In San Juan county, in a posted portion of the San Juan river, from a point beginning approximately 1/4 mile downstream of Navajo dam and extending downstream 3.5 miles to the east side of section 16: the daily bag limit shall be 1 trout and no more than 1 trout shall be in possession except in the catch-and-release section. The angler must stop fishing in the section defined once the daily bag limit is reached.

(c) On those sections of the following waters no fish may be kept or held in possession while fishing in the posted portions of the following waters: In San Juan county: a posted portion of the San Juan river from Navajo dam downstream approximately 1/4 mile; In Sandoval county: a posted portion of the Rio Cebolla from the Seven Springs day use area upstream to its headwaters; In Sandoval County: a posted portion of the San Antonio River from the Baca location boundary downstream approximately 2.0 miles (T. 19 N., R. 03 E., S 16 and 20); In Sandoval county: a posted portion of the Rio Guadalupe from the Porter landing bridge downstream approximately 1.3 miles to Llano Loco Spring; In Taos county: a posted portion of the Rio Costilla from the Valle Vidal tract of the Carson national forest downstream for approximately 2.4 miles to the confluence of Latir creek; In Sierra county: the Rio las Animas within the Gila national forest, Black range ranger district; In Mora county: the Pecos river in the Pecos wilderness, above Pecos falls; In Rio Arriba county: Nabor creek and Nabor lake on the Edward Sargent wildlife area; In San Miguel and Santa Fe counties: Doctor creek from 1/4 mile above its confluence with Holy Ghost creek upstream to its headwaters; In Mora county: Rio Valdez in the Pecos wilderness from 1/4 mile below Smith cabin upstream to its headwaters; In San Miguel and Mora counties: Jack's creek from the water falls located 1/4 mile downstream of NM Highway 63 crossing upstream to its headwaters; In Taos and Colfax counties: any stream on the Valle Vidal (Vermejo tract -

Carson national forest).

(d) In Colfax county: on a posted section of the Cimarron river from the lower end of Tolby campground downstream approximately 1.4 miles to the first bridge of N.M. 64 the daily bag limit shall be 1 fish and no more than one fish may be in possession.

(5) On the following waters, the daily bag limit shall be 3 trout and no more than 3 trout may be in possession, although there are no special restrictions regarding the use of legal gear.

(a) In Taos county: a posted portion of the Rio Grande beginning at the New Mexico/Colorado state line downstream to the Taos junction bridge.

(b) In Taos county: a posted portion of the Red River beginning approximately 1/2 mile downstream of the walking bridge at Red River state fish hatchery downstream to its confluence with the Rio Grande.

(c) In Taos county: the designated fishing pond at Red River state fish hatchery.

(d) In Rio Arriba county: on a posted portion of the Rio Chama from the base of Abiquiu dam downstream approximately 7 miles to the river crossing bridge on U.S. 84 at Abiquiu.

(e) In Sierra county: the Rio Grande from ~~the power line crossing upstream of the confluence with Cuchillo Creek~~ Elephant Butte dam downstream to and including Caballo lake.

(f) In Lincoln county: The Rio Ruidoso from the boundary between the Mescalero Apache reservation and the city of Ruidoso downstream to Fridenbloom drive.

(g) In Rio Arriba county: Burns canyon lake at Parkview hatchery.

(6) Gila trout: It shall be unlawful for any person to possess Gila trout (*Oncorhynchus gilae*).

#### B. Warm-water fishes:

The daily bag limit for game fish other than trout shall be as listed below and the possession limit shall be twice the daily bag limit.

(1) striped bass 2 fish;

(2) largemouth, smallmouth, and spotted bass 5 fish;

(3) walleye 5 fish;

(4) crappie 20 fish;

(5) white bass and white bass x striped bass hybrid 25 fish;

(6) northern pike 10 fish;

(7) catfish (all species, except bullheads) 15 fish;

(8) all other warm-water game species 20 fish.

C. The following exception shall apply:

(1) At Tingley beach in Albuquerque; lake Van (Chaves county);

Oasis state park; Greene Acres lake (Curry county); Burn lake (Dona Ana county); Escondida lake (Socorro county); Aztec pond (San Juan county); McGaffey lake (McKinley county); Bataan lake (Eddy county); Chaparral lake (Lea county); Bosque Redondo (De Baca county); Carrizozo lake (Lincoln county); Green Meadow lake; Eunice lake; and Jal lake (Lea county): the daily bag limit for channel catfish will be 2 fish and the possession limit shall be twice the daily bag limit.

(2) In San Juan county, in the San Juan and Animas rivers, not including Navajo lake, there is no daily bag limit or possession limit for channel catfish and striped bass.

(3) Statewide, all tiger muskie (*Esox lucius* x *E. masquinongy*) caught must immediately be released.

[19.31.4.11 NMAC - Rp 19.31.4.11 NMAC, 4-15-02; A, 10-31-02; A, 6-25-03; A, 8-13-04]

#### 19.31.4.12 SIZE LIMITS:

##### A. Salmonids

(1) On that section of the San Juan river where only barbless lures or flies may be used, any trout taken that are less than 20 inches long shall be immediately returned to the water and no fish under 20 inches shall be possessed in that section; provided, however, that no fish may be possessed in the catch-and-release water section.

(2) On Shuree lakes, on the Valle Vidal tract, any trout taken that are less than 15 inches long shall be immediately returned to the water.

(3) In Colfax county, a posted portion of the Cimarron river where only barbless lures or flies may be used (and more specifically described in Subsection A of 19.31.4.11 NMAC above), any trout taken that are less than 16 inches long shall be immediately returned to the water.

~~(4) [In Sierra County: a posted portion of the Rio Grande above the confluence of Cuchillo Creek (more specifically described in Subsection A of 19.31.4.11 NMAC above) any trout taken that are less than 16 inches long shall be immediately returned to the water.] [Reserved]~~

(5) Any trout taken that are less than 12 inches long shall be immediately returned to the water in the following locations:

(a) In San Miguel county: a posted portion of the Pecos river where only barbless lures or flies may be used (more specifically described in Subsection A of 19.31.4.11 NMAC above).

(b) In Lincoln county: a posted section of the Rio Ruidoso where only barbless lures or flies may be used (more specifically described in Subsection A of 19.31.4.11 NMAC above).

(c) In Taos county: a posted section of the Red River from the confluence with Goose creek 1 mile upstream.

##### B. Black basses

(1) Any largemouth or spotted bass taken which is less than 14" long shall be immediately returned to the water.

(2) Any smallmouth bass taken which is less than 12" long shall be immediately returned to the water.

C. Walleye: Any walleye taken which are less than 14" long shall be immediately returned to the water.

[19.31.4.12 NMAC - Rp 19.31.4.12 NMAC, 4-15-02; A, 8-13-04]

#### 19.31.4.14 WATERS WITH AGE OR HANDICAPPED USE RESTRICTIONS:

A. Only persons under 12 years of age may fish in the following waters: Shuree kids' ponds on Valle Vidal (Vermejo tract-Carson national forest); walley improvement association ponds at Belen, Young pond in Las Cruces, Harris pond in Las Vegas, Spring river park in Roswell, Grants city pond, and the Brood pond at Seven Springs state fish hatchery.

B. Only persons under 12 years of age, those 65 years and over, and handicapped persons may fish in the designated Red River hatchery pond located at the Red River state fish hatchery, Blue Hole park pond (formerly Santa Rosa seniors pond), Estancia park lake at Estancia, and in ponds located in Harry McAdams park.

C. Only handicapped persons and those under 12 years of age may fish in the Red River city ponds, and in the posted small pond at Cowles.

D. Olympic pond: Only persons under 12 years of age and those 65 years and over may fish in Olympic pond located at Angel Fire.

E. Burns canyon lake: Only persons 14 years of age and under, those 65 years and over, or up to two parents/guardians in direct supervision of a child or children 14 years of age and under who are fishing, may fish in Burns canyon lake located near Parkview hatchery.

[19.31.4.14 NMAC - Rp 19.31.4.14 NMAC, 4-15-02; A, 10-31-02; A, 8-13-04]

## NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.31.8 NMAC, Sections 7 and 20, effective August 13, 2004.

#### 19.31.8.7 DEFINITIONS:

A. "antelope management units" or "AMU" shall mean those areas as documented in the state game com-

mission's rule **19.30.4 NMAC Boundary Descriptions for Wildlife Management Areas.**

- B.** "antlerless deer" shall mean a deer without or with antlers less than two inches in length.
- C.** "A or antlerless elk" shall mean any one elk without antlers.
- D.** "bearded turkey" shall mean a turkey with a visible beard.
- E.** "big game species" shall mean deer, bear, cougar, elk, antelope (American pronghorn), Barbary sheep, bighorn sheep, javelina, oryx, and Persian ibex.
- F.** "bighorn ram" shall mean any male bighorn sheep.
- G.** "cougar zones" as used herein, shall define hunt areas consisting of one or more game management units as documented in the state game commission's rule **19.30.4 NMAC Boundary Descriptions for Wildlife Management Areas.**
- H.** "deer license" shall mean a resident deer, nonresident deer, resident general hunting, resident general hunting and fishing, resident senior general hunting, resident junior general hunting, or resident handicapped general hunting license issued for hunting deer in New Mexico during the current license year.
- I.** "department" shall mean the New Mexico department of game and fish.
- J.** "ES or either sex" shall mean any one animal of the species.
- K.** "entry permit" shall entitle the holder of a valid deer license to hunt deer when special permission is required.
- L.** "FAD or forked antlered deer" 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.
- M.** "F-IM or female or immature antelope" shall mean an antelope without horns or with both horns shorter than its ears.
- N.** "F-IM or female or immature Persian ibex" shall mean a Persian ibex with horns less than 15 inches long.
- O.** "game management unit" or "GMU" shall mean those areas as described in the state game commission's rule **19.30.4 NMAC Boundary Descriptions for Wildlife Management Areas.**
- P.** "license year" shall mean the period from April 1 through March 31.
- Q.** "male Persian ibex" shall mean any male Persian ibex.
- R.** "MB or mature bull" 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.
- S.** "MB or mature buck antelope" shall mean an antelope with at least one horn longer than its ears.
- T.** "MB-A or mature bull -antlerless" 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, or any one elk without antlers.
- U.** "NT or non-typical oryx" shall mean an oryx of either sex with at least one horn broken off at the halfway point, or horns that deviate significantly from normal.
- V.** "unlimited" shall mean there is be no set limit on the number of permits or licenses established for the described hunt areas.
- W.** "Valles Caldera national preserve (VCNP)" shall mean the hunt area within game management sub-unit 6B.
- X.** "APRD or antler point restricted deer" shall mean a deer with a minimum of three visible points on one antler.

**A burr at the base does not constitute a point.**

[19.31.8.7 NMAC - Rp 19.31.8.7 NMAC, 4-1-2003; A, 11-26-2003; A, 8-13-2004]

**19.31.8.20 DEER (2004-2005):**

- A.** Over-the-counter deer hunts for any legal weapon, listing the hunt date, hunt code, maximum number of licenses available, bag limit, and open GMU's or areas shall be as indicated below:
- (1) Oct. 25 - 27, DER-1-001, unlimited, [~~FAD;~~] APRD, 8 (except Sandia ranger district of the Cibola national forest).
- (2) Oct. 29 - 31, DER-1-002, unlimited, [~~FAD;~~] APRD, 8 (except Sandia ranger district of the Cibola national forest), 29, 30, 34.
- (3) Nov. 3 - 5, DER-1-003, unlimited, [~~FAD;~~] APRD, 12, 13, 16, 18, 20, 21, 22, 23 (except the Burro mountain hunt area), 24, 25, 26, 29, 30, 34, 39, 41, 42, 43, 47.
- (4) Nov. 10 - 14, DER-1-004, unlimited, [~~FAD;~~] APRD, 12, 13, 16, 18, 20, 21, 22, 23 (except the Burro mountain hunt area), 24, 25, 26.
- (5) Nov. 12 - 14, DER-1-005, unlimited, [~~FAD;~~] APRD, 29, 30, 34.
- (6) Nov. 9 - 11, DER-1-006, unlimited, [~~FAD;~~] APRD, 31 (including Brantley WMA excluding Seven rivers waterfowl management area), 32, 33 (excluding the W. S. Huey waterfowl management area), 36, 37, 38, and 40.
- (7) Nov. 18 - 21, DER-1-007, unlimited, [~~FAD;~~] APRD, 31 (including Brantley WMA, excluding Seven rivers waterfowl management area), 32, 33 (excluding the W. S. Huey waterfowl management area), 36, 37, 38, and 40.
- (8) Oct. 30 - Nov. 1, DER-1-008, unlimited, [~~FAD;~~] APRD, 39.
- (9) Oct. 30 - 31, DER-1-009, unlimited, [~~FAD;~~] APRD, 41, 42, 43, 46, 47, 54, 55, 56 (except Sierra Grande hunt area), 57, 58.
- (10) Nov. 3 - 7, DER-1-010, unlimited, [~~FAD;~~] APRD, 46, 54, 55, 56 (except Sierra Grande hunt area), 57, 58.
- (11) Nov. 17 - 23, DER-1-011, unlimited, [~~FAD;~~] APRD, 54, 55, 56 (except Sierra Grande hunt area), 57, 58.
- B.** Over-the-counter deer hunts for bows, listing the hunt date, hunt code, maximum number of licenses available, bag limit, and open GMU's or areas shall be as indicated below:
- (1) Aug. 28 - Sept. 16 and Jan. 8 - 16, 2005, DER-2-001, unlimited, [~~FAD;~~] APRD, 12, 13, 15, 16, 18, 20, 21, 22, 23 (except Burro mountain hunt area), 24, 25, 26, 29, 30, 31 (including Brantley WMA, excluding Seven rivers waterfowl management area portion), 32, 33 (excluding the W. S. Huey waterfowl management area), 34, 36, 37, 38, 39, 40, 41, 42, 43, 46, 47, 54, 55, 56 (except Sierra Grande hunt area), 57 (except Sugarite canyon state park), 58. Hunters unsuccessful in the September hunt may hunt during the January hunt only in the same GMU validated on their license for the September hunt.
- (2) Aug. 28 - Sept. 16, DER-2-002, unlimited, [~~FAD;~~] APRD, 48, 49, 50, 51, 52, 53.
- C.** Over-the-counter deer hunts for muzzle-loaders, listing the hunt date, hunt code, maximum number of licenses available, bag limit, and open GMU's or areas shall be as indicated below:

- (1) Sept. 27 - Oct. 3, DER-3-001, unlimited, [FAD,] APRD, 8 (except Sandia ranger district of the Cibola national forest), 12, 13, 15, 16, 18, 20, 21, 22, 23 (except the Burro mountain hunt area), 24, 25, 26.
- (2) Oct. 23 - 27, DER-3-002, unlimited, [FAD,] APRD, 29, 30, 31 (including Brantley WMA, excluding Seven rivers waterfowl management area), 32, 33 (excluding the W. S. Huey waterfowl management area), 37, 38, 40.
- (3) Oct. 2 - 6, DER-3-003, unlimited, [FAD,] APRD, 34, 36.
- (4) Sept 18 - 27, DER-3-004, unlimited, [FAD,] APRD, 39, 41, 42, 43, 46, 47, 54, 55, 56 (except Sierra Grande hunt area), 57 (except Sugarite canyon state park), 58.
- D.** Deer entry hunts for any legal weapon, listing the hunt date, hunt code, maximum number of licenses available, bag limit, and open GMU's or areas shall be as indicated below:
- (1) Oct. 30 - 31, DER-1-101, 450, [FAD,] APRD, 2A.
- (2) Oct. 30 - 31, DER-1-102, 50, [FAD,] APRD, 2A (youth only, must provide hunter education certification number on application).
- (3) Oct. 23 - 24, DER-1-103, 620, [FAD,] APRD, 2B.
- (4) Oct. 23 - 24, DER-1-104, 75, [FAD,] APRD, 2B (youth only, must provide hunter education certification number on application).
- (5) Oct. 27 - 31, DER-1-105, 665, [FAD,] APRD, 2B.
- (6) Nov. 3 - 9, DER-1-106, 665, [FAD,] APRD, 2B.
- (7) Oct. 23 - 27, DER-1-107, 20, [FAD,] APRD, 4: Humphries-Rio Chama WMA's.
- (8) Oct. 30 - Nov. 3, DER-1-108, 20, [FAD,] APRD, 4: Humphries/Rio Chama WMA's.
- (9) Oct. 23 - 27, DER-1-109, 5, [FAD,] APRD, 4: Humphries-Rio Chama WMA's (youth only, must provide hunter education certification number on application).
- (10) Oct. 30 - Nov. 3, DER-1-110, 5, [FAD,] APRD, 4: Humphries/Rio Chama WMA's (youth only, must provide hunter education certification number on application).
- (11) Oct. 23 - 27, DER-1-111, 175, [FAD,] APRD, 4 private land only (application must be by special application obtained from a landowner).
- (12) Oct. 30 - Nov. 3, DER-1-112, 175, [FAD,] APRD, 4 private land only (application must be by special application obtained from a landowner).
- (13) Nov. 9 - 15, DER-1-113, 30, [FAD,] APRD, 5A public land only.
- (14) Nov. 9 - 15, DER-1-114, 220, [FAD,] APRD, 5A private land only (application must be by special application obtained from a landowner).
- (15) Oct. 9 - 13, DER-1-115, 15, [FAD,] APRD, 5B.
- (16) Oct. 9 - 13, DER-1-116, 5, [FAD,] APRD, 5B (youth only, must provide hunter education certification number on application).
- (17) Oct. 30 - Nov. 3, DER-1-117, 50, [FAD,] APRD, 6A and 6C.
- (18) Oct. 16 - 17, DER-1-118, 25, [FAD,] APRD, 7.
- (19) Oct. 23 - 24, DER-1-119, 90, [FAD,] APRD, 10.
- (20) Oct. 27 - 31, DER-1-120, 90, [FAD,] APRD, 10.
- (21) Nov. 3 - 7, DER-1-121, 90, [FAD,] APRD, 10.
- (22) Oct. 27 - 31, DER-1-122, 25, [FAD,] APRD, 14 (bow only, Sandia ranger district of the Cibola national forest).
- (23) Oct. 2 - 3, DER-1-123, 25, [FAD,] APRD, 17 (youth only, must provide hunter education certification number on application).
- (24) Oct. 23 - 27, DER-1-124, 400, [FAD,] APRD, 17.
- (25) Oct. 23 - 27, DER-1-125, 25, [FAD,] APRD, 23: Burro mountain portion of the Gila national forest (youth only, must provide hunter education number on application).
- (26) Nov. 18 - 20, DER-1-126, 25, [FAD,] APRD, 23: Burro mountain portion of the Gila national forest.
- (27) Dec. 4 - 6, DER-1-127, 75, [FAD,] APRD, 27.
- (28) Oct. 30 - 31, DER-1-128, 50, [FAD,] APRD, 28: McGregor range.
- (29) Oct. 30 - 31, DER-1-129, 15, [FAD,] APRD, 28: McGregor range (youth only, must provide hunter education certification number on application).
- (30) Oct. 30 - 31, DER-1-130, 20, [FAD,] APRD, 28: McGregor range (military only, must be full time active military and proof of military status must accompany application).
- (31) Nov. 6 - 8, DER-1-131, 300, [FAD,] APRD, 44/45.
- (32) Nov. 12 - 14, DER-1-132, 350, [FAD,] APRD, 44/45.
- (33) Sept. 20 - 22, DER-1-133, 100, [FAD,] APRD, 48.
- (34) Sept. 24 - 26, DER-1-134, 100, [FAD,] APRD, 48.
- (35) Sept. 20 - 22, DER-1-135, 100, [FAD,] APRD, 49.
- (36) Sept. 24 - 26, DER-1-136, 100, [FAD,] APRD, 49.
- (37) Sept. 20 - 22, DER-1-137, 100, [FAD,] APRD, 50.
- (38) Sept. 24 - 26, DER-1-138, 100, [FAD,] APRD, 50.
- (39) Sept. 20 - 22, DER-1-139, 100, [FAD,] APRD, 51.
- (40) Sept. 24 - 26, DER-1-140, 100, [FAD,] APRD, 51.
- (41) Sept. 20 - 22, DER-1-141, 100, [FAD,] APRD, 52.
- (42) Sept. 24 - 26, DER-1-142, 100, [FAD,] APRD, 52.
- (43) Sept. 20 - 22, DER-1-143, 100, [FAD,] APRD, 53.
- (44) Sept. 24 - 26, DER-1-144, 100, [FAD,] APRD, 53.
- (45) Nov. 6 - 7, DER-1-145, 15, [FAD,] APRD, 54/55: Colin Neblett WMA.



(46) Nov. 10 - 14, DER-1-146, 15, [FAD;] APRD, 54/55: Colin Neblett WMA.  
 (47) Nov. 17 - 23, DER-1-147, 15, [FAD;] APRD, 54/55: Colin Neblett WMA.  
 (48) Nov. 6 - 7, DER-1-148, 5, [FAD;] APRD, 55: E. S. Barker WMA.  
 (49) Nov. 10 - 14, DER-1-149, 5, [FAD;] APRD, 55: E.S. Barker WMA (youth only, must provide hunter education certification number on application).

- (50) Nov. 6 - 7, DER-1-150, 10, [FAD;] APRD, 55: Urraca WMA.  
 (51) Nov. 10 - 14, DER-1-151, 10, [FAD;] APRD, 55: Urraca WMA.  
 (52) Nov. 17 - 23, DER-1-152, 10, [FAD;] APRD, 55: Urraca WMA.  
 (53) Nov. 6 - 7, DER-1-153, 10, [FAD;] APRD, 56: Sierra Grande hunt area.  
 (54) Nov. 10 - 14, DER-1-154, 10, [FAD;] APRD, 56: Sierra Grande hunt area.  
 (55) Nov. 17 - 23, DER-1-155, 10, [FAD;] APRD, 56: Sierra Grande hunt area.

**E.** Deer entry hunts for bows, listing the hunt date, hunt code, maximum number of licenses available, bag limit, and open GMU's or areas, shall be as indicated below:

- (1) Aug. 28 - Sept. 16, DER-2-101, 200, [FAD;] APRD, 2.  
 (2) Jan. 8 - 16, 2005, DER-2-102, 50, [FAD;] APRD, 2A.  
 (3) Jan. 8 - 16, 2005, DER-2-103, 150, [FAD;] APRD, 2B.  
 (4) Aug. 28 - Sept. 16, DER-2-104, 150, [FAD;] APRD, 4 private land only (application must be by special application obtained from a landowner).  
 (5) Aug. 28 - Sept. 16, DER-2-105, 30, [FAD;] APRD, 5A public land only.  
 (6) Aug. 28 - Sept. 16, DER-2-106, 220, [FAD;] APRD, 5A private land only (application must be by special application obtained from a landowner).  
 (7) Aug. 28 - Sept. 16, DER-2-107, 100, [FAD;] APRD, 6A and 6C.  
 (8) Aug. 28 - Sept. 16, DER-2-108, 10, [FAD;] APRD, 7.  
 (9) Nov. 20 - Dec. 3, DER-2-109, 50, [FAD;] APRD, 8 (including Sandia ranger district, youth only, must provide hunter education certification number on application).  
 (10) Jan. 8 - 16, 2005, DER-2-110, 50, [FAD;] APRD, 8 (including Sandia ranger district).  
 (11) Aug. 28 - Sept. 16, DER-2-111, 90, [FAD;] APRD, 10.  
 (12) Aug. 28 - Sept. 16, DER-2-112, 25, [FAD;] APRD, 14.  
 (13) Aug. 28 - Sept. 16, DER-2-113, 400, [FAD;] APRD, 17.  
 (14) Jan. 8 - 16, 2005, DER-2-114, 50, [FAD;] APRD, 23: Burro mountain portion of the Gila national forest.  
 (15) Jan. 8 - 16, 2005, DER-2-115, 10, ES, 31/33: Brantley WMA and Seven rivers and Huey waterfowl management area's (youth only, must provide hunter education certification number on application).  
 (16) Aug. 28 - Sept. 16, DER-2-116, 100, [FAD;] APRD, 44/45.  
 (17) Aug. 28 - Sept. 16, DER-2-117, 10, [FAD;] APRD, 56: Sierra Grande hunt area.  
 (18) Nov. 1 - 30, DER-2-118, 40, [FAD;] APRD, 57: Sugarite canyon state park.

**F.** Deer entry hunts for muzzle-loaders, listing the hunt date, hunt code, maximum number of licenses available, bag limit, and open GMU's or areas, shall be as indicated below:

- (1) Sept. 18 - 27, DER-3-101, 350, [FAD;] APRD, 2.  
 (2) Sept. 18 - 27, DER-3-102, 100, [FAD;] APRD, 4 private land only (application must be by special application obtained from a landowner).  
 (3) Sept. 18 - 27, DER-3-103, 50, [FAD;] APRD, 6A and 6C.  
 (4) Sept. 18 - 27, DER-3-104, 10, [FAD;] APRD, 7.  
 (5) Sept. 18 - 27, DER-3-105, 90, [FAD;] APRD, 10.  
 (6) Sept. 18 - 27, DER-3-106, 50, [FAD;] APRD, 14 (except Sandia ranger district of the Cibola national forest).  
 (7) Sept. 25 - 30, DER-3-107, 400, [FAD;] APRD, 17.  
 (8) Oct. 23 - 27, DER-3-108, 25, [FAD;] APRD, 19: Organ mountains.  
 (9) Oct. 23 - 27, DER-3-109, 25, [FAD;] APRD, 27.  
 (10) Nov. 26 - 28, DER-3-110, 30, ES, 31/33: Brantley WMA and Seven rivers and Huey waterfowl management area's (youth only, must provide hunter education certification number on application).  
 (11) Sept. 18 - 27, DER-3-111, 150, [FAD;] APRD, 44/45.  
 (12) Sept. 18 - 27, DER-3-112, 10, [FAD;] APRD, 56: Sierra Grande hunt area.

**G.** Deer enhancement licenses. Deer enhancement licenses shall be valid from September 1 through December 31 for any legal weapon. These licenses shall be valid statewide only on public land where deer hunting is allowed, including the department's WMAs and private land with prior written permission. Bag limit shall be one fork-antlered. The hunt code shall be DER-1-400. License may be used either by the applicant or any individual of the selected applicant's choice through sale, barter, or gift.

**H.** Landowners, or their designees with written permission, shall be allowed to purchase a deer hunting license valid only on their private property in all DEER ENTRY UNITS described in subsections D through F (except units 4, 5A, military lands and wildlife management areas). Licenses purchased pursuant to this section shall be restricted to the weapon type and season dates established in subsections D through F. The bag limit for these licenses shall be one(1) APRD or one antler point restricted deer with a minimum of three visible points on one antler. A burr at the base does not constitute a point.

[19.31.8.20 NMAC - Rp 19.31.8.20 NMAC, 4-1-2003; A, 11-26-2003; A, 2-13-2004; A, 8-13-2004]

**NEW MEXICO  
DEPARTMENT OF  
GAME AND FISH**

This is an amendment to 19.31.10 NMAC, Section 15, effective August 13, 2004.

**19.31.10.15 HUNTING:**

**A. Hours:** Game species or turkey may be hunted or taken during open seasons only, and only during the period from one-half hour before sunrise to sunset.

**B. Bag limit:** It is unlawful for any person to hunt for or take more than one of any big game species during a current license year unless otherwise provided by regulation.

**C. Tagging:**

(1) Any license that permits the taking of any big game animal or turkey, **dark goose in the middle Rio Grande valley or sandhill cranes in the middle Rio Grande valley, Estancia valley, and southwest;** shall be issued with a tag bearing the name of the species.

(2) It shall be unlawful to possess more than one tag per big game species except as permitted by regulation.

(3) It shall be unlawful for any licensee not to properly tag the animal as prescribed below:

(a) IMMEDIATELY after killing any big game species or turkey, **dark goose in the middle Rio Grande valley or sandhill crane in the middle Rio Grande valley, Estancia valley, and southwest;** the licensee killing the game shall notch the proper day and month of kill from the species tag.

(b) The tag shall be attached to the carcass of big game animals and turkey, **dark geese harvested in the middle Rio Grande valley or sandhill cranes harvested in the middle Rio Grande valley, Estancia valley, and southwest;** and the tag shall remain attached to the carcass while the carcass is in any vehicle, left unattended in the field, or while it is in camp or at a residence or other place of storage. The notched tag may be removed from the carcass while the carcass is being removed from the field to a camp or vehicle. In situations where numerous trips are required to remove the carcass from the field, the tag shall remain attached to that portion of the carcass left in a camp or vehicle.

(4) A species tag, when attached to the carcass of legally taken game, shall authorize possession and storage for the period designated on the tag.

**D. Seizure:** Any conservation officer or other officer authorized to enforce game laws and regulations shall seize the carcasses of big game species or turkey that are improperly tagged.

**E. RESERVED.**

**F. Sealing of bighorn sheep**

(1) A seal shall be affixed to a horn of every bighorn sheep head taken in New Mexico, imported into New Mexico, or found in the field in New Mexico subsequent to August 17, 1973. Bighorn sheep heads found in the field within New Mexico shall remain the property of the state until disposed of by permit from the director. The seal shall authorize possession and transportation of the head within New Mexico.

(2) Such sealing shall be done within ten (10) days after the bighorn sheep head is taken, imported, or found in the field and before the bighorn sheep head is exported from New Mexico. Bighorn sheep heads not so declared shall be seized. Only legally taken and possessed bighorn sheep heads shall be sealed.

(3) Bighorn sheep heads legally sealed in another state are exempted.

**G. Proof of sex of game animals and turkey.**

(1) It shall be unlawful for any one to transport or possess the carcass of any game animal or turkey without proof of sex until the carcass reaches the place where it will be consumed or placed in cold storage.

(2) The antlers of any deer or elk and the horns of any antelope, bighorn sheep, Barbary sheep, oryx or ibex taken shall remain attached to the skull. The scalp and both ears of females or immature males of those species shall accompany the carcass in a like manner.

(3) The external genitalia of any bear or cougar taken shall remain attached to the hide and be readily visible until the hide has been inspected and tagged by a department representative.

(4) The beard and a small patch of feathers surrounding the beard shall not be removed from any turkey taken when the bag limit is limited to a bearded turkey.

(5) The head or a leg of each pheasant taken must remain attached to the bird.

(6) One fully feathered wing must remain attached to all migratory game birds.

**H. Use of dogs in hunting:**

(1) Dogs may be used only to hunt bear and cougar during open seasons for those species.

(2) When dogs are used in pursuit of bear or cougar, the licensed hunter intending to harvest the bear must be present continuously once any dog is released.

(3) It shall be unlawful to use dogs to hunt any other big game species or turkey.

**I. Use of baits or scents:**

**(1) It shall be lawful to take**

**quail from any place or area where quail feeders occur on private property.**

(2) It shall be unlawful for anyone to take or attempt to take any protected species by use of baits or scents as defined in Subsection P of 19.31.10.7 NMAC. Scent masking agents on one's person are allowed.

**J. Live animals:** It shall be unlawful to use live animals as a blind or decoy in taking or attempting to take any protected species.

**K. Use of calling devices:** It shall be unlawful to use any electrically or mechanically recorded calling device in taking or attempting to take any protected species (except furbearers).

**L. Killing out-of-season:** It shall be unlawful to kill any protected species out-of-season.

[6-25-90; 11-18-92; 9-9-93; 4-1-95; A, 10-14-95; A, 1-29-99; 19.31.1.15 NMAC - Rn & A, 19 NMAC 31.1.15, 4-14-2000; 19.31.10.15 NMAC - Rn, 19.31.1.15 NMAC & A, 9-29-00; A, 4-1-03; A, 8-13-04]

**NEW MEXICO  
DEPARTMENT OF HEALTH  
EPIDEMIOLOGY AND RESPONSE  
DIVISION**

7.27.4 NMAC, Emergency Medical Services Fund Act (filed August 30, 2001) is hereby repealed and replaced by 7.27.4 NMAC, Emergency Medical Services Fund Act, effective August 13, 2004.

**NEW MEXICO  
DEPARTMENT OF HEALTH  
EPIDEMIOLOGY AND RESPONSE  
DIVISION**

**TITLE 7 HEALTH  
CHAPTER 27 EMERGENCY MEDICAL SERVICES  
PART 4 EMERGENCY MEDICAL SERVICES FUND ACT**

**7.27.4.1 ISSUING AGENCY:** New Mexico Department of Health [7.27.4.1 NMAC - Rp, 7.27.4.1 NMAC, 8/13/2004]

**7.27.4.2 SCOPE:** The Emergency Medical Services Fund Act shall apply to requests made for funds available pursuant to the Emergency Medical Services Fund Act, Section 24-10A-1, et seq., NMSA 1978.

[7.27.4.2 NMAC - Rp, 7.27.4.2 NMAC, 8/13/2004]

**7.27.4.3 STATUTORY AUTHORITY:** This rule is promulgated pursuant to the following statutory authorities: 1) the Department of Health Act,

Section 9-7-6.E., NMSA 1978, which authorizes the secretary of the department of health to "... make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions", and; 2) the Emergency Medical Services Fund Act (as amended by Laws of 2001, Chapter 273), Section 24-10A-3.1., NMSA 1978, which authorizes the department of health to adopt rules to carry out the provisions of the act.

[7.27.4.3 NMAC - Rp, 7.27.4.3 NMAC, 8/13/2004]

**7.27.4.4 D U R A T I O N :** Permanent.

[7.27.4.4 NMAC - Rp, 7.27.4.4 NMAC, 8/13/2004]

**7.27.4.5 EFFECTIVE DATE:** August 13, 2004, unless a later date is cited at the end of a section.

[7.27.4.5 NMAC - Rp, 7.27.4.5 NMAC, 8/13/2004]

**7.27.4.6 OBJECTIVE:** The objective of Part 4, of Chapter 27 is to establish standards and procedures for regulating programs under the Emergency Medical Services Fund Act. These standards and procedures are designed for the purpose of making funds available to municipalities and counties, in proportion to their needs, for use in the establishment and enhancement of local emergency medical services in order to reduce injury and loss of life. This rule will inform New Mexico municipalities and counties of the procedures to access funds. The department of health, through the emergency medical systems bureau, will administer the fund pursuant to the Emergency Medical Services Fund Act and this rule.

[7.27.4.6 NMAC - Rp, 7.27.4.6 NMAC, 8/13/2004]

**7.27.4.7 DEFINITIONS:**

**A. "Accumulation"** means the expenditure or disposition in the current fiscal year of funds distributed in the prior fiscal year. However, a municipality or county may accumulate balances to purchase vehicles or equipment if the accumulation and a purchase plan have been approved by the bureau.

**B. "Act"** means the Emergency Medical Services Fund Act, Section 24-10A-1, et seq., NMSA 1978 (as amended by Laws of 2001, Chapter 273).

**C. "Advisory committee"** means those individuals, representing specific agencies, organizations, and consumers appointed by the secretary to advise the bureau on statewide EMS policy matters.

**D. "Ambulance service"**

means a publicly or privately owned entity holding a current certificate of the New Mexico public regulation commission as an emergency response ambulance service and subject to the rules and regulations of the public regulation commission or its successor agency.

**E. "Applicant"** means an incorporated municipality or county applying on behalf of a local recipient. For special funding applications (i.e., statewide and local system improvement projects), applicant also includes EMS regional office, approved training institution or the bureau.

**F. "Area"** for purposes of pro-rata allocation of designated funds by county as described in Subsection D of 7.27.4.11 NMAC, of this rule, means the area, expressed in square miles, for each New Mexico county as reported in the U.S. department of commerce publication entitled *area measurement reports, areas of New Mexico: (most recent edition)*.

**G. "Bureau"** means the emergency medical systems bureau of the office of health emergency management, New Mexico department of health.

**H. "Chief"** means the chief of the emergency medical systems bureau.

**I. "Department"** means the New Mexico department of health.

**J. "Director"** means the director of the epidemiology and response division.

**K. "Division"** means the epidemiology and response division.

**L. "Eligible item"** means a cost or item of proposed expenditure under the local EMS funding program, which is eligible for funding under the act and includes those categories listed in Subsection N of 7.27.4.11 NMAC of this rule.

**M. "Emergency medical dispatch agency (EMDA)"** means an organization, or a combination of organizations working cooperatively, that routinely accepts calls for emergency medical assistance and employs emergency medical dispatch priority reference system (EMDPRS) techniques.

**N. "EMS"** means the services rendered by emergency medical technicians, licensed emergency medical services first responders or emergency medical dispatchers in response to an individual's need for immediate medical care to prevent loss of life or aggravation of physical or psychological illness or injury.

**O. "EMS regional office"** means those regional planning and development agencies formally recognized and supported by the bureau.

**P. "Fiscal year"** means the state fiscal year that runs from July 1 through June 30 each year.

**Q. "Federal fiscal year"** means the federal fiscal year that runs from October 1 through September 30 each year.

**R. "Fund"** means the emergency medical services fund.

**S. "Licensing fees"** mean the licensure fees, licensure renewal fees, and travel and per-diem expenses associated with the licensing and the certification process in New Mexico required of emergency medical technicians and licensed EMS first responders under current regulations governing the certification and licensing of EMS personnel.

**T. "Local EMS personnel"** means an individual who is authorized to provide pre-hospital care and is affiliated with a local recipient.

**U. "Local emergency medical services system"** means coordinated system of health care in a defined geographic area, including but not limited to community education and prevention programs, centralized access, emergency medical dispatch, law enforcement, licensed EMS personnel, fire medical rescue, ambulance, and hospital which support, respond to and/or provide emergency medical care in an organized fashion to the real or perceived needs of sick or injured persons in New Mexico and its border areas. For the purpose of funding, local emergency medical service system means one or more local recipients within a single EMS system.

**V. "Local recipient"** means an ambulance service, medical rescue service, fire department rescue service or fire district, air ambulance service, or other pre-hospital care provider:

(1) that routinely responds to an individual's need for immediate medical care in order to prevent loss of life or aggravation of physical or psychological illness or injury;

(2) whose application for funding through the Emergency Medical Services Fund Act is sponsored by a municipality or county;

(3) that meets department guidelines concerning personnel training, use of bureau-approved run forms, participation in mutual aid agreements and medical control and;

(4) receives funds distributed under the act and this rule.

**W. "Medical director"** means a physician currently licensed or otherwise authorized to practice in New Mexico who directs or supervises the practice of EMS personnel, or assists in the development and approval of local protocols and who participates in the development and implementation of quality assurance activities and training programs in connection with an EMS provider.

**X. "Medical-rescue serv-**

ice” means a provider that is part of the emergency medical services system but not subject to the authority of the public regulation commission or its successor agency, under the Ambulance Standards Act (Sections 65-6-1 to 65-6-6, NMSA 1978) and which may be dispatched to the scene of an emergency to provide rescue or medical care.

**Y. “Population”** for purposes of pro-rata allocation of designed funds by county as described in Paragraph (1) of Subsection D of 7.27.4.11 NMAC of this rule, means the population estimates for each New Mexico county as shown in the most recent report of provisional figures in the U.S. department of commerce publication entitled population estimates, “*estimates of the population of New Mexico counties and metropolitan areas: (identifier)*”.

**Z. “Pre-hospital data base program”** means the routine submission of essential pre-hospital data elements as defined by the bureau via bureau provided run forms or other methods.

**AA. “Prevention program”** means a planned activity with a defined purpose, stated objectives, implementation schedule and an evaluation component that seeks to prevent or reduce illness or injury. Examples include but not limited to bicycle helmet promotion, seat belt awareness campaign, child car seat distribution program, DWI prevention and first aid training.

**BB. “Qualified instructor”** means an individual who through education, training, and experience is approved by an approved EMS training program to teach local EMS personnel or by the bureau to teach continuing education.

**CC. “Salaries and benefits”** means regular compensation for services or work, including other payments made in accord with a salary agreement, such as insurance, retirement, leave accrual, etc.

**DD. “Statewide”** for the purpose of statewide EMS system improvement projects means two (2) or more EMS local systems, a county, a training institution, an EMS regional office or the bureau, which support, respond to and/or provide medical care in an organized fashion to the real or perceived needs of at risk, sick or injured persons in New Mexico and its border areas.

**EE. “Routinely responds”** means the local recipient is available and may be dispatched to a medical or traumatic emergency twenty-four (24) hours per day, seven (7) days per week.

**FF. “Run”** means an EMS response dispatched to an existing or potential medical event, by one or more local recipients to provide EMS assistance and/or

transportation of a patient, regardless of the number of patients on scene.

**GG. “Secretary”** means the secretary of the New Mexico department of health.

**HH. “Training program”** means a course provided by an approved EMS training program or any continuing education approved by the bureau.

**II. “Tuition”** means those charges, including fees and textbooks, for the enrollment of students in approved EMS training programs, continuing education, and conferences relevant to the education and training of local EMS personnel.

[7.27.4.7 NMAC - Rp, 7.27.4.7 NMAC, 8/13/2004]

#### 7.27.4.8 DUTY OF THE BUREAU:

The bureau shall administer the fund and provide for the distribution of the fund pursuant to the act and this rule. The bureau shall certify the names and the amount distributed to each applicant and local recipient in accordance with the provisions of the act and this rule. To accumulate funds, municipalities or counties shall submit an accumulation and purchase plan, in writing to the bureau. The bureau shall review and approve/disapprove the plan in writing. Accumulated funds shall only be expended as outlined in the bureau approved purchase plan.

[7.27.4.8 NMAC - Rp, 7.27.4.8 NMAC, 8/13/2004]

#### 7.27.4.9 ANNUAL REPORT:

The bureau shall prepare an annual report which includes a summary of the current fiscal year distribution, the number of approved applications for the local funding program, local and statewide system support projects, the vehicle purchase program and the approved budgets for administration and the trauma support program. In addition, the report will include the dollar amounts requested, amount of appropriation, average distribution amount, the types of local recipients, total number of runs, and a break down of the distribution by county. The report shall be made available to public entities and the public on request.

[7.27.4.9 NMAC - Rp, 7.27.4.9 NMAC, 8/13/2004]

#### 7.27.4.10 EXTENSION OF TIME:

Extension of time for the filing of an application or document may be granted, if the person seeking the extension can show good cause to the satisfaction of the chief. Requests for extension of time shall be received in writing in advance of the date on which the application or document is due to be filed. No extension shall exceed ten (10) calendar days. Extensions shall be confirmed or denied in writing.

[7.27.4.10 NMAC - Rp 7.27.4.10 NMAC,

8/13/2004]

#### 7.27.4.11 LOCAL EMS FUNDING PROGRAM:

In a fiscal year, no less than seventy-five percent (75%) of the money in the fund shall be used for the local emergency medical services funding program. The program shall provide for: the establishment or enhancement of local emergency medical services; operational costs other than salaries and benefits of local emergency medical services personnel, purchase, repair and maintenance of emergency medical services vehicles, equipment and supplies; implementation of prevention program and the training and licensing of local emergency services personnel.

**A. ASSURANCES:** The bureau shall authorize distributions from money in the fund to the extent funds are available during a fiscal year. Distribution from money in the fund shall be made only to applicants on behalf of local recipients, that:

(1) submit an approved application to the bureau;

(2) demonstrate a need for a distribution from the fund and the amount required;

(3) agree to expend funds distributed from the fund only for the purposes stated in the application and approved by the bureau;

(4) authorization of the chief executive of the incorporated municipality or county on behalf of the local recipient upon vouchers issued by the treasurer and/or fiscal agent of each political subdivision shall also be required; accountability and reporting of these funds shall be in accordance with the requirements set forth by the local government division of the New Mexico department of finance and administration; and

(5) agree that the funds distributed under the act will not supplant other funds budgeted and designated for emergency medical service purposes by the applicant; applications for distributions of money from the fund shall be accompanied by a certified statement that the applicant shall not supplant any other public monies available for these same purposes.

#### B. UPPER FUNDING LIMITATION - STATUTORY REQUIREMENT:

No more than one percent (1%) may be distributed from the fund through any one county or municipality in any one fiscal year on behalf of any one local recipient whose proposal for assistance has been approved by the incorporated county or municipality. The advisory committee will annually recommend maximum funding amount prior to the (November) mail out of applications.

#### C. MINIMUM FUND-

**ING BASE ESTABLISHED - REGULATORY REQUIREMENT:** In a fiscal year, each local recipient which has been approved pursuant to this rule, may be allocated a minimum distribution based on the criteria established in this section. Approved applications requesting less than the minimum will be funded in the amount requested. For the purpose of determining funding eligibility, local EMS personnel cannot be affiliated with more than (1) one local recipient.

**(1) Emergency Medical Service - Start-Up Funding Level:** This level is eligible to receive a one (1) time, minimum distribution of one thousand five hundred dollars (\$1,500), upon recommendation from the advisory committee. The minimum requirements for this level are to submit a:

- (a) letter of commitment from the chief;
- (b) letter of review and recommendation from the respective EMS regional office; and
- (c) letter of support from the medical director.

**(2) Medical-Rescue Service - Entry Level:** This level is eligible to receive a minimum distribution of one thousand five hundred dollars (\$1,500) if the following criteria are met and are verified by the applicant. The minimum criteria for this level are:

- (a) at least fifty percent (50%) of EMS runs covered by a licensed first responder within two years of the initial request for funding;
- (b) the service has at least basic medical supplies and equipment;
- (c) the service has at least one written mutual aid agreement or other written cooperative plan with a transporting ambulance and will attach to the application a copy of the agreement(s);
- (d) the service has a designated training coordinator; and
- (e) the service shall participate in the bureau's pre-hospital data collection system as determined by the bureau, by using the bureau's software, web-site or by submitting compatible data.

**(3) Medical-Rescue Service - First Responder Level:** This level of service is eligible to receive a minimum distribution of three thousand dollars (\$3,000) if the following criteria are met and are verified by the applicant. The minimum criteria for this level are:

- (a) at least eighty percent (80%) of EMS runs were covered in the prior federal fiscal year (October 1 - September 30), by a licensed EMS first responder or higher licensed medical personnel and shall continue to demonstrate that EMS response level; there shall be a minimum of at least two licensed EMS first responders with the

service;

(b) the service has at least basic medical supplies and equipment;

(c) the service has at least one written mutual aid agreement or other written cooperative plan with a transporting ambulance and will attach to the application a copy of the agreement (s);

(d) the service has a designated training coordinator;

(e) the service shall participate in the bureau's pre-hospital data collection system, as determined by the bureau, by using the bureau's software, web-site or by submitted compatible data;

(f) the service has a medical director, if automatic defibrillation capable.

**(4) Medical-Rescue Service or Ambulance - Basic Level:** This level of service is eligible to receive a minimum distribution of five thousand dollars (\$5,000) if the following criteria are met and are verified by the applicant. The minimum criteria for this level are:

(a) at least eighty percent (80%) of EMS runs shall be covered in the prior federal fiscal year (October 1 - September 30), by a licensed EMT-basic or higher level of licensed medical personnel and shall continue to demonstrate that EMS response level; there shall be a minimum of at least two licensed EMT basics with the service;

(b) the service has at least basic medical supplies and equipment;

(c) the service has at least one written mutual aid agreement or other written cooperative plan with first response or transporting ambulance service(s) and will attach to the application a copy of the agreement(s);

(d) the service has a designated training coordinator;

(e) the service shall participate in the bureau's pre-hospital data collection system as determined by the bureau by using the bureau's software, web-site or by submitting compatible data;

(f) the service has a service medical director and appropriate medical protocols;

(g) the service complies with public regulation commission (PRC) Regulation 18.4.2 NMAC, if applicable, or such other regulations as may be adopted by the PRC or its successor agency regarding registered medical rescue and certified ambulances and;

(h) the service complies with the department's air ambulance certification regulations where applicable.

**(5) Medical-Rescue Service or Ambulance - Advanced Level:** This level is eligible to receive a minimum distribution of seven thousand dollars (\$7,000) if the following criteria are met and are verified by the applicant. The minimum criteria for

this level are:

(a) at least eighty percent (80%) of EMS runs were covered in the prior federal fiscal year (October 1 - September 30), by licensed EMT intermediate or paramedic level personnel; or, if an emergency medical dispatch priority reference system (EMD-PRS) is utilized, at least 80% of all runs determined by dispatch to require an advance level response shall be covered by licensed EMT intermediate or paramedic level personnel and there shall be a least one additional licensed EMT with the service;

(b) the service has at least basic and advanced medical supplies and equipment;

(c) the service shall maintain at least one transport capable vehicle if appropriate within the local EMS system;

(d) the service has at least one written mutual aid agreement or other written cooperative agreement with first response or transporting ambulance service(s) and will attach to the application a copy of the agreement(s);

(e) the service shall participate in the bureau's pre-hospital data collection system as determined by the bureau by using the bureau's software, web-site or by submitting compatible data;

(f) the service has a designated training coordinator;

(g) the service has a service medical director and appropriate BLS and ALS medical protocols;

(h) the service routinely responds when dispatched for all medical and traumatic emergencies within its primary response area;

(i) the service complies with public regulation commission (PRC) Regulation 18.4.2 NMAC, if applicable, or such other regulations as may be adopted by the PRC or its successor agency regarding registered medical - rescue and certificated ambulances; and

(j) the service complies with the department's certification of air ambulance services regulations where applicable.

**D. FUNDING FORMULA DEFINITION:** If the money available is not sufficient to meet the funding requested in the applications of all local recipients at the statutory maximum, the bureau shall allocate the funds according to the following formula.

(1) After computation of the sum of minimum allocations pursuant to Subsection C of 7.27.4.11 NMAC, a total county share shall be determined. The balance of funds shall be divided into two equal portions. For each county, the first portion shall be prorated according to area of the county as a percentage of total state area, and the other portion shall be prorated according to population of the county as a percentage of total state population.

(2) From the county share established above, the individual allocation to each local recipient shall be determined based on the relative number of runs in the prior federal fiscal year (October 1 through September 30) as reflected in the application of the local recipient and verified through the bureau's pre-hospital data base program.

(3) In the event that an incorporated municipality or county supports the applications of more than one local recipient, the bureau shall determine the pro-rata share for each local recipient in the allocation of funds based on the number of annual runs reported.

**E. SPECIAL CONDITIONS EMERGENCY FUNDING:** Subject to the availability of funds, the bureau will entertain applications for funding at any time based on the following criteria.

(1) The local recipient needs some immediate financial support for first year, startup services and the local community cannot provide adequate initial funding support. Financial need shall be verified by the bureau.

(2) The local recipient does not have financial support to continue operations due to an emergency situation. The bureau will consider an application for a one-time special financial award. The request for financial assistance will be verified by the bureau. To be eligible for emergency funding, applicant and local recipient shall provide a letter of support for the emergency funding from their respective EMS regional director and shall document the need for emergency funding based on the following criteria:

(a) the need for emergency funding is unanticipated;

(b) emergency funding is necessary to protect life, health and safety;

(c) applicant and local recipient have exhausted all reasonable alternative funding sources.

(3) The bureau will advise the advisory committee of such distributions.

(4) The decision is subject to the appeal provision of Subsection J of 7.27.4.11 NMAC, of this rule.

**F. DISTRIBUTION METHOD TO ENSURE COMPLIANCE WITH STATUTORY LIMITATION:** To comply with the statutory limitation per local recipient, the department shall certify for distribution only funds computed and allocated according to Subsection G of 7.27.4.11. NMAC. Individual distribution amounts computed that are in excess of the maximum amount for a local recipient shall be pro-rated in accordance with Paragraph (2) of Subsection D of 7.27.4.11 NMAC, to all other eligible remaining local recipients in that county. If funding of all local recip-

ients within a county is at the statutory maximum, and there still remains an overage in the county share, the balance shall be reallocated as described in Subsection G of 7.27.4.11 NMAC to all other counties, and distributed to local recipients within those counties still remaining eligible, in addition to their first distribution.

**G. INDIVIDUAL DISTRIBUTION:** Subject to Subsection F of 7.27.4.11 NMAC, the distribution to each local recipient shall be the sum of its share as calculated under Paragraph (2) of Subsection D of 7.27.4.11 NMAC and the minimum allocation under Subsection C of 7.27.4.11 NMAC, unless the entity's total distribution shall have been otherwise established pursuant to the exception in Subsection B of 7.27.4.11 NMAC.

**H. APPLICATION:** Applicants shall request and use the most current forms for preparation of applications. Applications will be made available to all counties, municipalities and local recipients.

**I. APPLICATION CYCLE:** The following cycle will apply for the local emergency medical services funding program.

(1) Applications will be distributed to all counties, municipalities and local recipients by November 1 of each year.

(2) The local recipient and applicant shall submit to the bureau, a completed application which shall be postmarked or hand-delivered by January 15.

(3) The bureau shall review the applications, calculate the distribution of funds and notify the applicant and local recipients of its determination by May 1 of each year.

**J. PROCEDURES FOR APPEAL OF DETERMINATION:** Pursuant to Section 24-10A-5 NMSA 1978, an applicant (county and/or municipality) desiring reconsideration of the bureau's determination as to its application for funding may appeal the determination by notifying the chief.

(1) The appeal shall be in writing and shall be received by the bureau within ten (10) working days after notification to the applicant of the bureau's determination.

(2) The bureau shall refer the appeal to the advisory committee for its review and recommendation. Upon receiving the advisory committee's recommendation, the secretary shall issue a final determination and send notice to the part appealing on or before June 15 of the results of the appeal.

**K. DISBURSEMENT:** The chief shall certify final determination to the state treasurer and the department of finance and administration (DFA) on or before June 30 for distribution as early as possible in the next fiscal year.

**L. REPORTING REQUIREMENTS:** The bureau may require special reports from applicants or local recipients regarding the appropriate use, maintenance and disposition of any items acquired with funds distributed under this section.

**M. ELIGIBLE ITEMS OF EXPENDITURE:** Items eligible for funding are:

(1) purchase, repair, and maintenance of ambulance and/or rescue vehicles;

(2) purchase, repair, and maintenance of medical and rescue training equipment;

(3) purchase, installation, repair, and maintenance of communications systems for use by local EMS systems;

(4) payment of EMS training program tuition, per-diem, and mileage for local EMS personnel to attend EMS related training and continuing education programs, either in-state or within one hundred and fifty (150) miles of New Mexico's borders; training beyond the one hundred and fifty (150) mile limit shall be justified and receive prior written approval from the bureau, in order to be an eligible expense;

(5) payment of fees to qualified instructors and reasonable expenses associated with the development and provision of EMS related training and continuing education programs on a local or regional basis;

(6) payment of fees for medical direction;

(7) the cost of New Mexico examination, certification and/or licensing fees for EMS personnel;

(8) payment of costs related to legally mandated health and safety measures for the protection of local EMS personnel, such as vaccine, chest x-rays, etc;

(9) all other operating expenses, including rent, utilities, insurance, gas and oil, etc., except those listed in Subsection N of 7.27.4.11 NMAC;

(10) reimbursement for such items as uniforms, cleaning expenses, meals, travel, etc. when on duty, and;

(11) expenditures associated with the implementation of a prevention program.

**N. INELIGIBLE ITEMS OF EXPENDITURE:** Costs which are not eligible for funding include:

(1) land;

(2) buildings and construction, except as provided in Paragraph (3) of Subsection M of 7.27.4.11 NMAC above;

(3) certification fees charged by the national registry of EMT's, unless required for New Mexico licensure;

(4) costs for salaries and benefits of local emergency medical services personnel and;

(5) medical care expenses for

EMS personnel, except as provided in Subsection M of 7.27.4.11 NMAC of this rule.

**O. BUDGET ADJUSTMENTS:**

(1) An applicant or a local recipient may request a budget adjustment for any of the following reasons or other good cause shown:

(a) to permit the expenditure of any balance of funds subsequent to the purchase of an eligible item;

(b) to permit expenditure on a pro-rata basis of funds allocated when the allocations are insufficient to fund the cost of the eligible item;

(c) to change priorities or change requested items;

(d) to permit expenditure of all or part of a given fiscal year's distribution in the following fiscal year; the deadline to request the bureau's approval to carry over funds shall be made in writing by October 31;

(e) to allow and facilitate intra-county or geographical region re-distribution of allocations to maximize the available funding; an intra-county or geographical region re-distribution of funds shall be requested by the applicant(s) and have the written concurrence of all involved local recipients.

(2) Each proposed budget adjustment shall be submitted in writing to the bureau and shall receive the bureau's approval prior to expending or encumbering the reallocated funds.

(3) Budget adjustments totaling less than two hundred and fifty dollars (\$250) do not require bureau approval except as provided in Paragraph (2) of Subsection O of 7.27.4.11.NMAC.

**P. OTHER CONSIDERATIONS:**

(1) In the event a county and one or more incorporated municipalities apply on behalf of the same local recipient, only the county's application shall be accepted and certified for distribution.

(2) Individual applications may be approved by the bureau for separate locations of a local recipient that are at least fifteen (15) miles apart from the next closest station, as measured by the driving distance using the most direct route between the two (2) locations.

(3) Local recipient shall not submit multiple applications for the purpose of receiving additional EMS Fund Act distributions, except in special situations, as approved by the bureau on a case by case basis.

**Q. TRANSITION:**

(1) In the event that a local recipient ceases operations, an itemized year to date expenditure report of EMS Fund Act money shall be submitted to the bureau.

(2) It is the responsibility of the applicant to inventory and redistribute all equipment purchased with the EMS Fund Act money, to other local recipients in its county or municipality, and provide a report to the bureau.

[7.27.4.11 NMAC - Rp, 7.27.4.11 NMAC, 8/13/2004]

**7.27.4.12 LOCAL EMS SYSTEM IMPROVEMENT PROJECTS, EMS VEHICLE PURCHASE PROJECTS, STATEWIDE EMS SYSTEM IMPROVEMENT PROJECTS AND EMD AGENCY SUPPORT PROGRAMS**

**A. LOCAL EMS SYSTEM IMPROVEMENT PROJECTS, EMS VEHICLE PURCHASE**

**PROJECTS, STATEWIDE EMS SYSTEM IMPROVEMENT PROJECTS AND EMD AGENCY SUPPORT PROGRAMS:**

In a fiscal year, no more than eighteen percent (18%) of the fund may be used for local and statewide emergency medical services system improvement projects, the purchase of emergency medical services vehicles, and funding for certified emergency medical dispatch agencies. Applicants shall be funded on a competitive basis. Applications under this section shall be submitted by incorporated municipalities or counties on behalf of local recipients, unless it is a statewide system improvement application, where applicant may be a training institution, EMS regional office or the bureau.

**B. APPLICATION:**

Applicants and local recipients shall request and use the most current forms to apply for these funds. The applications will be made available to all applicants and local recipients.

**C. APPLICATION**

**CYCLE:** The bureau shall distribute applications for local EMS system improvement projects, EMS vehicle purchase projects, statewide EMS system improvement projects, and certified EMD agencies as set forth below.

(1) The bureau shall issue a request for applications by August 15.

(2) The applicant or EMS service, with authorization from its fiscal agent, shall submit to the bureau, a completed application which shall be postmarked or hand-delivered by November 1. Technical assistance may be provided by the EMS regional office.

(3) The bureau shall provide copies of each local EMS system improvement application and EMS vehicle purchase project application to the respective EMS regional office and the statewide EMS system improvement applications to the EMS operations manager by no later than December 01, of each year.

**D. REVIEW PROCESS:**

The EMS regional offices shall review all applications for local EMS system improvement projects and EMS vehicle purchase projects submitted by applicants within their respective regional areas. Each regional EMS advisory committee/governing board shall review the applications within its region and submit a prioritized listing of applications for funding to the advisory committee no later than March 01 of each year. EMS regional offices and the bureau shall collaboratively assign applications to the appropriate category of funding (statewide system or local system improvement) which shall not be changed unless recommended by a majority of the advisory committee. The advisory committee will review the prioritized listing and make recommendations to the bureau at their annual spring meeting. The bureau shall make its determination on projects to be funded by May 1.

**E. LOCAL EMS SYSTEM IMPROVEMENT PROJECTS:** At a minimum, an application for the local EMS system improvement projects shall address the following areas:

(1) a complete description of the existing EMS system for which the local EMS system improvement project is requested; this description should include all pertinent information which describes all local EMS components that would be affected by the project;

(2) a complete description of the proposed local EMS system improvement project including a detailed analysis of the need and a narrative showing how the project will contribute to the enhancement and/or integration of the local EMS system;

(3) a detailed proposed budget depicting all anticipated costs for implementation of the proposed project including a clear demonstration of local support via cash and/or in-kind participation; the demonstration of local support will be considered in the final determination;

(4) assurances of support and involvement from all parties involved in the project proposal;

(5) a one page abstract of the proposed project summarizing the request; and

(6) notarized signature(s) of the appropriate municipal and/or county officials;

(7) request for vehicles (ambulance, rescue, administrative etc.) are not considered to be a local system improvement project; requests for any type vehicle should be submitted under the EMS vehicle purchase program.

**F. EMS VEHICLE PURCHASE PROJECTS:** The following are required for the EMS vehicle purchase projects:

(1) the county or municipality

submitting the application shall commit to providing matching funds of at least twenty-five percent (25%) of the base price of purchasing the vehicle only, without regard to equipment or operation costs; there shall be no restrictions on the source of the matching funds;

(2) a complete description of the proposed vehicle including a detailed analysis of the need and a narrative showing how the purchase will contribute to the enhancement and/or integration of the local EMS system;

(3) assurances by the applicant that the local recipient is capable of operating and maintaining the requested vehicle as evidenced by a proposed budget identifying all associated costs of equipping and operating the vehicle;

(4) the applicant shall submit with the application the emergency medical service vehicle assessment form as provided by the bureau and shall have been completed at the time of application;

(5) assurances of support from all parties involved in the project proposal;

(6) a one page abstract of the proposed project summarizing the request; and

(7) notarized signature(s) of the appropriate municipal and/or county officials;

(8) upon approval, local recipient will affix a bureau provided decal on the outside of the vehicle; the logo should always face, or be nearer to, the street side of the vehicle (i.e., left, rear left, driver side).

**G. STATEWIDE EMS SYSTEM IMPROVEMENT PROJECTS:** No more than three percent (3%) of the fund is authorized for projects, which improve the health, safety and training of emergency medical services personnel statewide.

(1) Applications may be submitted by applicants, local recipients, EMT's or other interested parties.

(2) The bureau will present a prioritized listing to the advisory committee for its review and consideration. The advisory committee will make a final recommendation to the bureau at its spring meeting.

(3) The bureau will make a final determination by May 1.

(4) Funds not committed for statewide EMS system improvement projects may be allocated for additional vehicle purchase and/or local EMS system improvement projects consistent with recommendations from the advisory committee.

**H. EMD AGENCY SUPPORT PROGRAM:** Certified EMD agencies may apply for funding for allowable operational costs as an EMS system improvement project, as determined by the

bureau, when funds are available. Funding of this program shall be recommended to the bureau by the advisory committee based on the available funds.

**I. PROCEDURES FOR RECONSIDERATION:** Applicants desiring reconsideration of the bureau's determination as to its application for funding under of 7.27.4.12 NMAC may appeal the determination by notifying the chief.

(1) The request for reconsideration shall be in writing and shall be received by the bureau within ten (10) working days after notification to the applicant of the bureau's determination.

(2) Upon receipt of the request for reconsideration, the chief shall issue a final determination and notify all parties on or before June 15.

**J. DISBURSEMENT:** The chief shall certify the results of final determination to the state treasurer on or before the last working day in June for distribution as early as possible in the next fiscal year.

**K. REPORTING REQUIREMENTS:**

(1) All applicants that receive funding for local EMS system improvement projects, vehicle purchase projects and statewide EMS system improvement projects shall submit a final report of the project no later than 120 calendar days following project completion, or annually, whichever occurs first. Certification will be provided when the bureau provided decal is affixed to the vehicle which has been purchased with EMS Fund Act funds pursuant to Paragraph (8) of Subsection F of 7.27.4.12 NMAC no later than 120 calendar days following delivery of vehicle.

(2) At a minimum, this report will include the name of the county or municipality, address, phone and contact person, the date submitted, the names of the local recipients involved in the project, the year the project was awarded, a brief description of the project, a fiscal accounting or summary of expenditures, total expenditures and any funds remaining, the project achievements and any changes from the originally submitted application.

(3) The bureau may require a special report from an applicant funded on the appropriate use and maintenance of any eligible item acquired with funds distributed under section for local EMS system improvement projects, EMS vehicle purchase projects or statewide EMS system improvement projects.

**L. BUDGET ADJUSTMENTS:** For local EMS system improvement projects, EMS vehicle purchase projects and statewide EMS system improvement projects, the following will apply:

(1) an applicant or a local recipient may request a budget adjustment for any

of the following reasons or other good cause shown:

(a) to permit the expenditure of any balance of funds subsequent to the purchase of an approved item;

(b) to change priorities or change requested items and;

(c) to permit expenditure of all or part of an approved project in the following fiscal year; the deadline to request the bureau's approval to carry over funds shall be made in writing by October 31;

(2) each proposed budget adjustment shall be stated in writing to the bureau and shall receive the bureau's approval prior to expending or encumbering the reallocated funds.

[7.27.4.12 NMAC - Rp, 7.27.4.12 NMAC, 8/13/2004]

#### 7.27.4.13 STATEWIDE TRAUMA CARE SYSTEM PROGRAM

**A. STATEWIDE TRAUMA CARE SYSTEM PROGRAM:** The statewide trauma care system program shall provide for the support, development and expansion of the statewide trauma care system in accordance with rules adopted by the department. No more than four percent (4%) will be set aside from the fund for the purpose of supporting the statewide trauma care system program.

**B. PROGRAM:** The program mission shall include but not be limited to the continued support of the trauma registry database, statewide trauma system leadership, and the development, implementation, expansion, monitoring and support of the statewide trauma care system.

**C. BUDGET:** Each fiscal year, the bureau, with consultation from the trauma advisory committee, a subcommittee of the advisory committee, will propose a budget for the statewide trauma care system program to the advisory committee for review no later than its summer meeting. Following this review, the bureau will formally budget these funds. The bureau with concurrence from the advisory committee, may make budget adjustments to permit expenditure of all or part of a given fiscal year's budgeted amount for trauma in the following fiscal year.

**D. REPORT:** The bureau will submit a final report to the advisory committee on the program by the end of the fiscal year. At a minimum the report will include current activities, improvements, evaluation of areas in need and future plans for the continued enhancement of the state trauma care program.

[7.27.4.13 NMAC - Rp, 7.27.4.13 NMAC, 8/13/2004]

#### 7.27.4.14 ADMINISTRATION

**A. ADMINISTRATION:** From the fund, three percent (3%) may be



used by the bureau and EMS regional offices for administrative costs, including monitoring and providing technical assistance, as set forth in this section.

**B. INSPECTION - STATUTORY REQUIREMENT:**

Inspections, pursuant to Section 24-10A-9, NMSA 1978 are to be constructive and informative to the local recipient to insure the highest possible standards of equipment and training are instituted by the local recipient and to identify any areas which could be of danger or harmful to the health, safety and welfare of staff and the public for whom service is provided.

(1) Applicants and local recipients shall be subject to reasonable visitation by authorized representatives of the bureau. Vehicle maintenance records, records of service under warranties, continuing education records, training certificates, and similar records shall be open for inspection, as well as tariff billings and fiscal and expenditure records relative to an area for which full or partial funding was made under the act.

(2) Upon completion of an inspection, the findings shall be discussed with the applicant's and/or local recipient's representative.

(3) If deficiencies are indicated, the applicant and/or local recipient shall submit a report stating how the deficiencies will be corrected and the estimated date of completion. In most cases corrections should be completed within thirty (30) calendar days.

**C. LOSS OF FUNDING ELIGIBILITY - STATUTORY REQUIREMENT:**

A municipality, county or local recipient that the bureau finds has expended money in violation of the act including misrepresentation on the EMS Fund Act application, may be ineligible to receive funding from the bureau for a period of not less than one year or more than three years, through the process set forth below.

(1) When a violation is suspected, the bureau will notify the applicant and/or local recipient in writing identifying the concerns and requesting an explanation or response.

(2) The applicant and/or local recipient shall respond in writing within twenty (20) working days.

(3) The bureau may initiate a formal investigation, including a formal audit, if deemed necessary.

(4) Based upon their findings, the bureau will notify the applicant and/or local recipient in writing of their determination and associated penalty, which can range from one to three years of ineligibility.

(5) The bureau may refer the matter to appropriate law enforcement agencies.

**D. OVERSIGHT OF MUTUAL AID:** The bureau shall encourage the development of appropriate mutual aid agreements between local recipients to ensure compliance with the act and this rule.

**E. COORDINATION:** The bureau shall facilitate the coordination of services between state agencies, EMS regional offices, applicants, and local recipients to execute the requirements of the act and this rule for the efficient and effective use of these funds.

**F. EVALUATION AND AUDIT OF PROGRAMS:** The bureau shall be responsible for the periodic evaluation of all programs and projects receiving funds under the act. This evaluation may include initiation of an objective audit, if deemed necessary.

**G. TECHNICAL ASSISTANCE:** The bureau shall be responsible to provide, as needed, technical assistance to counties, municipalities, EMS regional offices, state and local agencies and any other parties involved in any of the programs funded through the act and this rule. [7.27.4.14 NMAC - Rp, 7.27.4.14 NMAC, 8/13/2004]

**History of 7.27.4 NMAC:**

**Pre NMAC:** The material in this part was derived from that previously filed with the commission of public records - state records center and archives:

HED 78-9-1, Emergency Medical Services Fund Act Regulations, filed 9-29-78

HED 80-7 (HSD), Emergency Medical Services Fund Act Regulations, filed 10-9-80

HED 84-2 (HSD), Emergency Medical Services Fund Act Regulations, filed 8-8-84  
HED 87-11 (PHD/HSD), Emergency Medical Services Fund Act Regulations, filed 10-26-87

DOH Regulation 94-11 (CHSD), Regulations Governing the Emergency Medical Services Fund Act for the State of New Mexico, filed 12-30-94

DOH Regulation 95-05 (CHSD), Regulation Governing the Emergency Medical Services Fund Act, filed 10-25-95.

**History of Repealed Material:**

7 NMAC 27.4, Emergency Medical Services Fund Act Program (filed 11-26-96), repealed 7/1/2000.

7.27.4 NMAC, Emergency Medical Services Fund Act Program (filed 06-16-2000), repealed 9/13/2001.

**Other History:**

7 NMAC 27.4, Emergency Medical Services Fund Act Program (filed 11-26-96) replaced by 7.27.4 NMAC, effective 7-1-2000.

7.27.4 NMAC, Emergency Medical

Services Fund Act Program (filed 06-16-2000) replaced by 7.27.4 NMAC, Emergency Medical Services Fund Act Program, effective 9/13/2001.

7.27.4 NMAC, Emergency Medical Services Fund Act Program (filed 08/30/2001) replaced by 7.27.4 NMAC, Emergency Medical Services Fund Act, effective 8/13/2004.

**NEW MEXICO HUMAN SERVICES DEPARTMENT  
MEDICAL ASSISTANCE DIVISION**

8 NMAC 4.MAD.753 is being repealed effective August 13, 2004. It will be replaced by 8.324.4 NMAC effective August 13, 2004.

**NEW MEXICO HUMAN SERVICES DEPARTMENT  
MEDICAL ASSISTANCE DIVISION**

**TITLE 8 SOCIAL SERVICES  
CHAPTER 324 ADJUNCT SERVICES  
PART 4 PHARMACY SERVICES**

**8.324.4.1 ISSUING AGENCY:** New Mexico Human Services Department. [8.324.4.1 NMAC - Rp, 8 NMAC 4.MAD.000.1, 8/13/04]

**8.324.4.2 SCOPE:** The rule applies to the general public. [8.324.4.2 NMAC - Rp, 8 NMAC 4.MAD.000.2, 8/13/04]

**8.324.4.3 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). [8.324.4.3 NMAC - Rp, 8 NMAC 4.MAD.000.3, 8/13/04]

**8.324.4.4 DURATION:** Permanent [8.324.4.4 NMAC - Rp, 8 NMAC 4.MAD.000.4, 8/13/04]

**8.324.4.5 EFFECTIVE DATE:** August 13, 2004 unless a later date is cited at the end of a section. [8.324.4.5 NMAC - Rp, 8 NMAC 4.MAD.000.5, 8/13/04]

**8.324.4.6 OBJECTIVE:** The objective of these regulations is to provide policies for the service portion of the New

Mexico medicaid program. These policies describe eligible providers, covered services, noncovered services, utilization review, and provider reimbursement.

[8.324.4.6 NMAC - Rp, 8 NMAC 4.MAD.000.6, 8/13/04]

**8.324.4.7 DEFINITIONS:**  
[RESERVED]

**8.324.4.8 MISSION STATEMENT:** The mission of the New Mexico medical assistance division (MAD) is to maximize the health status of medicaid-eligible individuals by furnishing payment for quality health services at levels comparable to private health plans.

[8.324.4.8 NMAC - Rp, 8 NMAC 4.MAD.002, 8/13/04]

**8.324.4.9 PHARMACY SERVICES:** The New Mexico medicaid program (medicaid) pays for medically necessary health services furnished to eligible recipients, including covered pharmacy services [42 CFR Section 440.120(a)]. This section describes eligible pharmacy providers, covered services, service limitations, and general reimbursement methodology.

[8.324.4.9 NMAC - Rp, 8 NMAC 4.MAD.753, 8/13/04]

**8.324.4.10 ELIGIBLE PROVIDERS:**

A. Upon MAD's approval of medical assistance program provider participation agreements, the following providers are eligible to furnish pharmacy services:

(1) pharmacies licensed by the New Mexico pharmacy board;

(2) clinics licensed for outpatient dispensing by the New Mexico pharmacy board;

(3) institutional pharmacies licensed for outpatient dispensing by the New Mexico pharmacy board;

(4) family planning clinics and rural health clinics licensed for outpatient dispensing by the New Mexico board of pharmacy;

(5) prescribing physicians practicing in communities more than fifteen (15) miles from a licensed pharmacy; and

(6) Indian health service (IHS), Indian Self-Determination and Education Assistance Act ("tribal 638") and IHS contract pharmacies and drug rooms operated consistent with IHS standards of practice for pharmaceutical care.

B. Once enrolled, providers receive a packet of information, including medicaid program policies, billing instructions, utilization review instructions and other pertinent material from MAD. Providers are responsible for

ensuring that they have received these materials and for updating them as new materials are received from MAD.

[8.324.4.10 NMAC - Rp, 8 NMAC 4.MAD.753.1, 8/13/04]

**8.324.4.11 PROVIDER RESPONSIBILITIES:**

A. Providers who furnish services to medicaid recipients must comply with all specified medicaid participation requirements. See 8.302.1 NMAC, *General Provider Policies*.

B. Providers must verify that individuals are eligible for medicaid at the time services are furnished and determine if medicaid recipients have other health insurance.

C. Providers must maintain records that are sufficient to fully disclose the extent and nature of the services furnished to recipients. See 8.302.1 NMAC, *General Provider Policies*.

(1) Original prescriptions written by prescribing providers cannot be discarded and replaced with a copy of the medicaid claims forms. The original prescription must be retained by the pharmacy. If the prescriber certifies that a specific brand is medically necessary, by handwriting "brand medically necessary" on the face of the prescription, the allowed ingredient cost is the estimated acquisition cost (EAC). The documentation of the provider's handwritten "brand medically necessary" must be maintained by the pharmacy provider and furnished upon request. Checked boxes, rubber stamps, requests by telephone and written words that do not include the statement "medically necessary" do not constitute appropriate documentation, pursuant to 42 CFR 447.331. "Brand medically necessary" prescriptions may be subject to prior authorization.

(2) Any claim for which the "brand medically necessary" is claimed must be supported with documentation.

(3) Recipients or their representatives should sign the drug claim form when receiving medication or supplies, when possible. For computer-printed claims and electronically or tape-billed claims, signatures can be accumulated in a log giving the date received, the prescription number, and the signature of the individual picking up the prescription. In the absence of a signature log, electronic prescription-processing systems must have provisions for documenting receipt of services by authorized parties.

D. A pharmacy provider must discuss any matters with medicaid recipients or caregivers that in the provider's professional judgment are significant. See 42USC 1396r-8(g)(2)(A)(ii)(I) of the Social Security Act. Pharmacy counseling services are subject to the standards

for counseling established under the State Pharmacy Practice Act. Counseling must be furnished, unless refused by recipients or caregivers.

[8.324.4.11 NMAC - Rp, 8 NMAC 4.MAD.753.2, 8/13/04]

**8.324.4.12 COVERED SERVICES:** MAD covers most medically necessary prescription drugs and some over-the-counter drugs, subject to the limitations and restrictions delineated in this Part. Claims for injectable drugs, intravenous (IV) admixtures, IV nutritional products and other expensive medications can be reviewed for medical necessity before or after reimbursement. Providers must consult MAD before supplying items not specifically listed in this policy or billing instructions. Coverage of over-the-counter items is limited to situations where the over-the-counter items may be the drug of choice for common medical conditions and when the over-the-counter item provides an appropriate economical and therapeutic alternative to prescription drug items. Drug restrictions include dosage, day supply, and refill frequency limits necessary to ensure appropriate utilization or to prevent fraud and abuse. In establishing such limits, professional standards of health are considered.

[8.324.4.12 NMAC - Rp, 8 NMAC 4.MAD.753.3, 8/13/04]

**8.324.4.13 COVERAGE REQUIREMENTS:**

A. **Legal requirements:** All drug items must be assigned a national drug code by the respective manufacturer, repackager or labeler. Any prescription must meet all federal and state laws. Providers must fulfill all the requirements of federal and state laws relating to pharmacy practice and ethics.

B. **Rebate requirements:** Medicaid pays only for the drugs of pharmaceutical manufacturers that have entered into and have in effect a rebate agreement with the federal department of health and human services.

C. This limitation does not apply to dispensing a single-source or innovator multiple-source drug if MAD has determined that the availability of the drug is essential to the health of recipients.

[8.324.4.13 NMAC - Rp, 8 NMAC 4.MAD.753.4, 8/13/04]

**8.324.4.14 NONCOVERED SERVICES OR SERVICE RESTRICTIONS:** Pharmacy services are subject to the limitations and coverage restrictions that exist for other medicaid services. See 8.301.3 NMAC, *General Noncovered Services* [MAD-602].

A. Medicaid does not

cover the following specific pharmacy items:

- (1) medication supplied by state mental hospitals to recipients on convalescent leave from the center;
  - (2) methadone for use in drug treatment programs;
  - (3) personal care items such as non-prescription shampoos, soaps;
  - (4) cosmetic items, such as retin-A for aging skin, rogain for hair loss;
  - (5) drug items that are not eligible for federal financial participation, (i.e., drugs not approved as effective by the federal food and drug administration, known as DESI (drug efficacy study implementation) drugs; by the federal food and drug administration, or DESI drugs);
  - (6) fertility drugs;
  - (7) antitubercular drug items available from the New Mexico department of health or the United States public health service;
  - (8) weight loss/weight control drugs are covered with prior authorization;
  - (9) barbiturate hypnotic drugs, barbiturate drugs whose primary action is to induce sleep for recipients who do not reside in nursing homes; MAD covers barbiturate hypnotic drugs for recipients in nursing homes and for other recipients when authorized on a prior approval basis if related to an appropriate medical diagnosis;
- B. MAD covers certain non-prescription drug items without special authorization or prior authorization when prescribed by a licensed physician or other licensed practitioner. The billing and claims processing instructions providers receive once enrolled contain information on these drug items. The pharmacy must maintain the prescription, written request, or telephone order reduced to writing. Other non-prescription items can be considered on a prior approval basis when related to an appropriate medical diagnosis requiring an ongoing course of treatment.
- C. MAD covers routine non-prescription drug items supplied in nursing facilities or intermediate care facilities for the mentally retarded with specified restrictions.
- (1) Routine items are included in the facility's reimbursable cost and cannot be charged to the recipient or billed to Medicaid by providers.
  - (2) Routine drug items, include the following:
    - (a) laxatives;
    - (b) stool softeners;
    - (c) diabetic testing supplies and equipment;
    - (d) alcohol and body rubs;
    - (e) aspirin and acetaminophen;
    - (f) antacids and other agents for treating ulcers;
    - (g) ointments, lotions and creams;

and

(h) other non-prescription items stocked at nursing stations and distributed or used individually in small quantities. [8.324.4.14 NMAC - Rp, 8 NMAC 4.MAD.753.5, 8/13/04]

**8.324.4.15 PRIOR AUTHORIZATION AND UTILIZATION REVIEW:** All Medicaid services are subject to utilization review for medical necessity and program compliance. Reviews can be performed before services are furnished, after services are furnished and before payment is made, or after payment is made. See 8.302.5 NMAC, *Prior Authorization and Utilization Review*. Once enrolled, providers receive instructions and documentation forms necessary for prior authorization and claims processing. Review or prior authorization may be required for items for which a lesser expensive or therapeutically preferred alternative should be used first. Establishing these therapeutic "step" requirements will be based on published clinical practice guidelines, professional standards of health care, and economic considerations.

A. **Prior authorization:** MAD reviews all requests for prior authorization on special drug requests. The MAD utilization review (UR) contractor grants prior authorization on durable medical equipment and medical supplies which can be dispensed by pharmacy services providers. Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process.

B. **Eligibility determination:** Prior authorization of services does not guarantee that individuals are eligible for Medicaid. Providers must verify that individuals are eligible for Medicaid at the time services are furnished and determine if Medicaid recipients have other health insurance.

C. **Reconsideration:** Providers who disagree with prior authorization request denials or other review decisions can request a re-review and a reconsideration. See 8.350.2 NMAC, *Reconsideration of Utilization Review Decisions* [MAD-953].

D. **Drug utilization review:** The MAD drug utilization review (DUR) program is designed to assess the proper utilization, quality, therapy, medical appropriateness and costs of prescribed medication through evaluation of claims data, as required by 42 CFR 456.700-716. The DUR program is done on a retrospective, prospective and concurrent basis. This program shall include, but is not limited to, data gathering and analysis and a mix of educational interventions related to over-utilization, under-utilization, therapeutic

duplication, drug-to-disease and drug-to-drug interactions, incorrect drug dosage or duration of treatment and clinical abuse or misuse. Information collected in the DUR program that identifies individuals is confidential and may not be disclosed by the MAD DUR board to any persons other than those identified as the recipient's service providers or governmental entities legally authorized to receive such information.

(1) **Prospective drug use review:** Prospective DUR (ProDUR) is the screening for potential drug therapy problems (such as, over-utilization, under-utilization, incorrect drug dosage, therapeutic duplication, drug-disease contraindication, adverse interaction, incorrect duration of drug therapy, drug-allergy interactions, clinical abuse or misuse) before each prescription is dispensed. The dispensing pharmacist is required to perform prospective drug use review prior to dispensing. Only a licensed pharmacist or intern may perform ProDUR activities. The pharmacist may be required to insert appropriate DUR override codes when the ProDUR system detects drug therapy issues. In retrospective review of paid claims, payment may be recouped for claims in which the pharmacist has not followed accepted standards of professional practice.

(2) **Counseling:** Pursuant to 42 CFR 456.705, each dispensing pharmacist must offer to counsel each Medicaid recipient receiving benefits (or the caregiver of such individual) who presents a new prescription, unless the recipient refuses such counsel. Pharmacists must document these refusals. If no documentation of refusal of counseling is available or readily retrievable, it will be assumed that appropriate counseling and prospective drug use review has taken place. A reasonable effort must be made to record and maintain the pharmacist's comments relevant to said counseling and prospective drug review, particularly when ProDUR overrides are performed. Counseling must be done in person, whenever practicable. If it is not practicable to counsel in person, providers whose primary patient population do not have access to a local measured telephone service must provide access to a toll-free number.

[8.324.4.15 NMAC - Rp, 8 NMAC 4.MAD.753.7, 8/13/04]

**8.324.4.16 REIMBURSEMENT:** Pharmacy providers must submit claims for reimbursement on the separate pharmacy claim form or its successor. See 8.302.2 NMAC, *Billing for Medicaid Services* and 8.324.4.17 NMAC, *Pharmacy Point of Sale*. Once enrolled, providers receive instructions on documentation, billing and claims processing.

A. **General reimbursement methodology:** MAD's total reim-

bursment for a prescription drug must not exceed the lowest of the estimated acquisition cost (EAC), the maximum allowable cost (MAC), the federal upper limit (FUL), or the usual and customary charge.

(1) **Estimated acquisition cost (EAC).** MAD determines EAC as follows:

(a) MAD establishes EAC, defined as MAD's approximation of the net or actual acquisition costs of such drugs to pharmacies in New Mexico for all covered drugs, following consultation with representatives of the New Mexico pharmacy profession. Dispensing fees are in addition to EAC.

(b) The factors MAD considers in setting rates for drugs under this subparagraph include:

(i) product cost, which may vary among purchasing contracts;

(ii) MAD's documented clinical concerns;

(iii) MAD's budget limits; and

(iv) the actual package size dispensed.

(c) MAD uses the EAC as MAD's reimbursement for a drug when the EAC, plus a dispensing fee established by MAD, is the lowest of the rates calculated under the methods listed in general reimbursement methodology, Subsection A of 8.324.4.16 NMAC.

(d) EAC cannot exceed the lowest of the current published average wholesale price of a drug less a percentage established by the department or EAC, determined by reference to other pricing information sources selected by MAD pursuant to general reimbursement methodology, Subsection A of 8.324.4.16 NMAC.

(2) **Maximum allowable cost (MAC); MAC methodology.** MAD establishes a maximum allowable cost (MAC) applicable for certain multiple-source drugs with FDA rated therapeutic equivalents and certain over-the-counter drugs and non-drug items on the following basis:

(a) at least one A-rated generic (as listed in the FDA orange book) is readily available to New Mexico pharmacies;

(b) the state MAC for the brand name drug products and for all A-rated therapeutic equivalents shall be determined by taking the lowest available cost for all of the A-rated therapeutic equivalent drugs regardless of manufacturer, and multiplying that by cost a factor set by MAD to cover the pharmacy's estimated administration and overhead plus a dispensing fee;

(c) the state MAC list will be updated at least quarterly, with on-going adjustments due to pricing changes and availability issues;

(d) all products on the state MAC list will be reviewed at a minimum every 6

months;

(e) if a "federal upper limit" (FUL) has been set for a product, then the MAC will not be applied if the FUL ingredient reimbursement rate is lower than the MAC reimbursement rate;

(f) MAC will not be applied if the calculation equals an amount greater than the current EAC, as defined in estimated acquisition costs in Paragraph (1) of Subsection A of 8.324.4.16 NMAC;

(g) MAC will not be applied if a specific brand has been determined to be medically necessary, in which event the reimbursement rate will be the EAC of the product dispensed plus the dispensing fee;

(h) for over-the-counter drugs and non-drug items, MAC may be established using the pricing sources in Subsection B of 8.324.16 NMAC.

(3) **Federal upper limit (FUL) methodology:**

(a) MAD adopts the FUL that is set by the centers for medicare and medicaid services (CMS).

(b) MAD's maximum payment for multiple-source drugs for which CMS has set FULs will not exceed, in the aggregate, the prescribed upper limits plus the dispensing fees set by MAD under the dispensing fee determination.

(c) Except as provided in MAC methodology and in subparagraph (4) below, MAD uses the FUL as MAD's reimbursement rate for all FDA A-rated, therapeutic-equivalent drugs when the FUL price, plus a dispensing fee, is the lowest of the rates calculated under the methods listed in general reimbursement methodology, Subsection A of 8.324.4.16 NMAC.

(d) MAD will not use the individual drug FUL as MAD's reimbursement rate when the prescribing physician has certified that a specific brand is medically necessary, in which event the reimbursement rate will be the EAC of the product dispensed plus the dispensing fee.

(4) **Usual and customary charge:**

(a) The provider's billed charge must be its usual and customary charge for services. Over-the-counter items must be billed with the over-the-counter price as the usual and customary charge, unless it is labeled and dispensed as a prescription.

(b) "Usual and customary charge" refers to the amount that the individual provider charges the general public in the majority of cases for a specific procedure or service.

(c) Usual and customary charges must reflect discounts given to non-medicare recipients for certain reasons, such as age or nursing home residents, when a medicare recipient meets the standards for the discount. Medicaid must be given the advantage of discounts received by the gen-

eral public, including promotions or items sold at cost to the general public, if these are the prices usually and customarily charged to non-medicare recipients.

(d) Providers must not add additional costs for their time, paperwork, or anticipated turnaround time for payment.

(5) **340B drug discount:** Drugs purchased under section 340B of the Public Health Service Act, 42 USC 256b, and dispensed to medicare recipients will be reimbursed at established rates, after consultation with representatives of the New Mexico pharmacy profession;

(6) **Medicare reimbursement:** Reimbursement may be limited to medicare reimbursement limits where the total of the medicare-allowed amounts plus, if applicable, a dispensing fee, is the lowest of EAC, MAC, FUL, usual and customary charge or 340B drug discount amount as defined in Subsection A of 8.324.16 NMAC, *Reimbursement*;

B. **Pricing information to set EAC and MAC:** MAD selects the sources for pricing information used to set EAC and MAC. These sources may include pharmaceutical wholesalers, manufacturers, drug data information clearinghouses (e.g., first data bank) and pharmacy invoices.

C. **Assistance in establishing EAC and MAC:** MAD may solicit assistance from pharmacy providers, pharmacy benefit managers (PBMs), other government agencies, actuaries, and/or other consultants when establishing EAC and/or MAC.

D. **Pharmacy provider reductions:** If the pharmacy provider offers a discount, rebate, promotion or other incentive that directly relates to the reduction of the price of a prescription to the individual non-medicare customer, the provider must similarly reduce its charge to MAD for the prescription.

E. **No claims for free products:** If a pharmacy gives a product free to the general public, the pharmacy must not submit a claim to MAD when giving the free product to a medicare recipient.

F. **Solutions:** Solutions, such as saline for nebulizers, intravenous (IV) solutions without additives, irrigation solutions, and diluents are considered medical supply items for reimbursement purposes. See 8.350.3 NMAC, *Durable Medical Equipment and Medical Supplies* [MAD-754].

G. **Non-drug items:** Urine test reagents, nutritional products, equipment and medical supplies, including syringes and alcohol swabs, are subject to restrictions for medical supplies. See 8.324.5 NMAC, *Durable Medical Equipment and Medical Supplies* [MAD-754].

(1) When a pharmacy does not

provide the ongoing clinical monitoring and care coordination involved with an episode of home infusion therapy, the NCPDP claim format must be used for billing the involved drugs. If the pharmacy's business includes providing ongoing clinical monitoring and care coordination related to an episode of home infusion therapy, the drugs must be billed in CMS-1500 or ASC X12N 837 format, or as otherwise consistent with federally required national standards. When an order for infusion therapy includes medical supply items that do not have NDC numbers assigned to them by the manufacturer, repackager or labeler, those items must be billed in the CMS-1500 or ASC X12N 837 format, or as otherwise consistent with federally required national standards.

(2) Reimbursement is calculated for the medical supply portion according to medical supply regulations and for the drug portion under these regulations. [8.324.4.16 NMAC - Rp, 8 NMAC 4.MAD.753.8, 8/13/04]

#### **8.324.4.17 POINT OF SALE:**

The point-of-sale system provides relevant drug utilization information that the pharmacist must consider before dispensing a drug. If utilization information indicates that a recipient has an adequate supply of the drug item or that the quantity being dispensed is excessive, the claim will initially be denied. The pharmacist is responsible for resolving the issue and obtaining an authorization to dispense the drug, if necessary.

**A. General requirements:** All in-state and border area pharmacy providers are required to submit claims through the point-of-sale system.

**B. Exceptions to general requirements:** The following are exceptions to this general requirement:

(1) the provider is out-of-state and not a border area provider;

(2) the provider is a family planning clinic dispensing prescriptions;

(3) the provider submitted less than fifty (50) claims per month average to MAD for the preceding six (6)-month period;

(4) the provider dispenses prescriptions only to recipients in nursing facilities;

(5) the claim requires an attachment or explanation; and

(6) a required data element on the claim cannot be entered in the current standard point-of-sale format.

[8.324.4.17 NMAC - Rp, 8 NMAC 4.MAD.753.9, 8/13/04]

#### **8.324.4.18 PRESCRIPTIONS AND REFILLS:**

**A. Dispensing frequencies:** Medicaid limits the frequency for

which it reimburses the same pharmacy for dispensing the same drug to the same recipient.

(1) The limitation is established individually for each drug.

(2) Some drugs are subject to a maximum of three (3) times in ninety (90) days with a twenty (20)-day grace period to allow for necessary early refills.

(3) Certain drugs are given more flexibility due to their specific dosage forms, packaging or clinical concerns.

(4) The excessive dispensing limitation applies regardless of whether the claim is for a new prescription or refill.

**B. Refill requirements:** Refills must be consistent with the dosage schedule prescribed and with all applicable federal and state laws.

**C. Quantities dispensed:** Maintenance drugs are those on the MAD-approved maintenance drug list. For recipients with likely continuous eligibility due to age, disability or eligibility policy, prescriptions for maintenance drugs may be dispensed in amounts up to a ninety (90)-day supply. Prescriptions for non-maintenance drugs may be dispensed in up to 34 (thirty-four)-day supplies. Oral contraceptives may be dispensed for up to a one-year supply if the appropriate contraceptive for the recipient has been established.

(1) Pharmacy providers shall not reduce prescriptions for maintenance drugs that are written for quantities larger than a thirty-four (34)-day supply and may dispense up to a 90 (ninety)-day supply. MAD considers prescription splitting to be fraudulent. Pharmacies that do not have the entire prescribed amount on hand may dispense a partial fill.

(2) Coverage may be limited by the end date of the recipient's span of eligibility at the time of dispensing.

(3) Pharmacists are encouraged to consult with prescribers to achieve optimal drug therapy outcomes, consistent with NMSA 1978, Section 61-11-2(V).

**D. Unit dose packaging:** MAD does not pay for unit dose packaging or for prefilling syringes. MAD does reimburse for commercial unit dose packaged drugs.

**E. Prevention of abuse:** Drug items are to be dispensed for legitimate medical needs only. If the pharmacist suspects the recipient of over-utilizing or abusing drug services, the pharmacist must contact the provider and MAD so that the recipient's use of medications can be reviewed.

**F. Mail service pharmacy:** MAD may provide a mail service pharmacy for recipient use.

(1) The mail service pharmacy is available as an option to all medicaid recipients.

(2) Retail pharmacies may mail, ship or deliver prescriptions to medicaid recipients consistent with applicable state and federal statutes and regulations.

[8.324.4.18 NMAC - Rp, 8 NMAC 4.MAD.753.10, 8/13/04]

#### **HISTORY OF 8.324.4 NMAC:**

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:

ISD 310.0700, Pharmacy Services, filed 2/29/80.

ISD 310.0700, Drug Services, filed 2/10/81.

ISD 310.0700, Drug Services, filed 7/8/82.

ISD Rule 310.0700, Drug Services, filed 3/1/83.

ISD Rule 310.0700, Drug Services, filed 2/15/89.

ISD Rule 310.0700, Drug Services, filed 7/9/84.

MAD Rule 310.07, Drug Services, filed 3/31/89.

MAD Rule 310.07, Drug Services, filed 1/3/92.

MAD Rule 310.07, Drug Services, filed 4/20/92.

MAD Rule 310.07, Drug Services, filed 12/8/94.

#### **History of Repealed Material:**

MAD Rule 310.07, Drug Services, filed 12/8/94 - Repealed effective 2/1/95.

8 NMAC 4.MAD.753, Pharmacy Services, filed 1/18/95 - Repealed effective 8/13/04.

### **NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION**

This is an amendment to 8.315.4 NMAC, Sections 9, 10, 11, 16 and 21, which will be effective on August 13, 2004. The Medical Assistance Division amended the sections in order to correct citation errors and omissions to specific citations and form numbers.

#### **8.315.4.9 PERSONAL CARE OPTION SERVICES:**

Personal care option (PCO) is a program for qualified individuals 21 years of age or older who are eligible for full medicaid coverage, and meet the nursing facility (high or low NF) level of care criteria pursuant to ~~[8.312.2 NMAC, Nursing Facilities [MAD 731]]~~ Attachment II of 8.312.2-UR, Long Term Care Services Utilization Review Instructions for Nursing Facilities. These utilization review instructions can be obtained from the medical assistance division. It should be noted that personal care services for individuals under the age of 21 are reimbursed by the New Mexico medicaid program through the early periodic screening, diagnostic and treatment

(EPSDT) services described in 8.323.2 NMAC, *EPSDT Personal Care Services*.

A. The goal of the PCO program is to avoid institutionalization, maintain or increase the individual's functional level and maintain or increase the individual's independence. The PCO program does not provide services 24 hours a day. PCO is a medicaid service, not a medicaid category, and services under this option are delivered pursuant to a personal care service plan (PCSP). PCO services include a range of services to consumers who are unable to perform some/all activities of daily living (ADLs) or independent activities of daily living (IADLs) because of a disability or a functional limitation(s). PCO services permit an individual to live in his or her home rather than an institution and allow him or her to maintain or increase independence. These services include, but are not limited to, bathing, dressing, grooming, eating, toileting, shopping, transporting, caring for assistance animals, cognitive assistance and communicating.

B. An individual may be physically capable of performing ADLs or IADLs but may have limitations in performing these activities because of a cognitive impairment. PCO services may be required because a cognitive impairment prevents an individual from knowing when or how to carry out the task. In such cases, personal care may include cueing along with supervision to ensure that the individual performs the task properly.

C. Individuals eligible for PCO services will have the option of choosing the consumer-directed personal care model or the consumer-delegated personal care model. Under both models, the consumer may select a family member (except a spouse), friend, neighbor or other individual as their attendant. The consumer-directed model allows the consumer to act as the employer, oversee his/her own service care delivery, and is required to work with a fiscal intermediary agency to process all financial paperwork to medicaid. Under the consumer-delegated model, the consumer chooses the agency to perform all employer-related tasks and the agency is responsible for ensuring all service delivery to the consumer.

D. The third-party assessor or MAD's designee is responsible for explaining both models to each individual initially and annually thereafter, assessing each individual applying for PCO services, making a medical level of care determination and allocating PCO services based on that individual's needs. Medicaid-eligible individuals or their personal representatives (as defined in 8.300.2.7 NMAC) may contact their SALUD! managed care organization (MCO) or MAD's designated third-party assessor to apply for personal care

services.

[8.315.4.9 NMAC - Rp 8 NMAC 4.MAD.738, 7/1/04; A, 8/13/04]

**8.315.4.10 CONSUMER - DIRECTED PERSONAL CARE:** The consumer or the consumer's personal representative retains responsibility for performing employer-related tasks.

**A. The consumer's or personal representative's responsibilities include:**

(1) interviewing, hiring, training, terminating, and scheduling personal care attendants. This includes, but is not limited to:

(a) verifying that the attendant possesses a current/valid New Mexico driver's license if there are any driving-related activities listed on the personal care service plan (PCSP); a copy of the driver's license must be in the attendant's personnel file;

(b) verifying that the attendant has proof of current liability automobile insurance if the consumer is to be transported in the attendant's vehicle at any time;

(c) identifying training needs for the attendants.

(2) developing a list of attendants who can be contacted when an unforeseen event occurs that prevents the consumer's regularly scheduled attendant from providing services;

(3) verifying that services have been rendered by completing, signing and submitting documentation the agency for payroll; a consumer or his/her personal representative is responsible for ensuring the submission of accurate timesheets; payment shall not be issued without appropriate documentation;

(4) notifying the agency, within one (1) working day, of the date of hire and/or the date of termination of his/her attendant;

(5) notifying and submitting a report of an incident to the agency, within 24 hours, so that the agency can submit an incident report to MAD or its designee on behalf of the consumer; the consumer or his/her personal representative is responsible for completing the incident report;

(6) ensuring that the elected individual for hire has submitted to a request for a nationwide criminal history screening, pursuant to 7.1.9 NMAC and in accord with NMSA 1978, Section 29-17-1 of the Caregivers Criminal History Screening Act, within 30 days of the individual beginning employment; the consumer must work with the elected agency to complete all paperwork required for submitting the nationwide criminal history screening; the consumer may conditionally (temporarily) employ the individual contingent upon the receipt of written notice of the nationwide criminal history screening; a consumer may

not continue employing an attendant who does not successfully pass a nationwide criminal history screening; and

(7) obtaining from the attendant a signed agreement, in which the attendant agrees that he will not provide PCO services while under the influence of drugs and/or alcohol and acknowledges that if he is under the influence of drugs and/or alcohol while providing PCO services he will be immediately terminated; the consumer or his personal representative shall not employ an attendant who has previously been terminated from employment for use of drugs and/or alcohol while providing PCO services;

(8) ensuring that if the consumer's legal guardian or attorney-in-fact is the elected individual for hire, prior approval has been obtained from MAD or its designee prior to employing that individual; any PCO services provided by the consumer's legal guardian or attorney-in-fact *MUST* be justified, in writing, by the PCO agency and consumer and submitted for approval to MAD or its designee prior to employment; the justification must demonstrate and prove the lack of other qualified attendants in the applicable area; documentation of approval by MAD or its designee must be maintained in the consumer's file; the consumer is responsible for immediately informing the agency if the consumer has appointed or elects a legal guardian or attorney-in-fact any time during the plan year.

**B. The consumer-directed personal care agency's responsibilities include:**

(1) furnishing services to medicaid consumers that comply with all specified medicaid participation requirements outlined in 8.302.1 NMAC, *General Provider Policies*;

(2) verifying every month that all consumers are eligible for full medicaid coverage prior to furnishing services pursuant to Subsection A of 8.302.1.11 NMAC, *General Provider Policies*; agencies must document the date and method of eligibility verification; possession of a medicaid card does not guarantee a consumer's financial eligibility because the card itself does not include financial eligibility, dates or other limitations on the consumer's financial eligibility; agencies that provide PCO services to consumers who are not financially eligible cannot bill medicaid or the consumer for PCO services rendered to the consumer;

(3) maintaining records that are sufficient to fully disclose the extent and nature of the services furnished to the consumers as outlined in 8.302.1 NMAC, *General Provider Policies*;

(4) passing random and targeted audits, conducted by the department or its audit agent, that ensure agencies are billing appropriately for services rendered; the

department or its designee will seek recoupment of funds from agencies when audits show inappropriate billing for services;

(5) providing either the consumer-directed or the consumer-delegated models, or both models;

(6) furnishing their consumers, upon request, with information regarding each model; if the consumer chooses a model that an agency does not offer, the agency must refer the consumer to an agency that offers that model; the third-party assessor is responsible for explaining each model in detail to consumers on an annual basis;

(7) maintaining appropriate record keeping of services provided and fiscal accountability as required by the ~~[MAD 342]~~ MAD 335;

(8) ensuring that each consumer served has a current, approved PCSP on file;

(9) performing the necessary nationwide criminal history screening, pursuant to 7.1.9 NMAC and in accord with NMSA 1978, Section 29-17-1 of the Caregivers Criminal History Screening Act, on all potential personal care attendants; nationwide criminal history screenings must be performed by an agency certified to conduct such checks; the agency must work with the consumer to ensure the paperwork is submitted within the first 30 days of hire; consumers under the consumer-directed model may conditionally (temporarily) employ an attendant until such check has been returned from the certified agency; if the attendant does not successfully pass the nationwide criminal history screening, the consumer may not continue to employ the attendant;

(10) obtaining from the consumer or his personal representative a signed agreement with the attendant in which the attendant agrees that he will not provide PCO services while under the influence of drugs and/or alcohol and acknowledges that if he is under the influence of drugs and/or alcohol while providing PCO services he will be immediately terminated; the agency must maintain a copy of the signed agreement in the attendant's personnel file, for the consumer.

(11) obtaining a signed agreement from each consumer accepting responsibility for all aspects of care and training not included under the consumer-directed option; mandatory training in CPR and first aid for all attendants, competency testing, TB testing, hepatitis B immunizations and supervisory visits are not included in the consumer-directed option; a copy of the signed agreement must be maintained in the consumer's file;

(12) verifying that if the consumer has elected the consumer's legal guardian or attorney-in-fact as his/her atten-

dant, the agency and the consumer has obtained prior approval from MAD or its designee; any personal care services provided by the consumer's legal guardian or attorney-in-fact *MUST* be justified, in writing, by the agency and consumer and submitted for approval to MAD or its designee prior to employment; the justification must demonstrate and prove the lack of other qualified attendants in the applicable area; documentation of approval by MAD or its designee must be maintained in the consumer's file; the agency must inform the consumer that if the consumer is appointed or elects a legal guardian or attorney-in-fact any time during the plan year, the consumer must notify the agency immediately and the agency must ensure appropriate documentation is maintained in the consumer's file;

(13) producing reports as required by the department;

(14) verifying that consumers will not be receiving services through the following programs while they are receiving PCO services: a medicaid home and community-based waiver (HCBW), medicaid nursing facility (NF), intermediate care facility/mentally retarded (ICF/MR), PACE, CYFD attendant care program, or medicaid hospice; an individual residing in a NF or ICF/MR or receiving community-based services is eligible to apply for PCO services; all individuals must meet the financial/medical eligibility requirements under the PCO program to receive PCO services; the third-party assessor, MAD, or its designee must conduct an assessment or evaluation to determine if the transfer is appropriate and if the PCO program would be able to meet the needs of that individual;

(15) processing all claims for PCO services; payment shall not be issued without appropriate documentation;

(16) making a referral to an appropriate social service or legal agency(s) for assistance, if the agency questions whether the consumer is able to direct his/her own care.

(17) establishing and explaining to the consumer the necessary payroll documentation needed for reimbursement of PCO services, such as time sheets and tax forms;

(18) performing payroll activities for the attendants, such as, but not limited to, income tax and social security withholdings;

(19) informing the consumer and his/her attendant on the responsibilities of the agency;

(20) arranging for state of New Mexico workers' compensation insurance for all attendants;

(21) informing the consumer of available resources for necessary training, if requested by the consumer, in the following areas:

(a) hiring, recruiting, training, and supervision of attendants, including advertising and interviewing techniques; and

(b) evaluating methods of attendant competence and effectiveness.

(22) submitting written incident reports to MAD or its designee, on behalf of the consumer, by fax, within 24 hours of the incident being reported to the agency; the agency must provide the consumer with an appropriate form for completion; reportable incidents may include, but are not limited to:

(a) abuse, neglect and exploitation:

(i) Abuse is defined as the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish to a consumer.

(ii) Neglect is defined as the failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness to a consumer.

(iii) Exploitation is defined as the deliberate misplacement or wrongful, temporary or permanent use of a consumer's belongings or money without the voluntary and informed consent of the consumer.

(b) death:

(i) Unexpected death is defined as any death of an individual caused by an accident, or an unknown or unanticipated cause.

(ii) Natural/expected death is defined as any death of an individual caused by a long-term illness, a diagnosed chronic medical condition, or other natural/expected conditions resulting in death.

(c) other reportable incidents:

(i) Environmental hazard is defined as an unsafe condition that creates an immediate threat to life or health of a consumer.

(ii) Law enforcement intervention is defined as the arrest or detention of a person by a law enforcement agency, involvement of law enforcement in an incident or event, or placement of a person in a correctional facility.

(iii) Emergency services refers to admission to a hospital or psychiatric facility or the provision of emergency services that results in medical care that is not anticipated for this consumer and that would not routinely be provided by a primary care provider.

(23) obtaining from the consumer a signed contract with the attendant in which the attendant acknowledges that if he is under the influence of drugs and/or alcohol while providing PCO service, it will be grounds for immediate termination;

(24) maintaining a consumer file and an attendant personnel file for the

consumer.

C. **Eligible consumer-directed agencies:** Personal care agencies must be certified by MAD or its designee. (A detailed guideline for all of the requirements can be obtained through MAD's fiscal agent.) To be certified by MAD or its designee, agencies must meet the following conditions and submit a packet (contents 1-5 described below) for approval to MAD's fiscal agent or its designee containing the following:

(1) a completed medicaid provider participation application [~~MAD 342~~] (MAD 335);

(2) copies of successfully passed nationwide caregivers criminal history screenings on employees who meet the definition of "caregiver" and "care provider" pursuant to 7.1.9 NMAC and in accord with NMSA 1978, Section 29-17-1 of the Caregivers Criminal History Screening Act;

(3) a copy of a current/valid business license or evidence of non-profit status; after certification, a copy of the business license/evidence of non-profit status must be kept current and submitted annually;

(4) proof of liability and workers' compensation insurance; after certification, proof of liability and workers' compensation insurance must be submitted annually;

(5) a copy of written policies and procedures that address:

(a) MAD's personal care option provider policies;

(b) personnel policies; and

(c) office requirements.

(i) Agencies must establish and maintain an official office for the conduct of business with posted hours of operation and a published phone number. Branch offices must be within a one hundred (100) mile radius of the agency's main office's physical location. In order to ensure the health and safety of consumer, the main agency can service up to a one hundred (100) mile radius of the agency's physical location. The satellite office can also service up to one hundred (100) mile radius of its actual physical location.

(ii) Agencies offices must meet all Americans with Disabilities Act (ADA) requirements.

(iii) If agencies have branch offices, the branch office must have a qualified on-site administrator to handle day-to-day operations who receives direction and supervision from the main/central office.

(d) quality improvement program to ensure adequate and effective operation, including documentation of quarterly activities that address, but are not limited to:

(i) service delivery;

(ii) operational activities;

(iii) quality improvement action plan; and

(iv) documentation of activities.

(6) a copy of a current and valid home health license, issued by the department of health, division of health improvement, licensing and certification (pursuant to 7.28.2 NMAC) may be submitted in lieu of requirements (3) and (5) above. After certification, a copy of a current and valid home health license must be submitted annually along with proof of liability and workers' compensation insurance;

(7) after the packet is received and reviewed by MAD or its designee, the agency will be contacted to complete the rest of the certification process. This will require the agency to:

(a) attend a mandatory MAD or its designee's provider training session prior to the delivery of PCO services; and

(b) possess a letter from MAD or its designee changing provider status from "pending" to "active".

(8) any professional authorized to complete the medical assessment form (MAD 075) under the PCO program cannot also become a personal care agency.

D. **The consumer-directed personal care attendant responsibilities and requirements include:**

(1) being hired by the consumer;

(2) not being the spouse or minor child of the consumer pursuant to 42 CFR Section 440.167 and CMS state medicaid manual section 4480-D;

(3) providing the consumer with proof of and copies of current/valid New Mexico driver's license and motor vehicle insurance policy if the attendant will be transporting the consumer;

(4) being 18 years of age or older;

(5) ensuring that if the attendant is the consumer's legal guardian or attorney-in-fact and is the elected individual for hire, prior approval has been obtained from MAD or its designee; any PCO services provided by the consumer's legal guardian or attorney-in-fact *MUST* be justified, in writing, by the agency and consumer and submitted for approval to MAD or its designee prior to employment; the justification must demonstrate and prove the lack of other qualified attendants in the applicable area; documentation of approval by MAD or its designee must be maintained in the consumer's file; and

(6) successfully passing a nationwide criminal history screening, pursuant to 7.1.9 NMAC and in accord with NMSA 1978, Section 29-17-1 of the Caregivers Criminal History Screening Act, performed by an agency certified to conduct such checks; attendants are required to submit to a criminal history screening within the first 30 days of hire; an attendant may be condi-

tionally (temporarily) hired by the consumer contingent upon the receipt of written notice of the nationwide criminal history screening; attendants who do not successfully pass a nationwide criminal history screening are not eligible for continued employment under the PCO program.

(7) Ensuring while employed as an attendant he will not be under the influence of drugs and/or alcohol while performing PCO services; the attendant must complete and sign an agreement with the consumer or the consumer's personal representative in which the attendant acknowledges that if he is under the influence of drugs and/or alcohol while providing PCO services he will be immediately terminated; attendants who have been terminated for use of drugs and/or alcohol while providing PCO services are not eligible for further employment under the PCO program.

[8.315.4.10 NMAC - Rp 8 NMAC 4.MAD.738.1, 7/1/04; A, 8/13/04]

**8.315.4.11 CONSUMER-DELEGATED PERSONAL CARE:** The agency contracts with the department to perform employer-related tasks.

A. **The consumer-delegated agency responsibilities** include, but are not limited to the following:

(1) employing, terminating and scheduling qualified attendants;

(2) training all attendants for a minimum of twelve (12) hours per year; initial training must be completed within the first three (3) months of employment and must encompass:

(a) an overview of the PCO program;

(b) living with a disability in the community;

(c) cardiopulmonary resuscitation (CPR) and first aid training; and

(d) a written competency test with a minimum passing score of seventy-five (75%) or better; expenses for all trainings are to be incurred by the agency; other trainings may take place throughout the year as determined by the agency; the agency must maintain in the attendant's file copies of all trainings, certifications, and specialty training the attendant completed. CPR and first aid certifications must be kept current;

(i) documentation of all training must include at least the following information: 1) name of individual taking training; 2) title, purpose, and objectives of class; 3) name of instructor; 4) number of hours of instruction; 5) date instruction was given;

(ii) documentation of competency testing must include at least the following: 1) name of individual being evaluated for competency; 2) date and method used to determine competency; 3) copy of the attendant's competency test in



the attendant's personnel file.

(3) submitting to the department of health (DOH) for inclusion on the PCO attendant registry names of all qualified PCO attendants who have completed the required training and competency testing per subparagraphs (a) through (d) of Paragraph (2) of Subsection A of 8.315.4 NMAC; the agency must verify with DOH that PCO attendants previously employed by other PCO agencies are in good standing with DOH on the PCO attendant registry and cannot employ attendants who are not in good standing;

(4) developing and maintaining a registry of trained and qualified attendants as backup for regularly scheduled attendants and emergency situations; complete instructions regarding the consumer's care and a list of attendant duties and responsibilities must be available in each consumer's home;

(5) informing the attendant of the risks of hepatitis B infection and offering hepatitis B immunization at the time of employment at no cost to the attendant; attendants are not considered to be at risk for hepatitis B since only non-medical services are performed; therefore, attendants may refuse the vaccine; documentation of the immunization, prior immunization, or refusal of immunization by the attendant must be in the attendant's personnel file;

(6) providing the attendant with information on community resources and information about the specific populations being served;

(7) obtaining a copy of the attendant's current/valid New Mexico driver's license and a copy of the motor vehicle insurance policy if the consumer is to be transported by the attendant; copies of the driver's license and motor vehicle insurance policy must be maintained in the attendant's personnel file;

(8) complying with federal and state regulations and labor laws;

(9) preparing all documentation necessary for payroll; and

(10) producing reports as required by the department.

(11) complying with all specified medicaid participation requirements outlined in 8.302.1 NMAC, *General Provider Policies*;

(12) verifying every month that all consumers are eligible for full medicaid coverage prior to furnishing services pursuant to Subsection A of 8.302.1.11 NMAC, *General Provider Policies*; agencies must document the date and method of eligibility verification; possession of a medicaid card does not guarantee a consumer's financial eligibility because the card itself does not include financial eligibility, dates or other limitations on the consumer's financial eligibility; agencies that provide PCO services

to consumers who are not financially eligible cannot bill medicaid or the consumer for PCO services rendered to the consumer;

(13) maintaining records that are sufficient to fully disclose the extent and nature of the services furnished to the consumers as outlined in 8.302.1 NMAC, *General Provider Policies*;

(14) passing random and targeted audits, conducted by the department or its audit agent, that ensure agencies are billing appropriately for services rendered; the department or its designee will seek recoupment of funds from agencies when audits show inappropriate billing for services;

(15) providing either the consumer-directed or the consumer-delegated models, or both models;

(16) furnishing their consumers, upon request, with information regarding each model; if the consumer chooses a model that an agency does not offer, the agency must refer the consumer to an agency that offers that model; the third-party assessor is responsible for explaining each model in detail to consumers on an annual basis;

(17) maintaining appropriate record keeping of services provided and fiscal accountability as required by the [MAD 312] MAD 335;

(18) ensuring that each consumer served has a current, approved PCSP on file;

(19) performing the necessary nationwide criminal history screening, pursuant to 7.1.9 NMAC and in accord with NMSA 1978, Section 29-17-1 of the Caregivers Criminal History Screening Act; the agency must ensure that the individual has submitted to a request for a nationwide criminal history screening within 30 days of the individual beginning employment; nationwide criminal history screening must be performed by an agency certified to conduct such checks; agencies under the consumer-delegated model may conditionally (temporarily) employ an attendant until the nationwide criminal history screening has been returned from the certified agency; if the attendant does not successfully pass a nationwide criminal history screening, the agency may not continue employment;

(20) obtaining from the attendant a signed agreement, in which the attendant agrees that he will not provide PCO services while under the influence of drugs and/or alcohol and acknowledges that if he is under the influence of drugs and/or alcohol while providing PCO services he will be immediately terminated; the agency shall not employ an attendant who has previously been terminated from employment for use of drugs and/or alcohol while providing PCO services;

(21) ensuring that if the consumer has elected the consumer's legal guardian or

attorney-in-fact as his/her attendant, the agency has obtained prior approval from MAD or its designee; any PCO services provided by the consumer's legal guardian or attorney-in-fact *MUST* be justified, in writing, by the agency and consumer and submitted for approval to MAD or its designee prior to employment; the justification must demonstrate and prove the lack of other qualified attendants in the applicable area; documentation of approval by MAD or its designee must be maintained in the consumer's file; the agency must inform the consumer that if the consumer is appointed or elects a legal guardian or attorney-in-fact any time during the plan year, they must notify the agency immediately;

(22) producing reports as required by the department;

(23) verifying that consumers will not be receiving services through the following programs, while they are receiving PCO services: a medicaid home and community-based waiver (HCBW), medicaid nursing facility (NF), intermediate care facility/mentally retarded (ICF/MR), PACE, CYFD attendant care program, or medicaid hospice; an individual residing in a NF or ICF/MR or receiving community-based services is eligible to apply for PCO services; all individuals must meet the financial/medical eligibility requirements under the PCO program to receive PCO services; the third-party assessor, MAD, or its designee must conduct an assessment or evaluation to determine if the transfer is appropriate and if the PCO program would be able to meet the needs of that individual;

(24) processing all claims for PCO services; payment shall not be issued without appropriate documentation;

(25) making a referral to an appropriate social service or legal agency(s) for assistance, if the agency questions whether the consumer is able to direct his/her own care;

(26) establishing and explaining to all their consumers and all attendants the necessary payroll documentation needed for reimbursement of PCO services, such as time sheets and tax forms;

(27) performing payroll activities for the attendants, such as, but not limited to income tax and social security withholdings;

(28) informing the consumer and his/her attendant on the responsibilities of the agency;

(29) providing state of New Mexico workers' compensation insurance for all attendants;

(30) submitting written incident reports to MAD or its designee, by fax, within 24 hours of the incident being reported to the agency; reportable incidents may include, but are not limited to:

(a) abuse, neglect and exploita-

tion:

(i) Abuse is defined as the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish to a consumer.

(ii) Neglect is defined as the failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness to a consumer.

(iii) Exploitation is defined as the deliberate misplacement or wrongful, temporary or permanent use of a consumer's belongings or money without voluntary and informed consent of the consumer.

(b) death:

(i) Unexpected death is defined as any death of an individual caused by an accident, or an unknown or unanticipated cause.

(ii) Natural/expected death is defined as any death of an individual caused by a long-term illness, a diagnosed chronic medical condition, or other natural/expected conditions resulting in death.

(c) other reportable incidents:

(i) Environmental hazard is defined as an unsafe condition that creates an immediate threat to life or health of a consumer.

(ii) Law enforcement intervention is defined as the arrest or detention of a person by a law enforcement agency, involvement of law enforcement in an incident or event, or placement of a person in a correctional facility.

(iii) Emergency services refers to admission to a hospital or psychiatric facility or the provision of emergency services that results in medical care that is not anticipated for this consumer and that would not routinely be provided by a primary care provider.

(31) conducting supervisory visits in the consumer's home, once a month at a minimum, which must include a face-to-face interview with the consumer, and/or his/her personal representative;

(32) documenting in the consumer's file the safety of the service and the quality of care provided to the consumer;

(33) arranging regular staff meetings and in-service training programs for attendants; agencies must bear expenses for all trainings but is not required to pay attendants for his/her training time; attendants must receive a minimum of 12 hours training per year, which must include CPR and first aid and should be in-conjunction with the consumers needs; agencies must ensure CPR and first aid trainings are completed within the first three (3) months of employment; agencies must annually resubmit to DOH the names of all qualified PCO attendants upon completion of their annual in-

service requirements; agencies must ensure that mandatory trainings are kept current and that copies of all trainings and certifications are in the attendant's personnel file;

(34) maintaining an accessible and responsive 24-hour communication system for consumers to use in emergency situations to contact the agency;

(35) maintaining a roster of trained and qualified attendants for backup of regular scheduling and emergencies;

(36) offering hepatitis B immunization at the time of employment at no cost to the attendant and inform the attendant of the risks of hepatitis B infection; the attendant may refuse hepatitis B vaccination; documentation of current immunization, prior immunization, or refusal of immunization must be maintained in the attendant's personnel file;

(37) obtaining a current tuberculosis (TB) skin test or chest x-ray upon initial employment; TB testing must be conducted thereafter, pursuant to the current standards of the department of health; the results of the TB skin test or chest x-ray must be documented in the attendant's personnel file; if the individual tests positive for TB, he/she cannot be hired as an attendant; the individual must be referred to his/her physician or to the department of health for infectious disease treatment; when the individual has received appropriate treatment, he/she may be employed as the attendant; there must be documentation of treatment from a medical professional in the attendant's personnel file; the agency must incur expenses for TB tests; and

(38) conducting or arranging for a written competency test (approved by MAD or its designee as stated in Paragraph (6) of Subsection B of 8.315.4.11 NMAC of these regulations), at the agency's expense, for all eligible attendants; the attendant must successfully pass a written test with seventy-five percent (75%) or better within the first three (3) months of employment; a copy of the test must be in the attendant's personnel file; special accommodations must be made for attendants who are not able to read or write or who speak/read/write a language other than English;

**B. Eligible consumer-delegated agencies:** Personal care agencies must be certified by the MAD or its designee. (A detailed guideline to all of the requirements can be obtained through MAD's fiscal agent.) To be certified by MAD or its designee, agencies must meet the following conditions and submit a packet (contents 1-5 described below) for approval to MAD's fiscal agent or its designee containing the following:

(1) a completed medicaid provider participation application [~~MAD 312~~] [MAD 335];

(2) copies of successfully passed

caregivers criminal history screenings on employees who meet the definition of "caregiver" and "care provider" pursuant to 7.1.9 NMAC and in accord with the Caregivers Criminal History Screening Act;

(3) a copy of a current/valid business license or evidence of non-profit status; after certification, a copy of the business license/evidence of non-profit status must be kept current and submitted annually;

(4) proof of liability and workers' compensation insurance; after certification, proof of liability and workers' compensation insurance must be submitted annually;

(5) a copy of written policies and procedures that address:

(a) MAD's personal care option provider policies;

(b) personnel policies; and

(c) office requirements.

(i) *Agencies must establish and maintain an official office for the conduct of business with posted hours of operation. Branch offices must be within a one hundred (100) mile radius of the agency's main office's physical location. In order to ensure the health and safety of consumer, the main agency can service up to a one hundred (100) mile radius of the agency's physical location. The satellite office can also service up to one hundred (100) mile radius of its actual physical location.*

(ii) Agencies must meet all Americans with Disabilities Act (ADA) requirements.

(iii) If agencies have branch offices, the branch office must have a qualified on-site administrator to handle day-to-day operations who receives direction and supervision from the main/central office.

(d) quality improvement program to ensure adequate and effective operation, including documentation of quarterly activity that address, but are not limited to:

(i) service delivery;

(ii) operational activities;

(iii) quality improvement action plan;

(iv) documentation of activities.

(6) a copy of the agency's written competency test for approval to MAD or its designee; an agency may elect to purchase a competency test or it may develop its own test; the test must address at least the following:

(a) communication skills;

(b) patient/client rights, including respect for cultural diversity;

(c) recording or information for patient/client records;

(d) nutrition and meal preparation;

- (e) housekeeping skills;
- (f) care of the ill and disabled, including the special needs populations;
- (g) emergency response (including CPR and first aid);
- (h) basic infection control;
- (i) home safety;

(7) a copy of a current and valid home health license, issued by the department of health, division of health improvement, licensing and certification (pursuant to 7.NMAC 28.2) may be submitted in lieu of requirements 3, 5 and 6 of this section; after certification, a copy of a current and valid home health license must be submitted annually along with proof of liability and workers' compensation insurance;

(8) after MAD or its designee has received and reviewed the packet, the agency will be contacted to complete the rest of the certification process; this will require the agency to:

(a) attend a mandatory MAD or its designee's provider training session prior to the delivery of PCO services; and

(b) possess a letter from MAD or its designee changing provider status from "pending" to "active".

(9) any professional authorized to complete the medical assessment form (MAD 075) under the PCO program cannot also become a personal care agency.

**C. The consumer-delegated personal care attendant responsibilities and requirements include:**

- (1) being hired by the agency;
- (2) not being the spouse or minor child of the consumer pursuant to 42 CFR Section 440.167 and CMS state medicaid manual section 4480-D;
- (3) providing the agency with proof of and copies of current/valid New Mexico driver's license and motor vehicle insurance policy if the attendant will be transporting the consumer;
- (4) being 18 years of age or older;
- (5) ensuring that if the attendant is the consumer's legal guardian or attorney-in-fact and is the elected individual for hire, prior approval has been obtained from MAD or its designee; any personal care services provided by the consumer's legal guardian or attorney-in-fact *MUST* be justified, in writing, by the PCO agency and consumer and submitted for approval to MAD or its designee prior to employment; the justification must demonstrate and prove the lack of other qualified attendants in the applicable area; documentation of approval by MAD or its designee must be maintained in the consumer's file;
- (6) successfully passing a nationwide criminal history screening, pursuant to 7.1.9 NMAC and in accord with NMSA 1978, Section 29-17-1 of the Caregivers Criminal History Screening Act, performed by an agency certified to conduct such

checks; attendants are required to submit to a criminal history screening within the first 30 days of hire; an attendant may be conditionally (temporarily) hired by the consumer contingent upon the receipt of written notice of the nationwide criminal history screening; attendants who do not successfully pass a nationwide criminal history screening are not eligible for employment under the PCO program;

(7) ensuring while employed as an attendant he will not be under the influence of drugs and/or alcohol while performing PCO services; the attendant must complete and sign an agreement with the agency in which the attendant acknowledges that if he is under the influence of drugs and/or alcohol while providing PCO services he will be immediately terminated; attendants who have been terminated for use of drugs and/or alcohol while providing PCO services are not eligible for further employment under the PCO program;

(8) successfully passing a written personal care attendant competency test with seventy-five percent (75%) or better within the first three (3) months of employment;

(9) completing 12 hours of training yearly; the attendant must obtain certification of CPR and first aid training within the first (3) three months of employment, and the attendant must maintain certification throughout the entire duration of providing PCO services; additional training will be based on the consumer's needs as listed in the PCSP; attendants are not required to be reimbursed for training time;

(10) being placed on DOH's PCO attendant registry and remaining in good standing with DOH on the PCO attendant registry; and

(11) providing the agency with a current tuberculosis (TB) skin test or chest x-ray upon initial employment with the agency per the current standards of the department of health; the results of the TB test must be documented in the attendant's personnel file; if the results are positive for TB, the individual cannot be hired as an attendant, and must seek treatment; after treatment and the individual has been given medical clearance, the individual may be employed by the agency; there must be documentation from a medical professional of treatment, and the agency must place a copy of the treatment documentation in the attendant's personnel file.

[8.315.4.11 NMAC - Rp 8 NMAC 4.MAD.738.2, 7/1/04; A, 8/13/04]

**8.315.4.16 THIRD-PARTY ASSESSOR (TPA):** The TPA or MAD's designee is responsible for making level of care (LOC) determinations based on criteria developed by MAD or its designee [~~nursing facilities MAD 731~~] Attachment II of

8.312.2-UR, Long Term Care Services Utilization Review Instructions for Nursing Facilities, available upon request from MAD; developing personal care service plans (PCSP), issuing prior approvals, and making utilization reviews for all PCO consumers. The TPA or MAD's designee will explain, in detail, the two service delivery models, consumer-directed and consumer-delegated, annually; and is also required to provide the consumer with informational materials that explain both models and the PCO program in general. The TPA is not authorized to contract with any medicaid approved PCO agency to carry out TPA responsibilities. The TPA's responsibilities are as described below.

**A. Level of care (LOC):** To be eligible for PCO services, a consumer must meet the level of care required in a nursing facility, the medical eligibility criteria entails two distinct levels of care: a high nursing facility (HNF) or low nursing facility (LNF), [~~8.312.2 NMAC, Nursing Facilities [MAD 731]~~] Attachment II of 8.312.2-UR, Long Term Care Services Utilization Review Instructions for Nursing Facilities. A level of care packet is developed and approved by the TPA or MAD's designee.

(1) The packet must include:

(a) a current (within the last 12 months) MAD 075 signed by a physician, physician assistant, nurse practitioner or, clinical nurse specialist;

(b) any other information or medical justification documenting the consumer's functions abilities.

(2) The TPA or MAD's designee will use the LOC packet to:

(a) make all LOC determinations for all consumers requesting services under the personal care option program;

(b) approve the consumers LOC for a minimum of one year (12 consecutive months); and

(c) contact consumer within a minimum of ninety (90) days, prior to the expiration of the approved LOC, to being LOC determination process for PCO services, to ensure the consumer does not experience a break in PCO services.

(3) An agency that does not agree with the LOC determination made by the third-party assessor or MAD's designee may:

(a) request a re-review and/or reconsideration pursuant to medicaid oversight policies, 8.350.2 NMAC, *Reconsideration of Utilization Review Decisions* [MAD-953]; and

(b) is responsible for submitting the additional medical justification to the TPA or MAD's designee and adhering to the timelines as out lined in medicaid Oversight Policies, 8.350.2 NMAC, *Reconsideration of Utilization Review Decisions* [MAD-

953].

(4) A consumer that does not agree with the LOC determination made by the TPA or MAD's designee may request a fair hearing pursuant to 8.352.2 NMAC, *Recipient Hearings*.

(5) Agencies that have identified a consumer with a declining health condition or whose needs have changed and believe the consumer is in need of more services should refer the consumer to the TPA or MAD's designee for an additional assessment.

(6) Agencies who are providing PCO services to a consumer who becomes eligible for and would like to be placed onto the HCBS must submit a new LOC packet to MAD's utilization review [~~contractor~~] contractor (UR) as outlined in UR policy for HCBS waivers.

**B. Personal care service plan (PCSP):** The PCSP (MAD 058) is developed and personal care services are allocated, in conjunction with the in-home assessment (MAD 057, The Personal Care Option Assessment Form) and the current medical assessment form (MAD 075) for all consumers requesting services or continued services under the PCO program.

(1) The TPA or MAD's designee will:

(a) conduct an in-home assessment (MAD 057) in the consumer's home;

(b) explain both service delivery models, consumer-directed and consumer-delegated to the consumer and/or his/her personal representative and provide the consumer and/or his/her personal representative with informational material, allowing the consumer to make the best educated decision possible regarding which model he/she will elect;

(c) determine and allocate personal care services using the LOC packet and the in-home assessment (MAD 057) for the duration of one year (12 consecutive months);

(d) develop a PCSP in-conjunction with the consumer or his/her personal representative; participation in the development of a PCSP is not separately reimbursable for consumers or his/her personal representatives; the TPA or MAD's designee must ensure the consumer has participated in the development of the plan and that the PCSP is reviewed and signed by the consumer and/or the consumer's personal representative; a signature on the PCSP indicates that the consumer an/or personal representative agrees with the allocation of hours made by the TPA or MAD's designee and understands what services will be provided on a weekly basis and for the duration of one year; if a consumer is unable to sign the PCSP and the consumer does not have a personal representative, a thumbprint or personal mark (i.e., an "X") will suffice; if

signed by a personal representative, the TPA or MAD's designee and the agency must have documentation in the consumer's file verifying the individual is the consumer's personal representative; the PCSP must include the following:

(i) description of the functional level of the consumer as evidenced by the primary care physician's clinical evaluation, including mental status, intellectual functioning and other supporting documentation;

(ii) statement of the nature of the specific limitations and the specific needs of the consumer for personal care services;

(iii) a specific description of the attendant's responsibilities, including tasks to be performed by the attendant and any special instructions related to maintaining the health and safety of the consumer;

(iv) a description of intermediate and long range service goals, which includes the scope and duration of services, how goals will be attained and the projected timetable for their attainment.

(v) a statement describing the most integrated setting necessary to achieve the goals identified in the plan; and

(vi) a prior authorization (PA) number issued to the agency of the consumer's choice, for on-going billing purposes; a HCPC code must be tied to the PA based on the consumer's elected model of service delivery.

(e) approve PCO services for the duration of one year (12 consecutive months);

(f) provide the consumer with a copy of their approved PCSP; and

(g) contact consumer within a minimum of ninety (90) days, prior to the expiration of the approved PCSP, to be the re-assessment process for PCO services, to ensure the consumer does not experience a break in PCO services.

(2) Personal care agencies must:

(a) obtain an approved PCSP (MAD 058) from the consumer;

(b) refer consumers to the TPA or MAD's designee who do not utilize services or the full amount of allocated services on the PCSP for 90 consecutive days. Documentation must be in the consumer's file demonstrating that a consumer has not utilized the full amount of hours allocated on the PCSP; and

(c) submit a personal care transfer/closure form (MAD 062) to the TPA or MAD's designee to close out a consumer's personal care services who has passed away.

[8.315.4.16 NMAC - Rp 8 NMAC 4.MAD.738.11 & 12, 7/1/04; A, 8/13/04]

**8.315.4.21**

**OTHER:**

A. An attendant may not act as the consumer's personal representative, in matters regarding medical treatment, financial or budgetary decision making, unless the attendant is the consumer's legal guardian, agent under a power of attorney, conservator, or representative payee and has received authorization to be the consumer's attendant pursuant to Paragraph (7) of Subsection A of 8.315.4.10 NMAC, Paragraph (10) of Subsection B of 8.315.4.10 NMAC, Paragraph (5) of Subsection D of 8.315.4.10 NMAC, Paragraph (20) of Subsection A of 8.315.4.11 NMAC, and Paragraph (5) of Subsection C of 8.315.4.11 NMAC. If the agency questions whether the consumer is able to direct his/her own care, an agency must make a referral to an appropriate social service or legal agency(s) for assistance.

B. A consumer who does not comply with the requirements for receiving personal care services may be denied such a service or have those services suspended. A consumer has the right to appeal this decision as outlined in the medicaid oversight policy, 8.352.2 NMAC, *Recipient Hearings*.

C. An agency wishing to advertise or conduct any type of community outreach for the PCO program must first get prior approval from MAD or its designee before conducting any such activity. An agency conducting any such activity without prior approval from MAD or its designee may be subject to a civil monetary penalty and/or have its medicaid provider participation agreement [~~(MAD 312)~~] (MAD 335) terminated for conducting such activity without prior approval.

D. An agency may not deceive or misrepresent information to a potential personal care consumer. An agency conducting any such activity may be subject to a civil monetary penalty and/or termination of its provider participation agreement [~~(MAD 312)~~] (MAD 335). This includes:

(1) contacting consumer who are receiving services through another medicaid program, including personal care;

(2) door-to-door solicitation of potential consumers;

(3) making false promises;

(4) misinterpreting medicaid policies/procedures/eligibility; and

(5) representing itself as an entity to which it has no affiliation.

[8.315.4.21 NMAC - Rp 8 NMAC 4.MAD.738.15, 7/1/04; A, 8/13/04]

**NEW MEXICO  
DEPARTMENT OF LABOR  
LABOR AND INDUSTRIAL  
DIVISION**

This is an amendment to 11.2.3 NMAC, Section 22, effective August 13, 2004.

**11.2.3.22 STANDARDS OF APPRENTICESHIP:**

**A. General policy:** It is the objective of the council to encourage the development and continuance of apprenticeship programs adequate to produce qualified skilled workers. Labor and management will be encouraged to jointly develop adequate standards of apprenticeship, and it is the policy of the council to render any assistance needed by these groups in the development of such standards. Apprenticeship program sponsors shall submit their standards to the council for registration. After registration, the sponsor shall provide the director of apprenticeship with such documentation as may be requested concerning the operation of the program.

**B. Development of standards:** In order to promote good apprenticeship policies and procedures the council requires that each apprenticeship program sponsor, who desires registration by the council, formulate, adopt, and submit to the council for review and registration a set of apprenticeship standards. The purpose of these standards is to provide rules for the operation of the apprenticeship program. An apprenticeship program, to be eligible for registration by the council shall conform to the following standards:

(1) The program is an organized, written plan embodying the terms and conditions of employment, training, and supervision of one or more apprentices in the apprenticeable occupation, as defined in this manual and subscribed to by a sponsor who has undertaken to carry out the apprentice training program.

(2) The program standards contain the equal opportunity pledge prescribed in the council plan for equal employment opportunity in apprenticeship, and when applicable, an affirmative action plan and selection procedure as required by this plan, and provision concerning the following:

(a) the employment and training of the apprentice in a skilled trade;

(b) a term of apprenticeship, not less than 2,000 hours of work experience, consistent with training requirements as established by industry practice; **all apprentices must serve a minimum of one (1) year, or 2000 on-the-job training hours, in a registered apprenticeship program, in order to be recognized as a graduate of apprenticeship by the coun-**

**cil:**

(c) an outline of the work processes in which the apprentice will receive supervised work experience and training on the job, and the allocation of the approximate time to be spent in each major process;

(d) provisions which will ensure the apprentice of organized related and supplemental instruction in technical subjects related to the trade; a minimum of 144 hours of related instruction for each year is required; such instruction may be given in a classroom through trade and industrial courses or by correspondence courses of equivalent value, or other forms of self-study approved by the council; such instruction will not be the financial responsibility of the apprentice with the possible exception of the purchase of books;

(e) a progressively increasing schedule of wages to be paid the apprentice consistent with the skill acquired; the entry wage shall not be less than the minimum wage prescribed by the Fair Labor Standards Act, where applicable, unless a higher wage is required by other applicable federal law, state law, respective regulations, or by collective bargaining agreement;

(f) periodic review and evaluation of the apprentice's progress in job performance and related instruction; and the maintenance of appropriate progress records;

(g) the numeric ratio of apprentices to journeymen consistent with established industry practices, proper supervision, training, safety, and continuity of employment, and applicable provisions in collective bargaining agreements except where such ratios are expressly prohibited by the collective bargaining agreements; the ratio language shall be specific and clear as to application in terms of job site, work force, department or plant; for all apprenticeship programs in the building and construction industry, the maximum allowable ratio of apprentices to journeymen shall not exceed 1:1 on a job or an employer's total workforce;

(h) a probationary period reasonable in relation to the full apprenticeship term, with full credit given for such period toward completion of apprenticeship;

(i) adequate and safe equipment and facilities for training and supervision, and safety training for apprentices on the job and in related instruction, which will include at least 5 hours of special classroom training in accident prevention and job safety practices;

(j) the minimum qualifications required by a sponsor for persons entering the apprenticeship program, with an eligible starting age not less than 16 years;

(k) the placement of an apprentice under a written apprenticeship agreement; such agreement shall directly, or by refer-

ence, incorporate the standards of the program as part of the agreement;

(l) the granting of advanced standing or credit for previously acquired experience, training or skills for all applicants equally with commensurate wages for any progression step so granted; **all credit, which is to be granted, shall be reported to the office of the council in accordance with adopted procedures and guidelines;**

(m) in multi-employer programs, transfer of the employer's training obligation, when the employer is unable to fulfill his obligation, under the apprenticeship agreement, to another employer under the same program with consent of the apprentice and apprenticeship committee or program sponsor;

(n) assurance of qualified training personnel and adequate supervision on the job;

(o) recognition for successful completion of apprenticeship evidenced by an appropriate certificate;

(p) identification of the council as the registration agency;

(q) provision for the registration, cancellation and deregistration of the program; and requirement for the prompt submission of any modification or amendment thereto;

(r) provision for registration of apprenticeship agreements, modifications, and amendments; notice to the registration office of persons who have successfully completed apprenticeship programs, and notice of cancellations, suspensions and terminations of apprenticeship agreements and causes therefore;

(s) authority for the termination of an apprenticeship agreement during the probationary period by either party without stated cause;

(t) a statement that the program will be conducted, operated, and administered in conformity with applicable provisions of the council plan for equal employment opportunity in apprenticeship;

(u) name and address of the appropriate authority under the program to receive, process, and make disposition of complaints;

(v) recording and maintenance of all records concerning apprenticeship as may be required by the council and other applicable law;

(w) all standards registered with the council shall contain a provision which states that the director of apprenticeship or his designee selected from BAT or SAC staff shall be an ex-officio member, without vote, of any committee which functions to administer the apprenticeship program;

(x) all standards which are presented to the council for registration shall contain a provision which clearly states that the director of apprenticeship or his designee

nated representative shall have the right to visit all job sites where apprentices may be employed, and apprentice related instruction classes, in order to determine compliance with apprenticeship standards;

(y) all standards which are approved by the council shall be registered for a specific period only, such period not to exceed two years.

(i) When such period of registration expires, the period of registration shall be automatically renewed for another two years if no evidence has been presented to the council which alleges that the sponsor has not conducted the program according to the standards, of that the program is not in compliance with rules and regulations contained in the council policy manual.

(ii) If evidence has been presented to the council which alleges that the sponsor had not operated the program in accordance with the standards or that the program is not in compliance with the council policy manual, the council may extend the registration period in order to investigate the allegation or to allow the sponsor sufficient time to correct any deficiencies, or the council may instruct the director to inform the sponsor that the program registration will not be renewed unless the sponsor is able to show cause why the registration should be continued in a hearing before the council. Notice of opportunity for a hearing shall be sent to the sponsor by registered or certified mail, return receipt requested. This notice shall include the deficiencies which exist, or are alleged to exist, in the program and shall state that registration will not be renewed unless, within 15 days of receipt of the notice the sponsor requests a hearing by registered or certified mail, return receipt requested. If the sponsor does not request a hearing within the allotted time, the director shall discontinue the registration of the program. If the sponsor requests a hearing, the director shall submit to the council chairman all the documentation which supports the allegation/s/ of non-compliance. The council chairman may convene a special council meeting in order to allow the sponsor a hearing or such hearing may be held during the next council meeting. The director shall send a notice to the sponsor by registered or certified mail, return receipt requested, informing him of the time and place of the council meeting during which the hearing will be held. Such notice shall also include a statement of the provision of this manual pursuant to which the hearing will be held. The sponsor shall also be informed that the council chairman shall regulate the course of the hearing and that the hearing will be informally conducted. Every party shall have the right to counsel, and a fair opportunity to present his/her case including such cross-examination as

may be appropriate in the circumstances. The council shall make a decision, based upon the evidence presented during the hearing, if registration is to be renewed or such renewal is to be denied. All benefits of registration shall be extended to the sponsor after the expiration of registration of his program until a final decision is made by the council to deny registration of the program, except that no new apprentices will be registered during this period.

(iii) During the specified period of registration, the council may deregister any program in accordance with Paragraph (1) of Subsection D of 11.2.3.27 NMAC, or Paragraph (2) of Subsection D of 11.2.3.27 NMAC, of this policy manual.

(z) a requirement that, should either federal or state regulations or any other applicable regulation allow the employment of "helpers" on construction projects for which wages have been predetermined, no employer who participates in the apprenticeship program covered by standards shall employ any "helper" on any construction project unless the full maximum allowable ratio of apprentices are employed and physically present on such project; this requirement shall apply to all construction projects, whether or not wages have been predetermined for the project.

[6-7-77, 2-21-78, 8-26-84; 11.2.3.22 NMAC - Rn & A, 11 NMAC 2.3.22, 12-30-02; A, 8-13-04]

**NEW MEXICO  
REGULATION AND  
LICENSING DEPARTMENT  
FINANCIAL INSTITUTIONS  
DIVISION**

This is an amendment to 12.18.3 NMAC Sections 1,8, effective 08/13/2004.

**12.18.3.1 ISSUING AGENCY:** Financial Institutions Division of the Regulation and Licensing Department [~~725 St. Michaels Drive, Santa Fe, New Mexico 87504. Telephone No. (505) 827-7100.~~]

[12.18.3.1 NMAC - N, 10/1/2001; A, 08/13/2004]

**12.18.3.8 MANDATORY BROCHURE FOR SMALL LOAN BUSINESS**

**A.** All Small Loan Companies licensed by the State of New Mexico must have an informational brochure readily available to all small loan consumers.

**B.** The brochure rack containing the brochure must be placed [~~on the wall~~] by the main door entrance. The brochure rack must always be stocked with the brochure.

**C.** Using lettering no smaller than 24-point font, the front [~~panel~~] of the brochure shall have in bold capital letters, the words, "IMPORTANT CONSUMER INFORMATION" followed by the words in bold 14-point font, "This brochure contains some common terms and definitions, which are intended to help you better understand your credit transaction. Credit costs money, so it is important that you fully understand the terms of your credit transaction. If you come across terms you do not understand, look up the terms, or ask our personnel to explain the terms to you. Ask questions. Make certain the questions that you ask are answered. Make certain you understand the terms and costs of your loan."

**D.** Using lettering no smaller than 10-point font, [~~the inside of~~] the brochure shall state:

(1) Common Terms and Definitions

(2) Equal Credit Opportunity Act (ECOA). A federal regulation which requires lenders to promote the availability of credit to all creditworthy applicants without regard to race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract); to whether all or part of the applicant's income derives from a public assistance program; or to whether the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The regulation prohibits creditor practices that discriminate on the basis of any of these factors.

(3) Contract. A written binding document, describing terms of an agreement between two or more persons. (Keep all paperwork. Later, if there are any questions, you will have your agreement in writing.)

(4) Annual Percentage Rate (APR). The cost of your credit as a yearly rate. This measures the cost of credit expressed as a yearly interest rate. It is intended to provide a single value for a consumer to compare the cost of credit between one lender and another.

(5) Finance Charge. The dollar amount the credit will cost you. Finance charges include interest, and may also include transaction fees and service fees.

(6) Principal. The amount of money owed on a debt, on which interest is calculated.

(7) Interest. The cost of borrowing money, generally a percentage of the amount owed.

(8) Balance. The total amount of money owed to a lender.

(9) Default. Failure to pay a debt as agreed to on a contract. When a loan is in default, the lender may demand full payment of the remaining debt.

(10) Collateral. Security pledged by a borrower to protect the interests of the lender; in case of default, the lender may take ownership of the security, if any, pledged by the borrower.

(11) Credit Bureau. A private company that keeps a record of your credit history for distribution upon request by authorized parties. When you apply for credit, a lender may request a credit report to review when considering your application.

(12) Credit History. A record containing information about you, including your payment history on previous debts.

(13) Credit Report. A report of the credit history and other information about you that is kept by credit bureaus, which may include: your name, address, social security number, payment history (good and bad), current and previous debts, employers, income, etc. Accurate information on a credit report may not be legally removed. Incorrect information may be removed by disputing the information to the credit bureau involved.

E. The ~~back panel of the~~ brochure shall have the following words, using lettering no smaller than 10-point font: "This business is regulated by the Regulation and Licensing Department, Financial Institutions Division, ~~[725 St. Michaels Drive]~~ 2550 Cerrillos Road, Santa Fe, New Mexico ~~[87504]~~ 87505, telephone number (505) ~~[827-7100]~~ 476-4885". [12.18.3.8 NMAC - N, 10/1/2001; A, 08/13/2004]

**NEW MEXICO  
REGULATION AND  
LICENSING DEPARTMENT  
FINANCIAL INSTITUTIONS  
DIVISION**

This is an amendment to 12.18.4 NMAC Sections 1,8, effective 08/13/2004.

**12.18.4.1 ISSUING AGENCY:** Financial Institutions Division of the Regulation and Licensing Department [~~725 St. Michaels Drive, Santa Fe, New Mexico 87504. Telephone (505) 827-7100~~]. [12.18.4.1 NMAC - N, 10/1/2001]

**12.18.4.8 MANDATORY SIGNAGE FOR PAYDAY LENDERS AND TITLE LOAN COMPANIES**

A. All Title and Payday loan companies must display in each licensed place of business a prominent sign, readily visible to borrowers, disclosing the schedule of charges. The prominent sign in a reduced form, with font, no smaller than 10-point, must be displayed at every workstation where loans are originated.

B. The lettering on the prominent sign must be no smaller than 24-point font, unless specified otherwise.

C. The sign must state in bold capital letters, the words, "SCHEDULE OF CHARGES".

D. Below the words "schedule of charges", in bold capital letters, the sign shall state, "THE CHART BELOW REPRESENTS ILLUSTRATIVE EXAMPLES OF THE COST OF A LOAN TO THE BORROWER. IF YOU HAVE ANY QUESTIONS, OR WOULD LIKE MORE INFORMATION, PLEASE ASK. MAKE CERTAIN THE QUESTIONS THAT YOU ASK ARE ANSWERED. MAKE CERTAIN YOU UNDERSTAND THE TERMS AND COSTS OF YOUR LOAN."

E. The chart must have the following headings starting from left to right. The borders for the first two headings must be more prominent than the others.

(1) The first heading shall have in bold capital letters the words, "ANNUAL PERCENTAGE RATE (APR)" followed by the words in bold 14-point font, "The cost of your credit as a yearly rate. Assumes a \_\_\_\_\_ day repayment period." The blank is to be replaced with the actual number of days used for the illustrative Annual Percentage Rate calculation shown on the chart.

(2) The second heading shall have in bold capital letters the words, "FINANCE CHARGE" followed by the words in 14-point font, "The dollar amount the credit will cost you."

(3) The third heading shall have the words, "Amount Financed" followed by the words in 14-point font, "The amount of credit provided to you or on your behalf."

(4) The fourth heading shall have the words, "Total of Payments" followed by the words in 14-point font, "The amount you will have paid after you have made all payments as scheduled."

(5) The fifth heading shall have the words "Number of Payment(s) used in the APR calculation."

F. Below the chart headings, the company must have illustrative examples for each class of loans the company offers.

G. Below the chart in bold capital letters the following words shall appear, "TO REPORT A PROBLEM OR COMPLAINT, YOU MAY WRITE OR CALL \_\_\_\_\_." The blank shall be filled in with a name, address, and phone number, of the company's problem resolution person.

H. The bottom of the sign shall have the following words, "This business is regulated by the Regulation and Licensing Department, Financial Institutions Division, ~~[725 St. Michaels~~

~~Drive]~~ 2550 Cerrillos Road, Santa Fe, New Mexico ~~[87504]~~ 87505, telephone number (505) ~~[827-7100]~~ 476-4885".

[12.18.4.8 NMAC - N, 10/1/2001; A, 08/13/2004]

**NEW MEXICO  
SECRETARY OF STATE**

This is an amendment to 1.10.22 NMAC, Section 8, effective August 13, 2004.

**1.10.22.8 PRECINCT BOARD PROCEDURES:**

A. A provisional ballot shall not be placed in a ballot box at the polling place, alternate location or county clerk's office. Provisional ballots shall be deposited in a special provisional ballot transmission envelope designated by the county clerk for that purpose.

B. The precinct board shall not accept any verbal authorization from the county clerk to allow a person to vote whose name is not on the roster. The precinct board shall not accept any verbal authorization from the county clerk to allow a person to vote who is required to provide identification pursuant to the Election Code. The precinct board shall ensure that the name of a provisional voter is entered in the roster on the line immediately following the last entered voter's name, pursuant to the Election Code.

C. Upon sealing the voter's provisional ballot envelope, the precinct board shall provide the voter with the toll free telephone number, attached to the provisional ballot outer envelope, to use if the voter wishes to determine whether or not the provisional ballot was counted. The precinct board shall ensure that each provisional voter completes the certificate of voter registration attached to the provisional ballot outer envelope and that the certificate of registration is not placed in the envelope but returned to the county clerk.

D. The precinct board shall ensure that each provisional ballot cast at a polling place or alternate site is placed in an inner or secrecy envelope prior to placing the inner or secrecy envelope in the outer envelope containing the provisional voter's oath or affirmation. The precinct board shall ensure that each provisional voter is provided with a toll free telephone number that may be called fourteen (14) days after the election for a determination on whether the provisional ballot was counted.

E. Absentee precinct boards shall not open or tally any provisional absentee ballots, but shall convey them to the county clerk for processing according to the provisions of the Election Code and this rule. The county clerk shall process provisional absentee ballots using the same pro-

cedures used for provisional ballots cast at the polling place or alternate location. Identification documents submitted with provisional absentee ballots shall be attached to the voter's certificate of registration and a notation that the documents have been submitted shall be entered into the electronic file of registered voters.

**F.** Provisional voters are not subject to challenge under the procedures provided in the Election Code.

**G.** The voter registration card attached to the outer provisional ballot envelope shall be placed in the provisional ballot transmission envelope and returned to the county clerk.

**H.** A voter who is required to present identification at the polling place and fails to do so shall be entitled to vote on a provisional ballot and shall be instructed by the precinct board that the required identification must be taken to the office of the county clerk prior to 7:00 p.m. on election day to ensure counting of the voter's ballot.  
[1.10.22.8 NMAC - N, 8-15-2003, A, 8-13-04]

**NEW MEXICO BOARD OF VETERINARY MEDICINE**

This is an amendment to 16.25.9 NMAC, Section 17, effective August 25, 2004.

**16.25.9.17 PHARMACEUTICAL SERVICES:**

**A.** No legend or controlled drug shall be prescribed, dispensed, or administered without the establishment of a veterinary-client-patient relationship.

**B.** All legend drugs shall be stored in a secured manner limiting public accessibility.

**C.** No expired drug or biologic shall be administered or dispensed.

**D.** All expired drugs or biologics shall be stored away from the working pharmacy while awaiting disposal.

**E.** All drugs and biologics shall be maintained, administered, dispensed, and prescribed in compliance with state and federal laws.

**F.** Unless otherwise requested by the owner, and noted in the medical record, all repackaged legend and dangerous drugs shall be dispensed in safety-closure containers.

**G.** All drugs shall be labeled with:

- (1) name, address, and phone number of the facility;
- (2) client's name;
- (3) patient's name;
- (4) date dispensed;
- (5) name and strength of drug;
- (6) directions for use;
- (7) quantity dispensed;

- (8) expiration date of drug;
- (9) name of prescribing veterinarian;

(10) the words "for veterinary use only" and "keep out of reach of children."

**H.** Veterinarians shall honor client requests to dispense and/or provide a written prescription for a drug that has been determined by the veterinarian to be appropriate for the patient.

[16.25.9.17 NMAC - Rp 16.25.9.12 NMAC, 6-7-02; A, 8-25-04]

**End of Adopted Rules Section**



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## Other Material Related to Administrative Law

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**NEW MEXICO HUMAN  
SERVICES DEPARTMENT  
INCOME SUPPORT DIVISION**

HUMAN SERVICES DEPARTMENT  
NOTICE OF PUBLIC COMMENT  
PERIOD

The Human Services Department is required to file its State plan for administration of the Temporary Assistance for Needy Families (TANF) cash assistance program with the Federal Department of Health and Human Services, Administration for Children and Families (ACF). The Department is required to file the TANF State Plan with ACF by December 1, 2004. The TANF State Plan will cover the period from January 1, 2005 through December 31, 2006.

The Department is required to establish and allow a 45-day period for taking comments on the proposed TANF State Plan. The 45-day comment period begins on August 13, 2004 and ends at 5:00 pm on September 27, 2004. All comments received during the comment period will receive consideration for the development of the TANF State Plan.

Individuals may submit written or recorded comments to the address below. Individuals may also submit comments electronically to: [Michael.Rogers@state.nm.us](mailto:Michael.Rogers@state.nm.us)

A copy of the proposed TANF State Plan can be requested by calling the Office of the Director, Income Support Division, in Santa Fe at 1-800-432-6217 or (505) 827-7250; or by writing to:

Human Services Department  
Income Support Division  
P.O. Box 2348  
Pollon Plaza Room 111  
Santa Fe, NM 87504-2348

A copy of the proposed TANF State plan is available as of August 13, 2004 on the Department's web site at:

<http://policymanuals.hsd.state.nm.us>

If you are a person with a disability and you require this information in an alternative format or require a special accommodation, please contact the Department toll free at 1-800-432-6217, TDD 1-800-609-4TDD (4833), or through the New Mexico Relay System toll free at 1-800-659-8331. The Department requests at least a 10-day advance notice to provide requested alterna-

tive formats and special accommodations.

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**End of Other Related  
Material Section**

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## SUBMITTAL DEADLINES AND PUBLICATION DATES

**2004**

<b>Volume XV</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 30
Issue Number 3	February 2	February 13
Issue Number 4	February 16	February 27
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 3	May 14
Issue Number 10	May 17	May 28
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 16	July 30
Issue Number 15	August 2	August 13
Issue Number 16	August 16	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 14
Issue Number 20	October 15	October 29
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 1	December 14
Issue Number 24	December 15	December 30

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