

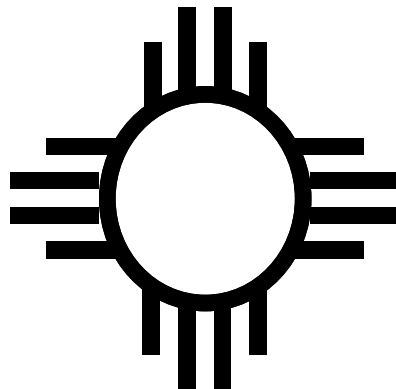
**NEW
MEXICO
REGISTER**



Volume XVIII
Issue Number 18
September 28, 2007

New Mexico Register

**Volume XVIII, Issue Number 18
September 28, 2007**



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

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Santa Fe, New Mexico
2007

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New Mexico Register

Volume XVIII, Number 18

September 28, 2007

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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

New Mexico Department of Agriculture will hold a public hearing on the following rules:

* 21 NMAC 16.11 Applying Administrative Penalties: Weights and Measures Law (Chapter 57, Article 17, Sections 1 through 19, New Mexico Statutes Annotated, 1978 Compilation)

* 21 NMAC 16.12 Applying Administrative Penalties: Weighmaster Act (Chapter 57, Article 18, Sections 1 through 26, New Mexico Statutes Annotated, 1978 Compilation as amended by Chapter 80, Laws of 1979)

* 21 NMAC 34.13 Applying Administrative Penalties: Egg Grading Act (Chapter 25, Article 6, Sections 1 through 16, New Mexico Statutes Annotated, 1978 Compilation)

* 21 NMAC 34.14 Applying Administrative Penalties: Dairy Act (Chapter 25, Article 7, Sections 1 through 8, New Mexico Statutes Annotated, 1978 Compilation)

The New Mexico Department of Agriculture is proposing the adoption of the following rules which will provide for the assessment of administrative penalties under the Weights and Measures Law, Weighmaster Act, Egg Grading Act, and Dairy Act. The assessment of administrative penalties will be used as an intermediate step between field enforcement actions and court action or when stop sale orders are not appropriate or have proven to be ineffective.

A hearing in Las Cruces will be held at the New Mexico Department of Agriculture building, 3190 South Espina (southeast corner of Gregg and Espina), beginning at 9:00 a.m. on November 7, 2007.

Written statements in support or opposition, signed by the submitting person, will be accepted if received prior to 5:00 p.m., November 7, 2007. Written statements, inquiries, or requests for copies of the rule should be directed to Raymond Johnson or Joe Gomez, New Mexico Department of Agriculture, Standards and Consumer Services, PO Box 30005, MSC 3170, Las Cruces, NM 88003 or at (505) 646-1616.

ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD NOTICE OF HEARINGS AND MEETING

On **November 14, 2007, at 5:30 PM**, the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) will hold three public hearings in the Vincent E. Griego Chambers (City Council/County Commission Chambers) of the Albuquerque/Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM 87102. The hearings will address:

1. Proposal to adopt revisions to the "Section 309" Regional Haze element for Bernalillo County. "Section 309" of the federal Regional Haze regulation is the provision that pertains to certain Western states, including New Mexico,
2. Proposal to amend 20.11.46 NMAC, *Western Backstop Sulfur Dioxide Trading Program*. "NMAC" stands for New Mexico Administrative Code.
3. Proposal to incorporate an amended Regional Haze SIP and an amended 20.11.46 NMAC into the New Mexico State Implementation Plan for air quality (SIP).

The purpose of the first hearing is to receive testimony on proposed revisions to Bernalillo County's Regional Haze element for inclusion into the SIP. The Regional Haze SIP is a federal mandate to develop strategies to improve visibility in Class I areas to natural visibility conditions by the year 2064. Class I areas are those designated as areas of special national or regional value from a natural, scenic, recreational, and/or historic perspective. These areas are the focus of federal visibility protection regulations, including the Regional Haze regulation. Across the country, Class I areas include such places as the Grand Canyon, Yosemite, Mt. Rainier, and Yellowstone. Of the 156 mandatory federal Class I areas in the US, nine Class I areas are in New Mexico, including Carlsbad Caverns National Park, Bandelier National Monument, Bosque del Apache National Wildlife Refuge, the Gila Wilderness Area, and the San Pedro Parks Wilderness Area.

The Regional Haze SIP was first submitted

pursuant to the U.S. EPA requirements published 7/1/99 as a Federal Register notice (FR Vol. 64, No. 126), and addressed requirements found in CFR Part 51, Appendix V relating to completeness of SIP submissions. This SIP was first presented at two public hearings before the Air Board on October 8, 2003 and November 12, 2003. The Air Board adopted their Regional Haze SIP on November 12, 2003.

However, since the first regulation to address the type of visibility impairment known as Regional Haze was promulgated by EPA in 1999, it has been judicially challenged twice. On May 24, 2002, the U.S. Court of Appeals for the District of Columbia Circuit issued a ruling vacating the Regional Haze Rule in part and sustaining it in part, based on a finding that EPA's prescribed methods for determining best available retrofit technology (BART) were inconsistent with the Clean Air Act (CAA). The suit was brought by American Corn Growers Association v. EPA, [291 F.3d 1 (DC Cir. 2002)]. EPA finalized a rule on July 6, 2005 addressing the court's ruling in this case [FR Vol. 70 No. 128 39104-39172]. On February 18, 2005, the U.S. Court of Appeals for the District of Columbia Circuit issued another ruling, in a suit brought by the Center for Energy and Economic Development (CEED) v. EPA, [398 F.3d 653(DC Cir. 2005)], granting a petition challenging provisions of the Regional Haze Rule governing an optional emissions trading program for certain western States and Tribes (the Western Regional Air Partnership (WRAP) *Annex Rule*). EPA published proposed regulations to revise the provisions of the Regional Haze Rule governing alternative trading programs, and to provide additional guidance on such programs in August 2005. EPA received several comments on the August 2005 proposal. This final rule [Federal Register: October 13, 2006 (Volume 71, Number 198)] finalized the proposed revisions, including changes in response to the public comments, and became effective December 12, 2006. The aforementioned proposed SIP revisions address all these actions, as well as addressing comments received by EPA on 11/3/04 regarding the first SIP submittal.

After the Regional Haze SIP hearing closes, another hearing will be held during which the Board will hear testimony on proposed revisions to 20.11.46 NMAC, *Western Backstop Sulfur Dioxide Trading Program*. This regulation was first adopted in order to comply with the federal Clean Air Act and the associated EPA requirements of 40 CFR § 51.309 ("Section 309"). Section 309 of

the federal Regional Haze Regulation establishes mandatory requirements that must be met by New Mexico's air quality implementation plan, including regional sulfur dioxide milestones, sulfur dioxide emissions tracking requirements and a backstop regional cap-and-trade program for sulfur dioxide. The current regulation includes emissions inventory requirements for tracking compliance with the sulfur dioxide milestones. The emissions inventory and tracking requirements for sulfur dioxide are included as enforceable provisions in the regulation. The current regulation contains the requirements that would apply to major industrial sources (100 tons or more per year), of sulfur dioxide emissions as a "backstop" regulatory program if specified sulfur dioxide milestones are ever exceeded. If the milestones are exceeded, numerous mandatory requirements of the current regulation will be triggered, including the procedures and compliance requirements for sources in the trading program. However, the mandatory provisions that will be triggered by exceeding the milestones may never be implemented if the goal of meeting the regional sulfur dioxide milestones through voluntary means is achieved. The proposed revisions address the changes necessitated by the court rulings outlined above.

The final hearing will address a proposal by the Environmental Health Department (Department) that the Air Board consider whether to approve the submittal to EPA of an amended 'Section 309' Regional Haze SIP, and an amended 20.11.46 NAMC as proposed revisions to the SIP.

After the hearings close the Air Board is expected to convene its regular monthly meeting during which they will decide whether to adopt the proposed amendments to the Regional Haze SIP and amendments to 20.11.46 NMAC, and whether to incorporate these amendments into the SIP.

The Air Quality Control Board is the federally delegated air quality authority for Albuquerque and Bernalillo County. Federal, State, and local delegation authorize the Air Board to administer and enforce the Clean Air Act, the New Mexico Air Quality Control Act, local air quality regulations, and to require local air pollution sources to comply with air quality standards.

Hearings and meetings of the Board are open to the public and all interested persons are encouraged to participate. All persons who wish to testify regarding the subject of the hearing may do so at the hearing and will be given a reasonable opportunity to submit relevant evidence, data, views, and

arguments, orally or in writing, to introduce exhibits and to examine witnesses in accordance with the Joint Air Quality Control Board Ordinances, Section 9-5-1-6 ROA 1994 and Bernalillo County Ordinance 94-5, Section 6.

Anyone intending to present technical testimony at any of these hearings is asked to submit a written notice of intent to testify (NOI) before 5:00pm on November 7, 2007 to: Attn: November Hearing Record, Mr. Neal Butt, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or, you may deliver your NOI to Room 3023, 400 Marquette Avenue NW. The NOI shall identify the name, address, and affiliation of the person testifying.

In addition, written comments to be incorporated into the public record for the November 14, 2007 hearings should be received at the above P.O. Box, or Environmental Health Department office, before 5:00 pm on November 7, 2007. Comments shall include the name and address of the individual or organization submitting the statement. Written comments may also be submitted electronically to nbutt@cabq.gov and shall include the required name and address information. Interested persons may obtain a copy of the proposed amendments at the Environmental Health Department Office, or by contacting Mr. Neal Butt electronically at nbutt@cabq.gov or by phone (505) 768-2660.

NOTICE FOR PERSON WITH DISABILITIES: If you have a disability and/or require special assistance please call (505) 768-2600 [Voice] and special assistance will be made available to you to review any public meeting documents, including agendas and minutes. TTY users call the New Mexico Relay at 1-800-659-8331 and special assistance will be made available to you to review any public meeting documents, including agendas and minutes.

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

JUVENILE JUSTICE DIVISION

CANCELLATION NOTICE OF PUBLIC HEARING

The Public Hearing scheduled by the Children, Youth and Families Department, Juvenile Justice Services for October 17, 2007 from 1:00 p.m. to 3:00 p.m. in Room 565 on the 5th floor of the PERA building located at 1120 Paseo de Peralta, Santa Fe, New Mexico is CANCELED.

NEW MEXICO COAL SURFACE MINING COMMISSION

NOTICE OF RULE MAKING

STATE OF NEW MEXICO

COAL SURFACE MINING
COMMISSION
SANTA FE, NEW MEXICO

The Coal Surface Mining Commission will conduct a public hearing at 1:00 P.M. on **October 30, 2007**, in Porter Hall at 1220 South St. Francis Drive, Santa Fe, New Mexico, to consider the adoption of amendments to 19.8 2, Parts 4 through 11, 13, 14, 19, 20, 24, 26, 27, 29, 30, 31, 34 and 35 NMAC to correct citation style, punctuation, spelling or capitalization corrections in order to conform with 1.24.10.12 NMAC; correct minor mistakes in cross-referencing of other NMAC rules; add non-substantive subheadings for ease of reference; and to change the name of the federal agency, part of the United States Department of Agriculture, formerly known as the soil conservation service to the correct name of natural resources conservation service. In addition to these changes the Mining and Minerals Division proposes to amend three definitions in 19.8.1 (those for: basal area, government financed construction, and reclamation) and expand the public notice requirements in 19.8.11. The Commission may take action on the proposed amendments at the close of the hearing.

Copies of the text of the proposed amendments are available from Commission Clerk James O'Hara at (505)-476-3413 or from the Mining and Minerals Division web site at <http://www.emnrd.state.nm.us/>. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Mr. O'Hara at (505)-476-3413 as soon as possible.

Bill Brancard, Director
Mining and Minerals Division

NEW MEXICO DEPARTMENT OF CULTURAL AFFAIRS

LIBRARY DIVISION

NOTICE OF PUBLIC HEARING

The New Mexico State Library of the Department of Cultural Affairs, will hold a formal public hearing on October 29, 2007

at 9:00 a.m. in the Commission Room of the Library's Administrative Area, Garrey Carruther's State Library, 1209 Camino Carlos Rey, Santa Fe, New Mexico to receive public comments regarding a new rule to govern the distribution of general obligation state of New Mexico bond funds to public libraries.

The proposed rule may be obtained on the New Mexico State Library web site (http://www.stlib.state.nm.us/for_libraries_more.php?id=491_0_14_0_M46) or by contacting Bernadette Torr at 505 476-9758. Interested persons may testify at the hearing or submit written comments no later than 5:00 p.m. on October 29, 2007. Written comments will be given the same consideration as oral testimony given at the hearing. Written comments should be addressed to: Bernadette Torr, New Mexico State Library, 1209 Camino Carlos Rey, Santa Fe, NM 87507; faxed to 505 476-9761; or electronic mail to: Bernadette.torr@state.nm.us.

If you are a person with a disability and you require this information in an alternative format or require special accommodations to participate in the public hearing, please contact Bernadette Torr at 505 476-9758. The New Mexico State Library requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF PUBLIC HEARING

The New Mexico Environmental Improvement Board ("the Board") will hold a public hearing after its regularly convened meeting on December 4, 2007 at 9:00 a.m., and continuing on December 5, 2007 if necessary, at the New Mexico State Capitol Building, Room 317, 490 Old Santa Fe Trail, Santa Fe, NM 87501, for the purpose of hearing the matter in EIB No. 07-11(R), the New Mexico Environment Department's ("NMED") proposal to adopt amendments to 20.5.1 NMAC (General Provisions), 20.5.2 NMAC (Registration of Tanks), 20.5.3 NMAC (Annual Fee), 20.5.4 NMAC (New and Upgraded Storage Tank Systems: Design, Construction and Installation), 20.5.5 NMAC (General Operating Requirements), 20.5.6 NMAC (Release Detection), 20.5.8 NMAC (Out-of-Service Systems and Closure) and 20.5.14 NMAC (Certification of Tank Installers). The proposed amendments

would conform the regulations to the secondary containment, release detection, inspection and other requirements of the federal Energy Policy Act of 2005; clarify that owners and operators of storage tanks may be held liable for noncompliance with the rules; identify the tasks that must be conducted by certified tank installers; and streamline, re-format and clarify other requirements of the regulations.

Interested persons may review the proposed amendments during regular business hours at the NMED Petroleum Storage Tank Bureau, 2044 Galisteo Street, Suite A, Santa Fe, NM; NMED's Albuquerque Field Office, 5500 San Antonio Drive NE, Albuquerque, NM; on NMED's website at www.nmenv.state.nm.us; or by contacting Jennifer Pruett at (505) 984-1815 or Jennifer.Pruett@state.nm.us.

The hearing will be conducted in accordance with 20.1.1 NMAC, Rulemaking Procedures for the Environmental Improvement Board; the Environmental Improvement Act, Section 74-1-9 NMSA 1978; the Hazardous Waste Act, Section 74-4-5 NMSA 1978; and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses.

Persons wishing to present technical testimony must file a written notice of intent that:

- (1) identifies the person for whom the witness(es) will testify;
- (2) identifies each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;
- (3) summarizes or includes a copy of the direct testimony of each technical witness and states the anticipated duration of the testimony of that witness;
- (4) attaches the text of any recommended modifications to the proposed regulatory change; and
- (5) lists and describes, or attaches, all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of the rules.

Notices of intent should reference the docket number, EIB No. 07-11(R) and the date of the hearing, and must be received in the Board's Office at the following address no later than 5:00 pm on November 19, 2007:

Joyce Medina, Board Administrator
Office of the Environmental Improvement Board
Harold Runnels Building
1190 St. Francis Dr., Room N-2150 / 2153

Santa Fe, NM 87502
Phone: (505) 827-2425, Fax (505) 827-2836

Persons, including members of the public, wishing to present non-technical testimony may do so without prior notification. Any such person also may offer exhibits in support of his testimony. Alternatively, any such person may submit a written statement for the record prior to or at the hearing.

Persons having a disability and needing help to participate in this hearing process should contact Judy Bentley by November 16, 2007 at the NMED, Human Resources Bureau, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-9872. TDY users may access her number via the New Mexico Relay Network at 1-800-659-8331.

The Board may make a decision on the proposed regulation at the conclusion of the hearing or may convene another meeting for that purpose.

NEW MEXICO DEPARTMENT OF HEALTH

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on 6.12.8 NMAC "Diabetes Management For Students In The School Setting". The Hearing will be held on October 30, 2007 at 9:00 a.m. in the Harold Runnels Building Auditorium, located at 1190 St. Francis Drive, Santa Fe, New Mexico.

The public hearing will be conducted to provide the public an opportunity to comment on the Department of Health's proposed rule for Primary and Secondary Education to grant students the right to self-manage their diabetes care in the school setting; to assure safe health care management in the school environment; and to require specified training and supervision/direction for adult volunteers who provide services in diabetes management in the school setting.

A copy of the proposed regulation can be obtained from:

Yolanda Cordova, Director
Office of School & Adolescent Health
300 San Mateo Blvd., NE Suite 902
Albuquerque, New Mexico 87108
Office: (505) 841-5889
Fax: (505) 222-8675

Please submit any written comments regarding the proposed regulation to:

Yolanda Cordova, Director

Office of School & Adolescent Health
300 san Mateo Blvd., NE Suite 902
Albuquerque, New Mexico 87108
Office: (505) 841-5889
Fax: (505) 222-8675

The Department will accept public comment through the close of the hearing.

If you are an individual with a disability who is in need of special services to attend or participate in the hearing, please contact Yolanda Cordova by telephone at 505-841-5889. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

**NEW MEXICO OIL
CONSERVATION
COMMISSION**

NOTICE OF RULE MAKING

**STATE OF NEW MEXICO
ENERGY, MINERALS AND
NATURAL
RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION
SANTA FE, NEW MEXICO**

The State of New Mexico, through its Oil Conservation Commission, hereby gives notice that the Commission will conduct a public hearing at 9:00 A.M. on **Monday, October 22, 2007**, in Porter Hall at 1220 South St. Francis Drive, Santa Fe, New Mexico, concerning a proposal to repeal 19.15.17.2.50 NMAC (concerning pits and below-grade tanks) and replace it with a proposed new rule to be codified as 19.15.17 NMAC. The proposed new rule will ban all unlined pits absent a special exception, adopt new requirements for the closure of pits and below-grade tanks, otherwise substantially change the Commission's existing requirements concerning the permitting, design, construction and operation of pits and below-grade tanks (and operation of sumps), used in oil and gas operations, and require the permitting of, and prescribe rules concerning design, construction, operation and closure of, closed loop systems or other alternative methods that may be proposed for use in lieu of pits or below-grade tanks. Copies of the text of the proposed rule are available from Division Administrator Florene Davidson at (505)-476-3458 or from the Division's web site at <http://www.emnrd.state.nm.us/ocd/what-snew.htm>. Proposals for alternatives to the proposed rule must be received by the division no later than 5:00 P.M. on Friday, October 5, 2007. Written comments on the proposed new rule must be received no later

than 5:00 P.M. on Monday, October 15, 2007. Persons intending to offer technical testimony at the hearing must file a Pre-hearing Statement (six copies) conforming to the requirements of 19.15.14.1204 NMAC, including six copies of all exhibits the person will offer in evidence at the hearing, no later than Monday, October 15, 2007. Proposed alternatives and written comments may be hand-delivered or mailed to Ms. Davidson at 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, or may be faxed to Ms. Davidson at (505)-476-3462. Pre-hearing statements must be hand-delivered or mailed to Ms. Davidson at the above address. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Ms. Davidson at (505)-476-3458 or through the New Mexico Relay Network (1-800-659-1779) as soon as possible.

Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 11th day of September, 2007.

**STATE OF NEW MEXICO
OIL CONSERVATION DIVISION**

**Mark E. Fesmire, P.E.
Chair, Oil Conservation Commission**

**NEW MEXICO BOARD OF
PHARMACY**

**NEW MEXICO BOARD OF
PHARMACY**

REGULAR BOARD MEETING

NOTICE TO THE PUBLIC

The New Mexico Board of Pharmacy will convene on **October 29th & 30th, 2007** at 9:00 a.m. in the **Board of Pharmacy Conference Room located at 5200 Oakland Ave., NE, Albuquerque, NM** for the purpose of conducting a regular Board meeting.

Interested persons may contact Debra Wilhite, Administrative Secretary, 5200 Oakland Ave., NE, Suite A, Albuquerque, NM 87113, (505) 222-9830 or fax (505) 222-9845, e-mail debra.wilhite@state.nm.us to receive copies of the agenda, which will be available October 18, 2007. The Board may go into executive session at any time to discuss licensee and/or personnel matters. Anyone who needs special accommodations for the meeting should contact the Board office at (505) 222-9830 as soon as possible.

The agenda (tentative) will be available starting August 16, 2007, through the Board's website: www.rld.state.nm.us/pharmacy.

The Board will notice the following for rule hearings:

- 16.19.20.42 NMAC - Controlled Substances
- 16.19.20.65, 66, & 67 NMAC - Controlled Substances
- 16.19.4.9 NMAC - Pharmacist
- 16.19.6.11.C(2d) NMAC - Pharmacies

The Board will address:

Approval of Applications:

Other Board Matters:

Settlement Agreement

Case#2005-085

Public Requests:

Moreno Valley
Waiver Request

Healthcare Clinic -

*Executive Director's Report:

Case presentations*

Published in the Albuquerque Journal and Tribune - September 28, 2007.

**NEW MEXICO PUBLIC REGULATION COMMISSION
TRANSPORTATION DIVISION**

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE ADOPTION OF)
AN AMENDMENT TO THE COMMISSION'S)
MOTOR TRANSPORTATION RULE)
18.3.1.7 NMAC,)
) Docket No. 07-00172-TR-M
TRANSPORTATION DIVISION STAFF)
OF THE PUBLIC REGULATION)
COMMISSION,)
)
Petitioner.)

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Public Regulation Commission ("Commission") proposes to adopt an amendment to the Commission's Motor Transportation Rule 18.3.1.7 NMAC. That section of the rule, showing the proposed amendment, is attached to the original and mailed copies of this Notice of Proposed Rulemaking ("NOPR") as Exhibit 1. This matter comes before the Commission on the motion of the Commission's Transportation Division Staff ("Staff"). Being fully advised,

THE COMMISSION FINDS AND CONCLUDES:

1. On April 27, 2007, the Staff filed its Motion to Initiate Rulemaking in the above matter. In its Motion, the Staff proposes to amend the Commission's Motor Transportation Rule 18.3.1.7 NMAC, definitions, to delete the definition of the term "incidental carrier" so as to eliminate a potential conflict between the definition of that term in the rule and the definition of the same term in a 2007 amendment to the New Mexico Motor Carrier Act, specifically in NMSA 1978, Section 65-2A-3.S. The Staff's Motion also requests that the subsequent subsections of 18.3.1.7 be re-lettered following the deletion of subsection K.

2. Commission Rule 18.3.1.7.K NMAC currently defines the term "incidental carrier" as follows: incidental carrier means a motor carrier of persons that provides services for which the customer pays either directly or indirectly and that transports passengers in conjunction with the primary service that it provides, including but not limited to, (1) businesses that transport passengers in conjunction with services such as boating, river rafting, kayaking, canoeing, cycling, hiking, bird watching, camping, fishing, or hunting, where customers pay directly or indirectly for either the transportation or the primary service; (2) hotels and other lodging establishments that provide their customers shuttle service from airports or other locations to their places of business and from their places of business to airports or other locations, where customers pay directly or indirectly for either the transportation or the lodging; (3) private schools and private pre-schools that provide transportation to students in conjunction with the schools' educational or extracurricular programs or activities, where customers (including students' parents) pay directly or indirectly for either the transportation or the educational or extracurricular services; (4) casinos and bingo halls that transport customers to and from their places of business where customers pay directly or indirectly for either the transportation or the primary services offered; (5) automobile dealerships that provide shuttle service to transport customers from their places of business to the customers' homes, offices or other locations where the customers pay directly or indirectly for either the transportation or the primary services offered by the dealership. The term "incidental carrier" does not include, for example, (1) automobile dealers that permit potential customers to test drive motor vehicles but do not provide shuttle service or transport customers or potential customers from point-to-point; (2) individuals such as family members or friends who transport passengers but are not engaged or employed in a paid primary service in conjunction with which the transportation services are offered; and (3) car-pools and similar arrangements where participants may share expenses such as fuel costs, but do not make payments beyond payment for such expenses.

3. The Commission adopted the foregoing definition in its Final Order in an earlier case, In the Matter of the Adoption of Proposed Amendments to the Commission's Motor Transportation Rule 18.3.3 NMAC, Case No. 06-00145-TR-M on November 7, 2006. It became effective upon publication in the New Mexico Register on November 30, 2006.

4. At the time when the Commission issued its Final Order in Case No. 06-00145-TR-M, the Motor Carrier Act had been amended in the 2005 legislative session to require the Commission to prescribe minimum financial responsibility requirements for motor carriers including "incidental carriers" (NMSA 1978, Section 65-2A-18.A (2005) and defined the term "incidental carrier" as "a motor carrier of persons that provides services for which the customer pays either directly or indirectly and that transports passengers in conjunction with the primary service that it provides." NMSA 1978, Section 1978, Section 65-2A-3.S (2005).

5. In the rule amendments to the Motor Transportation Rules that the Commission promulgated with its November 7, 2006 Final Order in Case No. 06-00145, the Commission required "incidental carriers" to maintain a combined single limit public liability policy in the amount of at least \$250,000 per occurrence for bodily injury or death of all persons injured or killed and property damage (18.3.3.10.G NMAC) and defined the term "incidental carrier" as set forth in Paragraph 1 above (18.3.1.7.K). The definition of the term "incidental carrier" that the Commission the adopted incorporated the then existing statutory definition and, in order to give guidance to affected businesses and members of the public, expanded upon the statutory definition by giving examples of carriers that come within the definition and examples of carriers that do not. (See Final Order ¶ 28.) In its Final Order, the Commission also acknowledged the enforcement burden potentially placed upon the Commission's Motor Transportation Division as a result of the broad statutory definition of the term "incidental carrier" and made some suggestions for easing that burden. (Final Order ¶¶ 25, 26, 40.)

6. Staff in its Motion in this case states that "the Commission asked the 2007 Legislature to amend the statutory definition of 'incidental carrier' to more easily manage its enforcement responsibilities and still fulfill the original intent of the legislature when it . . . passed the incidental carrier law in 2005 . . ." and, consequently,

"BH 1060 . . . deleted the [then] current statutory definition of the term "incidental carrier" and in its place substituted the following" definition:

"incidental carrier" means a motor carrier of persons that transports passengers using vehicles designed to transport sixteen or more passengers, including the driver, and for which the customer pays either directly or indirectly.

7. In its 2007 session, the New Mexico Legislature passed an amendment to the Motor Carrier Act in which it substituted this new definition of the term "incidental carrier" for the previous statutory definition; the Governor signed the amendment into law on April 2, 2007; and it took effect on June 16, 2007. (Laws 2007, ch. 188.)

8. Staff in its Motion states that the new definition of "incidental carrier" "will be much easier to enforce given that two databases already exist for the vehicles and drivers identified in the new definition" and states that the Motor Vehicle Division of the Taxation and Revenue Department ("MVD") maintains compatible data bases that MVD is willing to share with Staff, "allowing Staff to make contact with those filing under the new definition, thereby obtaining better and more accurate compliance." (Motion at 3-4.)

9. Staff in its Motion states, "[b]ecause the new statutory definition of 'incidental carrier' is self-contained, and requires no further clarification, Staff asks the Commission to delete the definition of 'incidental carrier' currently in its Motor Transportation Rules," and opines that the simple deletion of the current regulatory definition "would make the Motor Carrier Act and the Motor Transportation Rules consistent." (Motion at 4.) Finally, Staff asks the Commission to solicit written comments on the proposed rule amendment and to schedule a public comment hearing in Santa Fe.

10. Attached to the original and the mailed versions of this NOPR as Exhibit 1 is a copy of Section 18.3.1.7 NMAC of the Motor Transportation Rule (definitions) showing the current definition of the term "incidental carrier" (subsection K) struck through to indicate its proposed deletion and showing the re-lettering of the subsequent subsections. (Exhibit 1 is not provided with the published versions of this NOPR. See Paragraph 12 below to obtain copies.)

11. The Commission will take written comments on the amendment to its Motor Transportation Rules proposed in

this NOPR from any interested person. Interested persons shall file their written comments no later than October 15, 2007. Comments suggesting changes to the proposed rules shall state and discuss the particular reasons for the suggested changes and include specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the proposed rules should be in legislative format. A copy of the proposed rules in electronic format may be obtained from the Commission to facilitate this requirement. Any proposed changes to the amended proposed rules in Exhibit 1 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 format). 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 Notice.

12. Comments on the proposed amendment to the Motor Transportation Rules shall be sent to:

Bettie Cordova
ATTN: Proposed Rules for
Public Safety and Law Enforcement
New Mexico Public Regulation
Commission
P.O. Box 1269
Santa Fe, NM 87504-1269
Telephone: (505) 827-4526

Copies of the proposed rule amendment (Exhibit 1 to this NOPR) may be obtained by contacting Ms. Cordova.

13. The Commission will hold a public hearing to take oral comment regarding the proposed rules. The hearing will be held on Monday, October 29, 2007 commencing at 10:00 a.m., at the PERA Building, 4th floor hearing room, 1120 Paseo de Peralta, Santa Fe, New Mexico.

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

15. Any person with a disability requiring special assistance in order to participate in a hearing should contact Bettie Cordova at (505) 827-4526 at least 48 hours prior to the commencement of the hearing.

16. Copies of this Notice should be sent to all persons who have made a written request for advance notice and to any other person requesting service, and should be published in at least two newspapers of general circulation in the State and in the New Mexico Register.

IT IS THEREFORE ORDERED:

A. The proposed rule amendment to the Commission's Motor Transportation Rules, shown in Exhibit 1 attached to the original and mailed versions of this NOPR, is proposed for adoption as provided by this Notice.

B. Interested persons shall file their written comments on the proposed rule amendment as provided in this NOPR.

C. The Commission shall hold a public comment hearing as provided in this NOPR.

D. Commission Staff shall mail a copy of this Notice, including Exhibit 1, to all persons who have made a written request for advance notice and to any other person requesting service. The Commission shall cause this NOPR (excluding Exhibit 1) to be published in at least two newspapers of general circulation in the State and in the New Mexico Register.

E. This Notice is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 6th day of September, 2007.

NEW MEXICO PUBLIC REGULATION
COMMISSION

BEN R. LUJAN, CHAIRMAN

JASON A. MARKS, VICE-CHAIRMAN

SANDY JONES, COMMISSIONER

DAVID W. KING, COMMISSIONER

CAROL K. SLOAN, COMMISSIONER

**End of Notices and
Proposed Rules Section**

Adopted Rules

NEW MEXICO DEPARTMENT OF AGRICULTURE

This is an amendment to 21.17.47 NMAC, Section 8, effective 09/28/2007.

21.17.47.8 ASSESSMENT:

A. The committee assessment rate is set forth at ~~[10 dollars (\$10.00)]~~ 5 dollars (\$5.00) per bale of cotton for all cotton producers in the control district. The assessment will be collected at the cotton gins.

B. Payment of the assessment levied by a local control committee against a cotton producer will be due and payable when the cotton producer receives an assessment statement from the control committee.

C. Failure to comply with payment of assessment to the committee may result in the recording of a lien on the cotton crop and/or property in the county clerk's office where the property is located. The lien will remain in effect until foreclosure or balance subject to the lien is paid in full. Interest may be assessed at a rate of 8 1/2 percent per annum on the balance unpaid after 30 days.
[21.17.47.8 NMAC - N, 06/15/2000; A, 08/31/2006; A, 09/28/2007]

NEW MEXICO BOARD OF BARBERS AND COSMETOLOGISTS

This is an amendment to 16.34.1 NMAC, Section 7, effective 10-04-2007.

16.34.1.7 DEFINITIONS: As used in the Barbers and Cosmetologists Act:

A. "applicant" means a person who has applied for a license;

B. "approval number" means the number assigned by the board to designate an approved provider;

C. "approved" means accepted as a provider by the board;

D. "barber" means a person, other than a student, who for compensation engages in barbering;

E. "barbering" means shaving or trimming the beard or cutting the hair, curling and waving, including permanent waving, straightening the hair, giving facial and scalp massage or treatments with oils, creams, lotions or other preparations, either by hand or mechanical appliances, shampooing, bleaching or dyeing the hair or applying tonics or applying cosmetic prepa-

rations, antiseptics, powders, oils, clays or lotions to the scalp, face, neck or upper part of the body, caring for and servicing wigs and hair pieces or removing of unwanted hair except by means of electrology;

F. "board" means the board of barbers and cosmetologists;

G. "booth establishment license" means a license required of an individual who rents space within another licensed establishment for the purpose of rendering licensed services as a separate, independent business;

H. "branch campus/additional location" ~~[the board does not recognize branch campuses or additional locations in the same manner as some accrediting agencies or the US department of education; a school may be approved by other such oversight agencies as a "branch" or an "additional location;" however, they]~~ means an additional location that provides the same administrative services as the main campus, and offers at least one complete program entered into the programs offered at the main campus; a branch campus/additional location must be approved by the board as a separate school with a stand-alone license;

I. "contact hour" means one contact hour equals a minimum of fifty minutes of instruction;

J. "cosmetologist" means a person, other than a student, who for compensation engages in cosmetology;

K. "cosmetology" means arranging, dressing, curling, waving, cleansing, cutting, bleaching, coloring, straightening or similar work upon the hair of a person, whether by hand or through the use of chemistry or of mechanical or electrical apparatus or appliances, using cosmetic preparations, antiseptics, tonics, lotions or creams or massaging, cleansing, stimulating, manipulating, beautifying or performing similar work on the body of a person, manicuring and pedicuring the nails of a person, caring for and servicing wigs and hair pieces or removing of unwanted hair except by means of electrology;

L. "current work experience" means verified work that has occurred within the previous five years;

M. "electrologist" means a person, other than a student, who for compensation removes hair from or destroys hair on the human body through the use of an electric current applied to the body with a needle-shaped electrode or probe;

N. "enterprise" means a business venture, firm, or organization;

O. "expansion campus facility" means any separate classroom or clinic used for educational purposes that is

separate, detached and apart from the primary facility and main address; its purpose is to allow the licensed school to provide adequate space to train students who are enrolled through the primary facility and the expansion campus facility must be within a two-mile radius of the main campus;

P. "establishment" means an immobile beauty shop, barbershop, electrology clinic, salon or similar place of business in which cosmetology, barbering or electrolysis is performed;

Q. "esthetician" means a person, other than a student, who for compensation uses cosmetic preparations, including makeup applications, antiseptics, powders, oils, clays or creams or massaging, cleansing, stimulating or manipulating the skin for the purpose of preserving the health and beauty of the skin and body or performing similar work on any part of the body of a person; using the term or title of "medical esthetician" is not allowable under the act; this term is misleading and could be deemed deceptive or fraudulent;

R. "executive director" means the director for the board;

~~[S- "guest artist" means a non-resident who is granted permission to promote a product or technique in New Mexico for a limited time in accordance with rules adopted by the board;]~~

~~[T-]~~ S. "HSD" means the New Mexico human services department;

~~[U-]~~ T. "instructor" means a person licensed to teach in a school of cosmetology, barbering or in a school of electrology;

~~[V-]~~ U. "license" means a certificate, permit or other authorization to engage in each of the professions and occupations regulated by the boards enumerated in Subsection A of the act;

~~[W-]~~ V. "main campus" means a school, which has been licensed by the board ~~[for the three most recent years];~~ any change in location of the main campus must comply with the procedures set forth in 16.34.8 NMAC of these rules; the main campus includes the primary facilities and any separate or detached expansion campus facility of the primary training site within a two-mile radius;

~~[X-]~~ W. "manicurist-esthetician" means a person, other than a student, who for compensation performs work on the nails of a person, applies nail extensions or products to the nails for the purpose of strengthening or preserving the health and beauty of the hands or feet and who uses cosmetic preparations, including makeup applications, antiseptics, powders, oils, clays or creams or massaging, cleansing, stimulating or manipulating the skin for the

purpose of preserving the health and beauty of the skin and body or performing similar work on any part of the body of a person;

~~[X.]~~ X. "manicurist-pedicurist" means a person, other than a student, who for compensation performs work on the nails of a person, applies nail extensions or products to the nails for the purpose of strengthening or preserving the health and beauty of the hands or feet;

~~[Z.]~~ Y. "manicurist-shampooer" means a person who for compensation performs work on the nails of a person, applies nail extensions or products to the nails for the purpose of strengthening or preserving the health and beauty of the hands or feet and practices the art of shampooing, application of conditioners, rinses and scalp manipulations to the hair and scalp of a person and on artificial hair;

~~[AA.]~~ Z. "outreach enterprise" means an independent mobile unit, or system of units, equipped with or carrying both professional and special equipment used by a professional licensee of this act to a site or premises for the purpose of providing professional services to the handicapped, restricted, homebound, impaired, incapacitated, delicate, or otherwise constrained client;

~~[BB.]~~ AA. "provider" means the person, firm, corporation, institution or agency approved to conduct or sponsor a continuing education program and ensure its integrity;

~~[CC.]~~ BB. "revoke a license" means to prohibit the conduct authorized by the license;

~~[DD.]~~ CC. "sanitation" means the maintenance of sanitary conditions to promote hygiene and the prevention of disease through the use of chemical agents or products;

~~[EE.]~~ DD. "school" means a public or private instructional facility approved by the board that teaches cosmetology or barbering;

~~[FF.]~~ EE. "statement of compliance" means a certified statement from HSD stating that an applicant or licensee is in compliance with a judgment and order for support;

~~[GG.]~~ FF. "statement of non-compliance" means a certified statement from HSD stating that an applicant or licensee is not in compliance with a judgment and order for support;

~~[HH.]~~ GG. "student" means a person enrolled in a school to learn or be trained in cosmetology, barbering or electrolysis;

~~[H.]~~ HH. "suspend a license" means to prohibit, for a stated period of time, the conduct authorized by the license; "suspend a license" also means to allow for a stated period of time the conduct authorized by the license subject to conditions that

are reasonably related to the grounds for suspension;

~~[J.]~~ "temporary license" means a person, not licensed, who engages in the occupation of or teaches barbering, cosmetology or electrology by authority granted under special permission of the board; and]

~~[KK.]~~ II. "verified work experience" means work experience in the applicable discipline in a licensed establishment, enterprise or electrology clinic as verified by:

- (1) certified and notarized statement by employer(s);
- (2) certified and notarized statement by licensed co-worker(s);
- (3) certified and notarized statement by client(s);
- (4) certified and notarized copies of tax returns;
- (5) certified and notarized copies of W-2's; or
- (6) other related form(s) of documentation.

[16.34.1.7 NMAC - Rp 16 NMAC 34.1.7, 06-16-01; A, 07-16-04; A, 10-04-07]

NEW MEXICO BOARD OF BARBERS AND COSMETOLOGISTS

This is an amendment to 16.34.2 NMAC, Sections 8, 9 and 10, effective 10-04-2007.

16.34.2.8 GENERAL LICENSING PROCEDURES

A. Application forms;

(1) Application for any license to be issued or renewed by the board shall be made on the official form provided by the board for that purpose. Applications must include the required fee in the form of a money order, cashier's check, ~~[or]~~ business check, or credit card for on-line renewal only, (no personal checks will be accepted). Incomplete applications will be returned. Designated deadlines will apply to resubmitted applications.

(2) Applications for licensure must include:

(a) proof of age [~~includes a copy of a birth certificate, a driver's license or a state issued identification card, or a baptismal certificate~~] indicating applicant is at least seventeen years of age; please provide one of the following: a copy of birth certificate, driver's license, state issued identification card, or baptismal certificate.

(b) [~~proof of applicable secondary education includes a high school diploma, a G.E.D. certificate or transcript of G.E.D. test scores, a letter from the high school attended containing the school seal, a copy of the high school transcript showing all required grades have been passed, a letter from the~~

~~G.E.D. testing facility stating that the G.E.D. test has been passed or any other test approved by the United States department of education for the purpose of determining an applicant's ability to benefit, providing that documentation of grade equivalency is established by the test publisher and the required grade level for licensure has been achieved; documents submitted in a language other than English must be accompanied by a notarized translation of the document;~~] proof of applicable secondary education: please provide a copy of one of the following: a high school diploma, G.E.D. certificate or transcript of G.E.D. test scores, letter from the high school attended containing the school seal, copy of the high school transcript showing 10th grade equivalency or higher, a post-secondary transcript, successful completion of a 10th grade equivalency test, letter from the G.E.D. testing facility showing that the G.E.D. has been passed; documents submitted in a language other than English must be accompanied by a certified translation completed by a government certified translator;

~~[(e) the board, or its executive director, may accept as proof of secondary education the applicants notarized statement that he/she has completed the required secondary education, but has been unable to obtain documentary proof of that from a foreign nation; a notarized statement will not be accepted for applicants who have completed the secondary education in the United States;]~~

~~[(d)]~~ (c) a transcript of hours showing that the training hours were completed within the preceding twenty-four months; if the training hours were obtained more than twenty-four months before the application is submitted to the board, then the applicant will need to register at a licensed school, submit to a scholastic evaluation to determine his training needs, and complete a minimum of 150 hours of remedial education; upon completion and proof of the remediation, the applicant may apply for and submit to the complete theory examination, the applicable practical examination and a state law examination.

B. Photographs: applicants for original licensure shall attach a recent passport size, color photograph, front-view of face. The photo must be at least 1.5" X 1.5" and no larger than 2" X 3".

~~[(1) Applicants for original licensure by the board shall submit a recent (within three months), front view, head only photograph of him/herself. The photo must be at least 1.5" X 1.5" and no larger than 2" X 3".]~~

(2) Licensees must attach a recent (within three months), (front view, head only photograph of him/herself) to the license when it is issued and sign the license. The photo must be at least 1.5" X

1.5" and no larger than 2" X 3".

(3) Licensees must present a driver's license or other identification when requested by the public, the board or its authorized representative.]

C. [Renewals] Renewal is the responsibility of the licensee:

(1) Timely renewal of license(s) is the full and complete responsibility of the LICENSEE. Failure to renew the license by the expiration date will result in late fees or reexamination as set forth in the act.

(2) ~~[If a licensee has held a valid practitioner or instructor license within the previous twelve months, the instructor license may be used to renew or reinstate the original practitioner license.]~~ A licensee, with a valid instructor license for the preceding twelve months, may use the instructor license to renew or reinstate his original practitioner license.

(3) The board will issue renewal licenses within fifteen working days of receipt of the renewal request and applicable fee.

(4) Timely renewal of an establishment, enterprise, electrology clinic and school license is the full and complete responsibility of the LICENSEE. Failure to renew the license within thirty days after its expiration, ~~[payment of the renewal fee and a late fee will be required.]~~ will result in payments of renewal and late fees.

~~[D. For the purpose of meeting deadlines for submission of applications or required documentation, facsimiles may be accepted at the discretion of the board's executive director.]~~

[16.34.2.8 NMAC - Rp 16 NMAC 34.2.8, 06-16-01; A, 07-16-04; A, 10-04-07]

16.34.2.9 CUSTODY AND ALTERATION OF LICENSES

A. Licenses issued by the board are at all times the property of the board, and may remain in the custody of the licensee only ~~[so]~~ as long as the licensee complies with the act and board rules.

B. Licenses shall not be altered in any way. ~~[Duplication of a license is permitted for the sole purpose of license verification incidental to employment.]~~

C. Inspectors or board designees may retrieve any license which is suspended, revoked, expired, or left by a licensee who is no longer employed at an establishment, an enterprise, an electrology clinic, or school.

[16.34.2.9 NMAC - Rp 16 NMAC 34.2.9, 06-16-01; A, 10-04-07]

16.34.2.10 LICENSES POSTED

A. All licenses, except identification licenses, issued by the board shall be posted where clearly visible to the

public at all times.

B. Licensees must attach a recent passport size colored photograph to the board issued license and sign the license where indicated.

~~[B.]~~ C. All licensees, who have been placed on probation, will be issued a license, which states the licensee is on disciplinary probation. The license shall be posted where clearly visible to the public at all times.

D. Licensees must present a driver's license or other identification when requested by the public, the board or its authorized representative.

[16.34.2.10 NMAC - Rp 16 NMAC 34.2.10, 06-16-01; A, 10-04-07]

NEW MEXICO BOARD OF BARBERS AND COSMETOLOGISTS

This is an amendment to 16.34.3 NMAC, Section 8, 9, 10, 11, 12, 13, and 14, effective 10-04-2007

16.34.3.8 NOTICE OF EXAMINATION

A. The application for examination and applicable fee required by the act or these rules must be received by the board or its designee according to the [schedule published by the board] published schedule. It is the [examinee's] applicant's duty to [see to it that the deadline is met] meet all deadlines. Any arrangement to have a third party (such as a school) transmit the fee and application is made at the [examinee's] applicant's risk. Failure of the third party to transmit the fee in a timely manner will render the applicant being ineligible to take the examination in question. ~~[If the course of study cannot be completed by the scheduled deadline, but will be completed prior to the exam date, the applicant may contact the board to determine whether special consideration will be given.]~~

B. It shall constitute a violation of the rule, within the meaning of the act, for a school to engage in a pattern of failure to transmit student examination fees in a timely fashion if the school represents to the students that it will do so.

C. Applicants for examination must appear on the date of the examination on time, in proper dress code, with picture identification and a copy of the notice of examination sent from the board office. Applicants who do not appear on time or who do not have the required documents will not be admitted to the exam. The doors to the examination will close promptly at the scheduled examination start time. A board representative will be available to answer questions regarding rescheduling

for late applicants. In the case of extreme mitigating circumstances causing ineligibility for the exam, a decision regarding allowing the applicant to examine will be made at the sole discretion of the executive director.

~~D. Applicants for examination are expected to appear in professional dress, which includes dress slacks, skirt, or dress. Jeans or denim of any type or shorts of any style or length are not allowed. Applicants must wear a smock or lab coat with sleeves, which must be kept on and buttoned during the entire examination. If the smock or lab coat contains any identifying logos or school names, the logos must be covered during the examination. Aprons or vests are not allowed. Applicants not complying with this dress code will NOT be admitted to the examination.]~~

B. The doors to the examination room will close promptly at the scheduled examination start time. Applicants who do not appear on time or who do not have the required documents will not be permitted to the examination or will not be admitted to the examination. In extreme situations where mitigating circumstances are present, the board or its designee will decide whether to allow the applicant to take the examination.

[16.34.3.8 NMAC - Rp 16 NMAC 34.3.8, 06-16-01; A, 10-04-07]

16.34.3.9 EXAMINATION SCORES

A. The minimum passing scaled score for all written and practical licensing examinations is seventy five ~~[percent]~~.

B. Examinations for all licenses except instructor licenses are scored in three individual segments, each requiring a minimum segment scaled score of seventy five ~~[percent]~~. The segments are:

- (1) national practical;
- (2) national theory written; and
- (3) state law written.

C. If an applicant fails to attain a scaled score of seventy five ~~[percent score]~~ on any segment of the ~~[written]~~ examination, he/she will be required to ~~[retest in the failed segment(s) only and achieve a passing score]~~ retake the failed segment in its entirety.

~~[D. If an applicant fails to attain at least a seventy five percent score on the practical segment of any practical examination, he/she will be required to retest in the failed subject(s) only (both critical and non critical core) and achieve a passing score.]~~

~~[E.]~~ D. [Examination] Examinations for instructor licenses for all disciplines are scored in two individual segments, each requiring a minimum scaled score of seventy five ~~[percent]~~. The seg-

ments are:

- (1) theory written; and
- (2) state law written.

[16.34.3.9 NMAC - Rp 16 NMAC 34.3.9, 06-16-01; A, 07-16-04; A, 10-04-07]

16.34.3.10 EXAMINATION CONTRACT

A. To ensure test validity, reliability and standardization, the board ~~[contracts]~~ may contract with an outside testing agency which has developed examinations to test the qualifications for licensure as a cosmetologist, manicurist, esthetician, electrologist, barber and instructor.

B. All examiners are trained and certified by the testing agency to ensure the fairness and integrity of the ~~[exam]~~ examination.

C. Examination answer sheets are scored by the testing agency ~~[and results are mailed to the board office promptly].~~

D. The testing agency releases the board, its officers and employees, and the state of New Mexico from all liabilities, claims and obligations whatsoever arising from or under the contract for examination services.

[16.34.3.10 NMAC - Rp 16 NMAC 34.3.10, 06-16-01; A, 10-04-07]

16.34.3.11 EXAMINATIONS FOR EXPIRED LICENSES ~~[AND FAILED EXAM APPLICANTS]~~

A. ~~[Applicants]~~ An applicant whose license has expired for more than five years shall re-enter a licensed school, submit to a scholastic evaluation to determine ~~[their]~~ his training needs, and complete a minimum of 150 hours of remedial education. Upon completion of the remediation, ~~[they]~~ he may apply for and submit to the complete written theory examination, the applicable practical examination and a written state law examination.

B. ~~[Applicants whose license has expired for one year but less than five years shall submit to the applicable practical examination and a written state law examination.]~~ An applicant whose license has expired for one year but less than five years shall be required to retake the applicable examinations.

~~[C. Applicants who fail any portion of the examination must re-take that portion of the examination within one year of the date of failing the examination. In the event that the applicant does not re-examine within one year, he/she must re-enroll in a licensed school and repeat the applicable hours set forth in these rules in each of the failed subject areas in order to be eligible to re-take the examination for licensure.]~~

[16.34.3.11 NMAC - Rp 16 NMAC 34.3.11, 06-16-01; A, 07-16-04; A, 10-04-07]

16.34.3.12 EXAMINATION REQUIREMENTS FOR EXPIRED LICENSES:

All applicants for examination to reinstate an expired license shall submit a completed application for examination as required for original ~~[license]~~ licensure and submit proof that ~~[he/she]~~ he:

A. meets the age requirements set forth for original licensure;

B. meets the secondary education requirements set forth for original licensure; and

C. has been previously licensed by the New Mexico board of barbers and cosmetologists.

[16.34.3.12 NMAC - Rp 16 NMAC 34.3.12, 06-16-01; A, 10-04-07]

16.34.3.13 EXAMINATION REQUIREMENTS FOR FOREIGN TRAINED APPLICANTS:

Any foreign indicated person who meets the requirements set forth in 16.34.2.8 NMAC may apply for a New Mexico license by examination. The examination application must be submitted to the board or its designee along with the following supporting documentation:

A. notarized translation of his valid license or certificate from another nation;

B. notarized translation of certified transcript of training from school or nation;

C. notarized translation of any other documents that may be required by the board or its designee;

D. notarized letters of employment from past employers or employment records to prove work experience if applicable as stated in Subsection B of 16.34.6.8 NMAC;

E. the requirements for translation apply only to documents written in a language other than English;

F. the board shall require examination applicants with foreign training who fail any part of the examination to register at a licensed school, submit to a scholastic evaluation to determine their training needs, and complete a minimum of 150 hours of remedial education. Upon completion and proof of the remediation, the applicant will be allowed to re-examine in the failed areas.

[16.34.3.13 NMAC - N, 10-04-07]

16.34.3.14 EXAMINATION REQUIREMENTS FOR APPLICANTS WITH FULL HOURS, NO OUT-OF-STATE LICENSE:

An applicant, who has completed an equivalent course of study in the United States, but has not obtained a license in another state, will be admitted to the New Mexico board examinations subject to all requirements, which apply to New Mexico applicants to take examination.

[16.34.3.14 NMAC - N, 10-04-07]

NEW MEXICO BOARD OF BARBERS AND COSMETOLOGISTS

This is an amendment to 16.34.4 NMAC, Section 8, 9,13,14,15 effective 10-04-2007

16.34.4.8 MANICURISTS/SHAMPOOERS LICENSE RENEWALS:

~~[Holders of a manicurist/shampooer license are subject to the same renewal dates, penalties, fees and other renewal laws and rules as apply to manicurists/pedicurists.]~~ A manicurist/shampooer license holder is subject to the same rules and regulations that apply to manicurist/pedicurist license holders.

[16.34.4.8 NMAC - Rp 16 NMAC 34.4.8, 06-16-01; A, 10-04-07]

16.34.4.9 [TEMPORARY LICENSE

~~A. Temporary licensees must comply with the act and board rules. Non-compliance may be subject to administrative penalties and fines as outlined in the rules and regulations, 16.34.15 NMAC.~~

~~B. A temporary license will be issued only once to an applicant who:~~

~~(1) has completed and returned all examination application forms;~~

~~(2) has met all requirements for examination in his/her course of study; and~~

~~(3) has not taken the applicable written and practical examinations administered by the New Mexico board.~~

~~C. The temporary license will expire the earlier of ninety days after issuance or upon successfully passing the applicable examination.~~

~~(1) an extension will be granted if the date of expiration is after the examination date only until the applicant has received examination results;~~

~~(2) the applicant must take the examination prior to the expiration date on the temporary license.~~

~~D. A temporary license is automatically void and must be returned to the board office:~~

~~(1) if licensee fails ANY portion of the written or practical examinations;~~

~~(2) if applicant becomes eligible for licensure and fails to apply for the original license within fifteen days of the receipt of the examination results from the board office; or~~

~~(3) upon stated expiration date if an extension has not been approved or original licensure has not been applied for.~~

~~E. The executive director may approve one extension on a case-by-~~

~~ease basis for extreme mitigating circumstances only. A written request with documentation must accompany the written explanation to justify the extension. Consideration may include but is not limited to:~~

- ~~(1) medical reasons;~~
- ~~(2) physical restrictions;~~
- ~~(3) death in the immediate family;~~
- ~~(4) hazardous weather conditions;~~

~~or~~

~~(5) circumstances beyond the immediate control of the applicant or licensee.~~

~~F. The temporary license holder may provide all services in the applicable course of study in a licensed establishment. The temporary license holder may not assume supervisory or managerial responsibilities of a licensed establishment at any time.] [RESERVED]~~

~~[16.34.4.9 NMAC - Rp 16 NMAC 34.4.9, 06-16-01; Repealed, A, 10-04-07]~~

16.34.4.13 QUALIFIED INSTRUCTORS

~~A. [An instructor license will be issued to an applicant who has completed two full years of current verified work experience as a practitioner in the field in which he/she seeks licensure as an instructor and who passes the written and state licensing examination for instructor.] An eligible applicant may be issued an instructor license provided he submits a transcript for a 1000-hour instructor training course or proof of two years work experience and passes the instructor licensing examination.~~

~~B. A provisional instructor license will be issued to an eligible applicant who meets the board requirements and has completed three full years of current verified full time work experience as a practitioner in the field in which he/she seeks licensure as an instructor under the following terms and conditions:~~

~~(1) The work experience must be current to ensure up-to-date knowledge in the field in which the applicant seeks provisional licensure.~~

~~(2) The provisional license will be effective [from the time of issuance until the following March thirty first unless revoked or suspended pursuant to the act or these rules] until the next renewal period of March thirty-one.~~

~~(3) [The provisional license will be renewed only upon completion of the required continuing education in professional development as set forth by the board and stated in the application for renewal of a provisional license. Continuing education requirements for renewal of an initial provisional license will be prorated according to the portion of the year for which the license~~

~~was issued.] The provisional license will only be renewed twice upon completion of the required continuing education in professional development and the required fee as set forth by board rules.~~

~~(4) [A provisional license may be renewed no more than two times. If the holder of a provisional instructor license wishes to obtain a regular instructor license, he/she must complete the application for examination and submit to and successfully complete the written examination set forth by the board for licensure as an instructor. A provisional license is automatically void and must be returned to the board office if the licensee fails any portion of the written instructor examination.] To obtain an instructor license, the holder of a provisional instructor license must complete an examination application and pass the instructor licensing examination. Failing any portion of the instructor examination automatically voids the provisional instructor license. The provisional license must then be returned to the board office.~~

~~(5) [Based on Subsection A of 16.34.4.12 NMAC of this section, the provisional license holder may submit to the complete written examination at any time prior to the end of the expiration period for provisional licenses.] The holder of a provisional instructor license must sit for the licensing examination prior to the expiration of the provisional license.~~

~~[(6) To obtain a provisional instructor license, the applicant must meet all other requirements set forth by the board with regard to age, secondary education and payment of fees.]~~

~~[(7) (6) No more than fifty percent of the total instructional staff at any licensed school in the state of New Mexico may be licensed under this category. When determining ratios, more than one part-time provisional instructor may be combined to count as one instructor.~~

~~[16.34.4.13 NMAC - Rp 16 NMAC 34.4.13, 06-16-01; A, 10-04-07]~~

16.34.4.14 STUDENT PERMITS:

Upon receipt of a complete student registration form and applicable fee, which shall be received in the board office within ~~ten~~ fifteen days of date of registration, the board will issue a student permit and permit number. The student permit authorizes the holder to practice course related skills in an approved school and perform services on the public only after fifteen percent of the required hours for graduation from the course of study are accrued. Student permits are the property of the board and must be returned to the board office with the notice of termination or official transcript of credit by the school. Additional requirements applicable to student permits are

found in Subsection A, Paragraph 7 of 16.34.8.13 NMAC of these rules.

[16.34.4.14 NMAC - Rp 16 NMAC 34.4.14, 06-16-01; A, 07-16-04; A, 10-04-07]

16.34.4.15 DUPLICATE LICENSES: [Any licensee of this board desiring a duplicate license must pay the required fee and submit to the board office a notarized statement requesting the duplicate license, which certifies that he/she is the licensee requesting the duplicate license.] A duplicate license will be issued to any board licensee who submits a written, notarized request along with the required fee.

[16.34.4.15 NMAC - Rp 16 NMAC 34.4.15, 06-16-01; A, 10-04-07]

NEW MEXICO BOARD OF BARBERS AND COSMETOLOGISTS

This is an amendment to 16.34.5 NMAC, Sections 10 and 12, effective 10-04-2007.

16.34.5.10 COSMETOLOGIST LICENSE (1600 HOURS OR EQUIVALENT CREDIT): A cosmetologist license permits the practitioner to:

A. cut and style hair whether by hand or mechanical or electrical apparatus;

B. braid, natural hair braid, curl, wave, permanent wave or chemically relax the hair;

C. give facial and scalp massage or treatments with oils, creams, lotions or other preparations, either by hand or mechanical appliances including removal of superfluous or unwanted hair except by means of electrolysis or other invasive techniques and shaving;

D. shampoo, bleach, dye, or apply tonics to the hair;

E. apply cosmetic preparations, antiseptics, powders, oils, clays or lotions to any part of the body of a person;

F. manicure and pedicure the nails of a person and add nail extensions;

G. care for and service wigs and hairpieces;

H. cut or trim beards with clippers or scissors only.

[16.34.5.10 NMAC - Rp 16 NMAC 34.5.10, 06-16-01; A, 10-04-07]

16.34.5.12 ESTHETICIAN LICENSE (600 HOURS OR EQUIVALENT CREDIT)

A. An esthetician license permits the practitioner to:

(1) use cosmetic preparations on

the skin for cleansing and stimulating;

(2) apply massage and manipulation techniques using the hands or mechanical apparatus;

(3) apply light therapy, high frequency and other types of facial treatments;

(4) use specialized skin care and facial machines in applying facial treatments;

(5) apply cosmetic makeup preparations, antiseptics, powders, oils, clays or lotions to any part of the body of a person;

(6) perform lash and brow tinting procedures;

(7) remove superfluous or unwanted hair from the body of a person by any means except electrolysis or other invasive techniques and shaving.

B. An esthetician shall not perform any services other than those listed above. To do so may lead to revocation of the license or other disciplinary action by the board.

C. Using the term or title of "medical esthetician" is not allowable under the act. This term is misleading and could be deemed deceptive or fraudulent.

[16.34.5.12 NMAC - Rp 16 NMAC 34.5.12, 06-16-01; A, 10-04-07]

NEW MEXICO BOARD OF BARBERS AND COSMETOLOGISTS

This is an amendment to 16.34.6 NMAC, Section 8, effective 10-04-2007

16.34.6.8 RECIPROCITY

A. An applicant for licensure by reciprocity must meet all the requirements of the act and applicable rules.

B. CREDIT FOR WORK EXPERIENCE. Applicants who have not completed a course of study equivalent to the license for which he/she is applying may submit notarized letters of employment or employment records to prove licensed, current, verified work experience. Six full months of work experience will equal one-hundred-fifty hours of training. Work experience less than six full months will not be considered toward training hours. To obtain any license by reciprocity, no more than fifty percent of the hours required for licensure by in-state applicants may be obtained by work experience. Apprenticeship training hours shall be considered on an individual case basis and will not be credited for more than fifty percent of the hours required for licensure by in-state applicants.

C. FULL HOURS OR WORK EXPERIENCE, OUT-OF-STATE LICENSE. Any person who seeks licensure in the state of New Mexico through reciprocity from any other state shall:

(1) furnish an affidavit from the state regulatory agency verifying that the applicant holds a current license and is in good standing with the state;

(2) furnish a certified transcript for the course of study or affidavit of hours from the regulatory agency or school attended in the state from which the applicant is applying;

(3) complete the application for reciprocity on a form provided by the board and submit the required fee; and

(4) furnish notarized letters of employment from past employers or employment records to prove work experience as stated in B of this section, if needed.

~~D. FULL HOURS OR WORK EXPERIENCE, FOREIGN TRAINING. Any person who seeks licensure in the state of New Mexico through reciprocity or examination from another nation shall submit for consideration by the board or its designee the following:~~

~~(1) notarized translation of his/her valid license or certificate from another nation;~~

~~(2) notarized translation of certified transcript of training from school or nation;~~

~~(3) notarized translation of any other documents that may be required by the board or its designee;~~

~~(4) notarized letters of employment from past employers or employment records to prove work experience as stated in B of 16.34.6.8 NMAC, if needed;~~

~~(5) the requirements for translation apply only to documents written in a language other than English;~~

~~(6) the board or its executive director, may accept as proof of secondary education the applicant's notarized statement that he/she has completed the required secondary education, but has been unable to obtain documentary proof of that from the foreign nation; and~~

~~(7) the board may require examination applicants with foreign training who fail any part of the examination to return to school for a designated number of hours of training prior to re-examination.~~

~~E. FULL HOURS, NO LICENSE. An applicant, who has completed an equivalent course of study but has not obtained a license in another state, will be admitted to the New Mexico board examinations subject to all requirements, which apply to New Mexico applicants to take examination.~~

F. INCOMPLETE HOURS, OUT OF STATE LICENSE. A person holding a current license from another state who needs additional training not exceeding one hundred hours may obtain the hours in New Mexico or any other state and the applicant may submit proof of the training and be granted licensure through

reciprocity without examination.

~~G. An applicant from a state which requires a course of study less than the New Mexico course of study and who is licensed by that state may apply work experience or, on an individual case basis, apprenticeship training hours, toward training requirements as stated in Subsection B of 16.34.6.8 NMAC, not to exceed fifty percent of the required hours in New Mexico. If the allowed hours credited from work experience or apprenticeship training meet or exceed the equivalent of the New Mexico course of study, the applicant may obtain licensure through reciprocity without examination. If the applicant cannot obtain a license through reciprocity with the previous training and work experience, he/she will be required to obtain approval of the previous hours of training as stated in Subsection I of 16.34.6.8 NMAC, obtain the additional hours needed and submit to the New Mexico licensing examination applicable to the license he/she is seeking.~~

H. INCOMPLETE HOURS OF TRAINING, NO LICENSE. A person who is not currently licensed in another state and who is transferring to a licensed school in New Mexico with incomplete hours of training will be given full or partial credit in New Mexico. To determine the number of previous hours that will transfer to New Mexico the applicant must:

(1) submit a certified transcript from the regulatory agency in the state where the training was obtained or a sealed or certified transcript from the school in which the training was obtained; the transcript must include:

(a) the date training began in the former state; and

(b) the date training ended in the former state; and

(c) the number of hours earned categorized by subject.

(2) provide proof of age and secondary education as required for the license sought;

(3) submit on the prescribed form, a recommendation regarding approval of hours previously earned from the school in which the person is seeking enrollment; the board office will return the certified form stating how many hours are approved and how many hours are needed in the state of New Mexico; the certified approval must be retained in the student's school file.

(a) No credit will be approved in New Mexico for the study of subjects that are unrelated to the curriculum requirements in the state of New Mexico.

(b) If the number of hours to be credited to each subject cannot be obtained from the board or school in the former state, the applicant shall receive credit for ninety percent of the total hours of credit earned;

~~allocated by the prospective school as close as practicable in proportion to the time required for each subject in the New Mexico curriculum and submitted to the board for approval.]~~

D. FOREIGN TRAINING: All foreign trained applicants must submit to the applicable examination. Refer to 16.34.3 NMAC for requirements.

E. INCOMPLETE HOURS, OUT OF STATE LICENSE.

(1) An applicant who holds a valid license in another state and who needs additional training not in excess of 100 hours may obtain the training hours in any state. Upon submitting proof of having acquired the additional training hours, the applicant may then be licensed through reciprocity.

(2) An applicant licensed in a state where the course of study is not equivalent to New Mexico's may apply work experience or apprenticeship training hours, on a case by case basis, toward the training requirements as stated in Subsection B of 16.34.6.8 NMAC, provided these hours do not exceed fifty percent of the required hours in New Mexico. If the allowed hours credited from work experience or apprenticeship training meet or exceed the equivalent of the New Mexico course of study, the applicant may obtain licensure through reciprocity.

(3) An applicant who cannot obtain a license through reciprocity with the previous training and work experience, he will be required to obtain approval of the previous hours of training as stated in Subsection I of 16.34.6.8 NMAC, obtain the additional hours needed and submit to the New Mexico licensing examination applicable to the license he is seeking.

[+] **E.** In order to expedite the process of approving training hours and work experience for reciprocity applicants and transfer students, the board executive director may forward required documents to a member of the board who is also a licensee for approval.

[16.34.6.8 NMAC - Rp 16 NMAC 34.6.8, 06-16-01; A, 10-04-07]

NEW MEXICO BOARD OF BARBERS AND COSMETOLOGISTS

This is an amendment to 16.34.7 NMAC, Section 9, effective 10-04-2007

16.34.7.9 SANITARY AND SAFETY RULES FOR ESTABLISHMENTS AND ENTERPRISES

A. All licensees who operate enterprise outreach mobile units or establishments must comply with the fol-

lowing minimum sanitation and safety standards. Failure to comply with these requirements may result in an administrative fine as provided in 16.34.15 NMAC of these rules and other disciplinary action by the board.

(1) maintenance of adequate ventilation to ensure that occupants are not improperly exposed to hazardous products or chemicals;

(2) maintenance of smoking restriction to ensure that products or chemicals used are not inadvertently ignited;

(3) maintenance of spill standards to ensure that occupants are not improperly exposed to any product or chemical;

(4) maintenance of hot and cold running water available in such quantities as necessary to perform professional services in a safe and sanitary manner while serving the public;

(5) maintenance of all equipment in safe working condition;

(6) maintenance of clean towels in enclosed containers or cabinets with appropriate sanitizing agents;

(7) maintenance of combs and brushes in enclosed containers or cabinets with appropriate sanitizing agents;

(8) compliance with local licensing, fire, building, health, ventilation, heating and safety requirements;

(9) every person engaged in a licensed enterprise or establishment must keep his/her person in a hygienic condition;

(10) all products and chemicals must be kept in labeled closed containers;

(11) there shall be adequate wet and dry sanitizers;

(12) floors, walls, and other fixtures must be kept reasonably clean at all times; cups, bowls, basins, jars and instruments must be sanitized prior to using on the public;

(13) rest rooms of establishments must be in working order and be segregated and have ceiling high partitions from the rest of the establishment or common area;

(14) clean towels, sheets, robes and other linens must be used for each client; towels, sheets, robes, and other linens must be changed and properly laundered after each use; the use of paper or disposable towels, linens, etc. shall be in compliance with this rule and shall be disposed of after each use;

(15) implementation of proper cleaning and sterilization of head rests, hand rests, pedicure basins, foot rests, manicure tables and other fixtures that come in contact with licensees and the public; filters and drains must be cleaned or changed according to manufacturer's instructions;

(16) implements must be sanitized in an appropriate germicidal solution by immersion according to the product

manufacturer's direction;

(17) all licensees must provide a suitable place equipped to give adequate service, as advertised to clients, subject to inspection by the board;

(18) adherence to the product manufacturer's directions for safe use that appear on the product labeling;

(19) use of protective devices when so indicated by the product manufacturer's direction for safe use or when the nature of the product indicates such protection is necessary;

(20) implementation of proper hand washing practices to ensure that appropriate sanitary standards are maintained for clients and to ensure that cosmetology and barbering professionals are not overexposed to particular cosmetic products or their ingredients;

(21) implementation of proper storage practices to ensure that products are maintained in the manner that prevents any risk of fire or of undesired reactions;

(22) implementation of proper program of identification of products during use and in storage to avoid confusion as to products or their ingredients; such program shall include efforts to ensure that ingredient information provided by manufacturers or distributors remains available with the product for use by licensed professionals and clients;

(23) implementation of proper component mixing practices to reduce the risk of undesired reactions;

(24) implementation of proper sterilization practices of working tools and implements;

(25) licensees may not perform services on the public while under the influence of alcohol or drugs;

(26) maintenance of a material safety data sheet file containing pertinent facts regarding products;

(27) the use, storage or dispensing of such beauty service products containing methyl methacrylate or other chemicals determined to be hazardous to the health of licensees or consumers by the board of any federal, state or local health agency, shall be prohibited; the identification of such materials shall be determined by proper testing procedures approved by the board;

(28) no establishment or school shall use any razor-edged device or tool for the purpose of removing skin or calluses; ~~and~~

(29) all instruments and supplies that come in contact with a the public and cannot be disinfected (e.g. emery boards, sponges, cotton pads), shall be disposed of immediately after use; and

(30) procedures performed by any means, by hand, chemical, mechanical, or electrical apparatus or appliance which pen-

etrates into the dermal layer of the skin is considered invasive and is therefore prohibited.

B. Professional licensees who perform services in an outreach enterprise mobile unit must carry at all times a duplicate license which indicates that they have met the requirements stated in 16.34.4.15 NMAC of these rules.
[16.34.7.9 NMAC - Rp 16 NMAC 34.7.9, 06-16-01; A, 07-16-04; A, 10-04-07]

NEW MEXICO BOARD OF BARBERS AND COSMETOLOGISTS

This is an amendment to 16.34.8 NMAC, Section 10, 11, 12, 13, 18 and 21 effective 10-4-2007

16.34.8.10 PHYSICAL REQUIREMENTS: All schools must comply with the sanitary and safety rules for establishments outlined in 16.34.7.9 NMAC of these rules and provide for:

- A. a clean, well-maintained facility;
 - B. a reception area for clients and guests;
 - C. an area designated for theory instruction equipped with enough tables or desks and chairs to meet the instructional needs of assigned or scheduled students;
 - D. a designated clinic or laboratory area for supervised practical skills training;
 - E. sanitary, ~~[separate]~~ lavatories with hot and cold wash facilities;
 - F. sufficient grounded electrical outlets to provide for the safe operation of all laboratory and classroom equipment;
 - G. safe and secure maintenance of student records;
 - H. separate entrances and visitor reception areas if a professional service facility or salon is in the same building;
 - I. a designated work area for instructors for the purpose of planning, record keeping, counseling, consultation and administrative tasks;
 - J. properly marked exits to facilitate safe evacuation in case of emergency;
 - K. a dispensary or supply room adequately supplied to meet the reasonable anticipated needs of students and staff.
- [16.34.8.10 NMAC - Rp 16 NMAC 34.8.10, 06-16-01; A, 10-04-07]

16.34.8.11 EQUIPMENT, TEACHING AIDS: Schools shall have in good working order apparatus, equipment

and implements necessary for the full and ready teaching of all subjects included in the curriculum including, but not limited to the following:

- A. one applicable workstation for each student assigned a clinic patron at any one time;
 - B. one suitable bulletin board conspicuously located for posting rules and regulations, licenses, notices, etc.
 - C. one ~~[chalkboard]~~ board of adequate size to be seen by all students in the class;
 - D. teaching aids and applicable projection equipment for all subjects taught within the curriculum;
 - E. textbooks and lesson plans for the appropriate and authorized courses of study;
 - F. suitable reference materials including books, current periodicals, supplementary information to meet the requirements and objectives of the courses of study and which are available for independent study.
- [16.34.8.11 NMAC - Rp 16 NMAC 34.8.11, 06-16-01; A, 10-04-07]

16.34.8.12 EXPANSION CAMPUS FACILITY

- A. A completed official application to operate an expansion campus facility must be filed with the board at least fifteen days prior to the expected opening of the classroom or clinic. The application must include a statement of the distance between the approved primary facility and the new expansion campus facility, must be within a two mile radius of the main campus.
- B. The application, if complete, may be administratively approved. A formal inspection of the establishment shall occur within ninety days of opening. Incomplete applications without proper and complete supporting documents will be returned.
- C. Duplicate licenses for the school and all instructors teaching in any expansion campus facility shall be conspicuously displayed therein.
- D. If the ownership or address of the original, primary facility changes from that of the expanded campus facility, licensure of the expanded campus facility does not automatically continue for the expansion campus facility. ~~[The owner(s) of the original, primary facility must verify that the Expansion Campus Facility will remain in operation and comply with all licensure requirements by the Board.]~~
- E. An expansion campus facility must bear the same name as the original, primary facility and its advertising sign must indicate the same name as the primary facility.

[16.34.8.12 NMAC - Rp 16 NMAC 34.8.12, 06-16-01; A, 10-04-07]

16.34.8.13 REGULATIONS CONCERNING STUDENTS

- A. Student registration
 - (1) When a school receives an application from a prospective student, it shall promptly notify the student of the registration requirements of the board.
 - (2) It shall constitute a violation of the rules, within the meaning of the act, for a school to engage in ~~[a pattern of]~~ failure to transmit student registration documents and fees in a timely fashion to the board pursuant to Subsection G of 16.34.15.8 NMAC, wherein fines will be imposed.
 - (3) It shall be the responsibility of the prospective student to comply with the registration requirements by the first day he/she attends class for credit. Failure to do so may result in loss of hours earned prior to proper registration.
 - (4) No school shall allow a student to attend class for credit until the student has complied with the registration requirements ~~[for age and secondary education as follows]:~~
 - (a) Applicants for the barber, cosmetology, manicure/pedicure, esthetician, electrologist, and manicure/esthician courses must be at least sixteen years of age and have successfully completed two years of high school or the equivalent.
 - (b) Applicants for the instructor course must be at least seventeen years of age and have successfully completed four years of high school or the equivalent.
 - (5) Acceptable proof of age and education requirements as follows:
 - (a) Proof of age includes a copy of a birth certificate, a driver's license or a state issued identification card, or a baptismal certificate.
 - (b) Proof of two years of secondary education includes a high school diploma, a G. E. D. certificate or transcript of G. E. D. test scores, a sealed letter from the high school attended, a copy of the high school transcript showing all required grades have been passed, a letter from the G. E. D. testing facility stating that the G. E. D. test has been passed, or any other test approved by the United States department of education for the purpose of determining an applicant's ability to benefit, providing that documentation of GRADE EQUIVALENCY is established by the test publisher and the required grade level for the course of study has been achieved.
 - (c) The board, or its executive director, may accept as proof of secondary education the applicant's notarized statement that he/she has completed the required secondary education, but has been unable to obtain documentary proof of that from a

FOREIGN NATION. A notarized statement will not be accepted for students who have completed the secondary education in the United States.

(6) Evidence of compliance with the foregoing requirements shall accompany the application for registration form provided by the board.

(7) Upon receipt of a complete student registration form and applicable fee, which shall be received in the board office within ~~ten~~ fifteen days of the date of registration, the board office will then issue a STUDENT PERMIT and a permit number. The student permit authorizes the holder to practice course related skills in an approved school on the public only after successful completion of fifteen percent of the program. In addition, the student permit also authorizes the student to participate in the student externship program pursuant to 16.34.8.17 NMAC of these rules. A photograph of the student (front view, head only, at least 1.5" by 1.5") shall be attached to the permit. The permit shall be displayed in a binder in the school in which the student is enrolled and open to review by the state inspector or other board designee. Student permits are the property of the board and must be returned to the board by the school upon termination of the student's enrollment.

(8) If inspection of the student permits and school records determines that students are attending class without being properly registered with the board, the student may be denied the hours previously accrued and the school will be reported to the board for disciplinary action.

B. Student transfers/re-entries

(1) Any previously registered student desiring to transfer to another school, or re-enter the previous school shall submit a new registration form and required fees to the board. Students transferring schools as a result of a school closure shall submit a new registration form but are not required to pay a re-registration fee. Students attending a school, which undergoes a change of ownership, are not required to re-register with the board.

(2) Any student desiring to re-enter school ~~[after the board's record retention requirement has expired]~~ must submit ~~[a sealed transcript for]~~ proof of the successfully completed previous training in order to receive credit for it.

(3) A student enrolled in any course may withdraw and transfer hours or equivalent credit acquired to another course not to exceed the amount of hours or equivalent credit of each subject within the new course curriculum requirements. Appropriate termination notices and course registration documents must be submitted

to the board office when a student transfers to another course.

(4) Students enrolled in the cosmetology curriculum may take the examination for one of the specialty courses at which time the school certifies that the student has completed the requirements for the course in which the student seeks licensure. All other requirements for examination must also be met. The student may continue to attend classes in the cosmetology course. However, if licensure is obtained in any specialty course and the student continues attending classes in the cosmetology course, he/she cannot perform any services on the public in the school for which the individual is now licensed.

C. Records of student academic progress

(1) Schools shall keep records of academic progress for each student and these records shall be open for inspection by members of the board or its designees. ~~[The inspector will review lesson plans, student test grades, and practical skills grades for students to ensure that curriculum requirements are being met prior to course completion.]~~

(2) Schools will designate in the enrollment contract and other consumer information, all requirements for withdrawal or graduation. When all requirements have been met, the school must return the student's permit to the board, and submit a sealed official transcript of training to the board and to the student showing that course requirements for graduation have been met. The board recognizes for transfer, hours or equivalent credits reported on the official transcript of training. Circumstances regarding transfer of or approval of student hours may be brought to the board on an individual basis for special consideration by the board. The board may, in its discretion, recognize hours or equivalent credit or partial hours or partial credit for transfer when an official transcript of training has not been submitted by the school.

(3) If a student terminates his/her enrollment status without meeting all withdrawal or graduation requirements, the school in which he/she was enrolled shall notify the board of termination in writing within thirty days of the student's formal termination date using the format prescribed by the board, and return the student's permit.

(4) Schools offering clock hour training ~~[may]~~ shall define its attendance requirements to include one hundred percent attendance for the course length for licensure or may allow excused absences for no more than ~~[twenty-five]~~ ten percent of the course length for satisfactory course completion ~~[schools are advised, however,~~

~~that pursuant to Section 668.164(b), the U.S. department of education allows only up to ten percent excused absences for federal title IV recipients].~~

(a) student attendance policies are applied uniformly and fairly.

(b) attendance policies give appropriate credit for all hours attended;

(c) do not add or deduct attendance hours as a penalty;

(d) the school shall report actual hours attended by the student OR shall round the hours to the nearest half hour (i.e. if a student attended forty-four minutes past the hour, the school would report the previous half hour; if a student attended forty-five minutes past the hour, the school would report the next hour);

(e) the school must maintain attendance records for each student to verify that the minimum attendance standard set forth by the board is being met;

(f) in cases where schools are authorized to offer training via distance learning methods, the school establish standards for converting competencies achieved to clock or credit hours.

(5) To be considered a graduate, a student must have completed the course scheduled for completion and met the minimum attendance standard ~~[(or seventy five percent)]~~ (or ninety percent) of the established course of study and all other academic and evaluation factors established by the school. Therefore, in addition to completion of the required hours, the student must have satisfactorily completed the practical and theoretical curriculum requirements set forth by the school. Those requirements must include documentation that the student has satisfactorily completed each unit of study prescribed by the board in the applicable course of study. The excused absences DO NOT allow a student to accelerate in their course of study. Even though they may limit excused absences, they WILL NOT be allowed to sit for the state licensing examination until the number of hours prescribed by the board for the applicable course of study have elapsed.

(6) If a student is required OR allowed by the school to train more than the scheduled hours in a class day, he/she must be given credit for the additional time in the appropriate subject. ~~[Students may choose to attend more than the scheduled hours in any one day to accelerate completion of the course ONLY under supervised instruction approved and authorized by the school.]~~ Schools have full discretion in setting forth class schedules for each course offered as long as minimum requirements for graduation meet the board standards.

(7) Students may not be called from a scheduled theory class to perform services on the public.

(8) Schools expressing academic measurement in terms of credit hours shall set forth requirements for each unit of study within a course or program which ensure that required levels of competency or skills ability have been met. Such schools must award appropriate credit for each unit of study completed satisfactorily. Records of the students' academic progress within the course of study must be maintained for all students.

(9) The school shall provide a catalog to prospective students containing enough information to permit an informed choice among training opportunities and institutions. Catalogs which comply with the school's accrediting agency will be deemed to comply with this rule.

(10) Schools must comply with the Family Education Right to Privacy Act and must guarantee the rights of students ~~[and their parents or guardians, if the student is a dependent minor,]~~ to have access to their cumulative records and provide for proper supervision and interpretation of student records when reviewed.

(11) Schools and students shall enter into a signed written agreement which fully and accurately reflects the contractual rights and obligations of the parties, particularly with regard to suspension, expulsion, refunds, tuition and fees, withdrawal and graduation requirements. Contracts which comply with the school's accrediting agency will be deemed in compliance with this rule.

D. Records regarding state board examinations: Each school shall disclose to prospective students its annual statistics regarding the school's state examination pass rate. The board or its designee will send a letter to each school after each examination containing the result information on each student, which will serve as the source documentation for calculating the disclosed statistics.

[16.34.8.13 NMAC - Rp 16 NMAC 34.8.13, 06-16-01; A, 07-16-04; A, 10-04-07]

16.34.8.18 REFRESHER COURSES

A. Schools may offer a customized refresher course for individuals who have been out of school for an extended period of time and not yet obtained licensure and to licensees who wish to re-enter school and update their professional skills. The following requirements must be met for those students enrolled in a refresher course who are not already licensed.

(1) The student must be re-registered with the board and all other matriculation requirements met as required for regular students;

(2) The earned hours or equivalent credit will be added to the student's

existing transcript even though the requirements for licensure may have already been met.

(a) Successfully completed training must be reported on the official transcript of training accompanied by the student permit must be sent to the board office upon completion.

(b) A notice of termination and student permit must be sent to the board office upon termination from enrollment for unsuccessful completion of training.

B. Individuals who are already licensed who enroll in a refresher course must meet the following requirements.

C. The student file must contain a copy of the individual's current license, which may be reviewed by the inspector.

~~[D. The licensed student is not required to be registered with the Board and hours or equivalent credit does not have to be submitted unless the individual desires credit for the training. If credit is requested, the student must meet the same requirements listed in subsection A of 16.34.8.18 NMAC.]~~

[16.34.8.18 NMAC - Rp 16 NMAC 34.8.18, 06-16-01; A, 10-04-07]

16.34.8.21 STUDENT TRAINING - HIGH SCHOOL PROGRAMS

A. Students enrolled in the career enrichment courses (CEC) or any other associate high school program must meet the following requirements before enrolling for any course as follows:

(1) proof of completion of the second year of high school or its equivalent (i.e. only juniors and seniors can participate);

(2) proof that student is at least sixteen years of age;

(3) submission of a complete student registration form and required fees through the associate school licensed under this act.

B. In order for students to receive credit for attendance in high school related programs, such as CEC or EXCEL or others, the high school must certify the training provided and send that documentation to the licensed school that has registered the student. The licensed school will report the hours or equivalent credit to the state board and identify the type of student on a separate form designated by the board upon completion of the high school training program. The following restrictions apply:

(1) Students participating in high school programs cannot earn more than fifteen percent of the program in the high school facility.

~~[(2) Students participating in high school programs, whether the hours or equivalent credit are earned at the high~~

~~school or at the licensed school, cannot perform services on the public under any circumstances.]~~

~~[(2)]~~ (2) The licensed school must provide the student with an OFFICIAL TRANSCRIPT OF TRAINING for all hours or equivalent credit earned under the high school program because the board office retains those records for only one year.

[16.34.8.21 NMAC -Rp 16 NMAC 34.8.23, 06-16-01; A, 10-04-07]

NEW MEXICO BOARD OF BARBERS AND COSMETOLOGISTS

This is an amendment to 16.34.9 NMAC, Section 8, effective 10-4-2007

16.34.9.8 CONTINUING EDUCATION REQUIREMENTS

A. Instructors licensed to teach any course authorized under this act shall provide proof of attendance at a seminar of twelve contact hours or more per year for professional development ~~[and/or]~~ or improvement of professional proficiency. Instructor licenses are renewed every March thirty first. Therefore, each instructor must obtain twelve contact hours of continuing education between April first and March thirty first of the following year in order to renew the license. Continuing education hours do not carry over and must be completed each year. For initial instructor licenses, the continuing education requirement will not apply until after the first full year of licensure.

B. Entities that are automatically recognized as providers of continuing education are listed below. These entities do not have to obtain formal provider approval in order to offer recognized continuing education for instructors. These entities do not have to meet the approval, recordkeeping, and certificate of attendance requirements. However, the licensee must provide proof of attendance with license renewal.

(1) cosmetology educators of America (CEA) seminars and workshops conducted in any state;

(2) adult continuing education association programs in professional development, education, counseling, instructing or related programs;

(3) continuing education units (CEU's) recognized by four year institutions in any state in professional development, education, counseling, teaching or related programs;

(4) all schools licensed by the New Mexico state board of barbers and cosmetologists;

(5) credits recognized for teacher certification in any state according to the following conversion table:

(a) theory (cognitive/lecture): 1 credit hour = 30 clock hours;

(b) practice/demonstration: 1 credit hour = 45 clock hours.

(6) attendance at accreditation and team training workshops and instructor continuing education programs offered by nationally recognized accrediting agencies;

(7) certification of completion of Dale Carnegie professional development and business courses;

(8) the pivot point instructor symposium classes;

(9) educational classes or conferences sponsored by the Aveda institute;

(10) conferences sponsored by the American aesthetics education association;

(11) classes sponsored by Milady/Thomson learning's career institute;

(12) classes sponsored by Vidal Sassoon; or

(13) local, state, regional, or national industry trade shows with credit not to exceed fifty percent of the annual requirement for continuing education, or six hours; in addition, no more than fifty percent of the hours scheduled at such a trade show can contribute to the six hour maximum; the licensee must provide verifiable proof of attendance including an agenda of the event, a receipt for payment of attendance, or other such reasonable evidence of attendance;

(14) online faculty and professional development programs.

C. Licensee may also submit, subsequent to their attendance, copies of other programs and seminars that are not automatically approved. The board will consider such programs at the next regularly scheduled meeting and determine if credit is approved or denied. Detailed documentation of the program length and content must be submitted for the board to make a determination. Notification of approval or denial will be sent to the licensee within thirty days after the board meeting.

[16.34.9.8 NMAC - Rp 16 NMAC 34.9.8, 06-16-01; A, 10-04-07]

NEW MEXICO BOARD OF BARBERS AND COSMETOLOGISTS

This is an amendment to 16.34.11 NMAC, Section 9 effective 10-04-2007

16.34.11.9 [VIOLATIONS BY STUDENTS: If it is determined that a student is not in compliance with the sanitation or other rules promulgated by this board,

~~appropriate action may be taken.]~~
[RESERVED]
 [16.34.11.9 NMAC - Rp 16 NMAC 34.11.9, 06-16-01; Repealed, 10-04-07]

NEW MEXICO BOARD OF BARBERS AND COSMETOLOGISTS

This is an amendment to 16.34.13 NMAC, Section 8, 10, and 13 effective 10-4-2007

16.34.13.8 COMPLAINTS

A. ~~[A formal complaint against a licensee or establishment can be filed with the board. A complaint will not be considered for action by the board if the executive director determines that the complaint is frivolous in nature, anonymous, or is not on the complaint form designated by the board.]~~ The board, or its designee, will consider a formal complaint filed against a licensee or an establishment provided the complaint is on the proper form, signed and notarized.

B. When a complaint is received on the proper form, the ~~[executive director]~~ board, or its designee, will write to the licensee the complaint is against and request a response within fifteen days of receipt of such request.

C. The response will be reviewed by a committee designated by the board chairman.

D. If the committee's recommendation is that the complaint be taken before the board, the complaint will be reviewed at the next regularly scheduled board meeting. The executive director will notify all individuals involved of the action taken.

[16.34.13.8 NMAC - Rp 16 NMAC 34.13.8, 06-16-01; A, 10-04-07]

16.34.13.10 EXAMINATION PROCEDURES

~~[A. To be eligible for examination, the applicant must meet all of the following requirements:~~

~~(1) be at least seventeen years of age;~~

~~(2) have at least two years of high school or its equivalent;~~

~~(3) complete the required hours or equivalent credits of training in the specific course of study in a licensed school within the preceding twenty four months;~~

~~(4) submit an exam application to the board office; and~~

~~(5) submit a money order or cashier's check in the appropriate amount to the board office with the application; do not send personal checks or cash.~~

B. ~~What to bring to the cosmetology examination:~~

~~(1) the bulletin of information;~~
~~(2) kit containing required supplies listed in the bulletin of information;~~
~~(3) photo identification (e.g. driver's license); and~~

~~(4) one live model or mannequin head; a mannequin may be used for the hair-shaping portion only of the exam, when a live model is used;~~

~~(5) if mannequin is used, must bring one mannequin hand with sculptured nails already applied.~~

~~C. What to bring to the barbering examination:~~

~~(1) the bulletin of information;~~
~~(2) kit containing required supplies listed in the bulletin of information;~~
~~(3) photo identification (e.g. driver's license); and~~

~~(4) two live models or mannequin heads; a mannequin may be used for the hair-shaping portion only of the exam, when live models are used.~~

~~D. What to bring to the manicuring/pedicuring examination:~~

~~(1) the bulletin of information;~~
~~(2) kit containing required supplies listed in the bulletin of information;~~
~~(3) photo identification (e.g. driver's license); and~~

~~(4) one live model or two mannequin hands, one with sculptured nails already applied and one without sculptured nails; the applicant cannot bring a live model and a mannequin hand, its either or.~~

~~E. What to bring to the esthetician examination:~~

~~(1) the bulletin of information;~~
~~(2) kit containing required supplies listed in the bulletin of information;~~
~~(3) photo identification (e.g. driver's license); and~~

~~(4) one live model.~~

~~F. What to bring to the manicuring/esthetician examination:~~

~~(1) the bulletin of information;~~
~~(2) kit containing required supplies listed in the bulletin of information;~~
~~(3) photo identification (e.g. driver's license);~~
~~(4) one live model for the esthetician practical; and~~

~~(5) one live model or two mannequin hands, one with sculptured nails already applied and one without sculptured nails, for the manicuring practical.~~

~~G. Instructor eligibility requirements:~~

~~(1) be at least seventeen years of age;~~

~~(2) have at least a four-year high school course or its equivalent;~~

~~(3) complete the required hours or equivalent credits of training in a licensed school within the preceding twenty four months or two years work experience in the~~

field that you seek licensure; work experience is to be verified in a notarized statement by an employer, including specific work dates;

- (4) submit an exam application to the board office;
- (5) be licensed in the state of New Mexico as a practitioner in the field that you seek licensure as an instructor;
- (6) meet all requirements established by the board; and
- (7) submit a money order or cashier's check in the appropriate amount with the application; personal checks or cash are not accepted.

H. What to bring to the instructor examination:

- (1) the bulletin of information;
- (2) photo identification (e.g., driver's license);

A. The be eligible for the examination, the applicant must meet all requirements and follow all procedures set forth by the board or its designee.

[F] B. Special needs: If an applicant has a physical disability or a special need that prevents him/her from taking the examination under the regular conditions, he/she may request special accommodations. Written documentation of the disability must be submitted to the board office to determine what special accommodations are necessary. If special accommodations are needed to take the exam, the board office or its designee must be notified with the examination application.

[F] C. Policy on cheating: The exchange of information related to exam performance between examinees during the exam is prohibited. [Examinees] Applicants are not allowed to have any written or taped material in the testing area other than the supplies listed and approved for the exam.

[16.34.13.10 NMAC - Rp 16 NMAC 34.13.10, 06-16-01; A, 07-16-04; A, 10-04-07]

16.34.13.13 PETITIONS

A. The board shall accept for consideration at its regular meetings where licensee actions are taken, petitions for variance of these rules. If a licensee wishes to petition the board for a variance of these rules, he/she/it shall do so by filing with the board [executive director], in writing, a petition for variance. Such petition shall cite the specific section of these rules from which a variance is sought. It shall include an explanation of all factors and considerations to support the variance sought. A petition needs to be submitted at least fifteen days prior to the board meeting where it is to be considered. The petitioner may also request to personally appear before the board to support the petition. The board will only accept petitions that are submitted in the following format:

- (1) list the specific section of the rules to be varied, including part number and section;
- (2) provide the petitioner's rationale for the variance;
- (3) provide thorough documentation to support the request for variance; and
- (4) provide nine copies of the petition and supporting documentation in soft-sided binders for review by the board.

B. Decisions made by the board on a petition for variance shall be made in the same procedural manner as other actions of the board.

C. The denial of a petition for variance cannot be appealed.

[16.34.13.13 NMAC - N, 06-16-01; A, 10-04-07]

NEW MEXICO BOARD OF BARBERS AND COSMETOLOGISTS

This is an amendment to 16.34.14 NMAC, Section 8, effective 10-4-2007

16.34.14.8 FEES: The fees for examination, original licensure and annual renewal, licensure by reciprocity and special fees are as follows:

A.	Enterprise or establishment license (original).....	\$125.00
B.	Enterprise or establishment license (renewal).....	\$ 45.00
C.	Booth establishment license (original).....	\$125.00
D.	Booth establishment license (renewal).....	\$ 45.00
E.	School license (original and renewal).....	\$435.00
F.	Relocation of a school.....	\$185.00
G.	Barber license (original and renewal).....	\$ 25.00
H.	Cosmetologist license (original and renewal).....	\$ 25.00
I.	Manicurist/pedicurist license (original and renewal).....	\$ 25.00
J.	Manicurist/esthetician license (original and renewal).....	\$ 25.00
K.	Electrologist license (original and renewal).....	\$ 25.00
L.	Esthetician license (original and renewal).....	\$ 25.00
M.	Instructor license (original and renewal).....	\$ 25.00
N.	Reciprocity (original).....	\$125.00
[O]	Temporary practitioner license.....	\$ 15.00]
Q.	Administrative fee (other examination administrative costs).....	a maximum of \$100.00
P.	Administrative fee (lists).....	\$ 65.00
Q.	Administrative fee (lists on disks).....	\$ 95.00
R.	Administrative fee (relocation of establishments, etc.).....	\$ 25.00
S.	Lists on address labels (list fee plus actual cost of labels)	
T.	Transcript fee.....	\$ 15.00
U.	Examinations and re-examinations all licenses except instructor... [\$45.00]	a maximum of \$100.00
V.	Instructor examination and re-examination..... [\$45.00]	a maximum of \$100.00

W.	Duplicate licenses.....	\$ 15.00
X.	Student registration - any course.....	\$ 15.00
Y.	Identification license.....	\$ 25.00
Z.	Late fee.....	\$ 35.00
AA.	Provider approval, initial and renewal.....	\$ 50.00

[16.34.14.8 NMAC - Rp 16 NMAC 34.14.8, 06-16-01; A, 07-16-04; A, 10-04-07]

**NEW MEXICO
ENVIRONMENT
DEPARTMENT**

This is an amendment to 20.7.2 NMAC, Part Name, Sections 20.7.2.6, 20.7.2.7, 20.7.2.200, 20.7.2.201, 20.7.2.202, 20.7.2.204, 20.7.2.205, and 20.7.2.300 effective October 29, 2007.

**PART 2 RURAL WATER
SUPPLY, WASTEWATER AND SOLID
WASTE INFRASTRUCTURE**

20.7.2.6 OBJECTIVES:

A. To provide financial assistance to local authorities for the construction or modification of water supply, ~~and~~ wastewater, and solid waste facilities ~~[in order to correct demonstrably hazardous or inadequate conditions].~~

B. To provide guidelines for the department's ~~rating~~ ranking of water supply, ~~and~~ wastewater, and solid waste facility construction projects submitted pursuant to the RIA, for highest priority based on public health needs.
[20.7.2.6 NMAC - Rp, 20 NMAC 7.2.105, 10/31/2001; A, 10/29/2007]

20.7.2.7 DEFINITIONS:

A. "Administrative account" means a separate account established within the fund to carry out the administrative functions of the Rural Infrastructure Act.

~~[A.]~~ B. "Average residential user cost reduction grant" means a grant for the purpose of reducing the average residential user cost to a reasonable level as determined by the department for an eligible financially needy loan recipient whose water supply facility serves a population of less than three thousand.

~~[B.]~~ C. "Base interest rate" means the annual interest rate for loans to local authorities that do not qualify for average user cost reduction grants or zero percent loans.

~~[C.]~~ D. "Fund" means the rural infrastructure revolving loan fund.

~~[D.]~~ E. "Local authority" means ~~[any incorporated city, town, village, county,]~~ a mutual domestic association, ~~[public water cooperative association,]~~ or water and sanitation district ~~[whose water supply,]~~ that supplies water, wastewater or solid waste services to, or a municipality

that has a population of less than ~~[10,000; ten]~~ twenty thousand or a county with a population less than two hundred thousand.

~~[E.]~~ E. "Operate and maintain" means to conduct all necessary activities, including but not limited to replacement of equipment or appurtenances, to assure the dependable and economical function of a water supply or wastewater facility in accordance with its intended purpose.

~~[F.]~~ G. "Priority ranking system" means the system for ~~rating~~ ranking water supply, or wastewater, and solid waste facility construction projects for which loan applications have been received pursuant to the Rural Infrastructure Act.

~~[G.]~~ H. "Priority list" means a list of water supply, ~~and~~ wastewater, and solid waste facility construction projects ~~rated~~ ranked according to the priority ranking system ~~[pursuant to the RIA].~~

~~[H.]~~ L. "RIA" means the Rural Infrastructure Act, Chapter 75, Article 1 NMSA 1978.

J. "Secretary" means the secretary of the environment department.

K. "Solid waste facility" includes transfer and convenience facilities, landfills or other equipment or systems used for processing, transformation, recycling or disposal of solid waste.

~~[F.]~~ L. "Water supply facility" includes ~~[but is not limited to]~~ the source of supply of water, pumping equipment, storage facilities, transmission lines, treatment works, and distribution systems.

~~[F.]~~ M. "Wastewater facility" includes ~~[but is not limited to]~~ collection lines, pumping equipment, treatment works, and disposal piping or process units.

~~[K.]~~ N. "Zero percent loan" means a loan which carries no interest for the purpose of reducing the average residential user cost to a reasonable level as determined by the department for an eligible financially needy loan recipient whose water supply, ~~or~~ wastewater, or solid waste facility serves a population of less than 3,000.

[20.7.2.7 NMAC - Rp, 20 NMAC 7.2.106, 10/31/2001; A, 10/29/2007]

20.7.2.200 ELIGIBILITY:

A. Grants and loans shall be made only to local authorities that:

(1) agree to operate and maintain the water supply, ~~or~~ wastewater, or solid waste facilities so that the facilities will function properly over their structural and material design life, which shall not be less

than twenty years;

(2) require the contractor of the construction project to post a performance and payment bond in accordance with the requirements of Section 13-4-18 NMSA 1978;

(3) provide a written assurance, signed by an attorney, that the local authority has proper title, easements, and rights-of-way to the property upon or through which the water supply, ~~or~~ wastewater, or solid waste facility proposed for funding is to be constructed or extended;

(4) meet the requirements for financial capability set by the department to assure sufficient revenues to operate and maintain the facility for its useful life and to repay the loan;

(5) pledge sufficient revenues for repayment of the loan, provided that such revenues may by law be pledged for that purpose;

(6) agree to properly maintain financial records and to conduct an audit of the project's financial records;

(7) are included on the RIA priority list;

(8) have a treasurer, clerk, secretary-treasurer, or other individual responsible for the financial aspects of the project who is bonded;

(9) employ a registered professional engineer licensed in the state of New Mexico to provide and be responsible for all engineering services on a project; and

(10) provide a written notice to the department of completion and start of operation of the water supply, ~~or~~ wastewater, or solid waste facility.

~~[A.]~~ B. Loans and grants made pursuant to the RIA shall not be used by the local authority on any project constructed in fulfillment or partial fulfillment of requirements made of a subdivider by the provisions of the Land Subdivision Act, Sections 47-5-1 to 47-5-8 NMSA 1978, or the New Mexico Subdivision Act, Sections 47-6-1 to 47-6-29, and 47-5-9 NMSA 1978.

~~[B.]~~ C. Plans and specifications for a water supply, ~~or~~ wastewater, or solid waste facility construction project shall be approved by the department before grant or loan disbursements to pay for construction costs are made to a local authority.

~~[C.]~~ D. A local authority which receives RIA funds shall comply with all applicable federal, state, and local laws and regulations, including ~~[but not limited to]~~ those related to procurement practices, con-

struction wage rates, and these regulations. [20.7.2.200 NMAC - Rp, 20 NMAC 7.2.200, 10/31/2001; A, 10/29/2007]

20.7.2.201 ELIGIBLE AND NONELIGIBLE ITEMS:

A. Eligible items include ~~[but are not limited to]~~ the costs of engineering feasibility reports, contracted engineering services, archeological surveys, and contracted construction.

B. ~~[Eligible items, for loan funds only, include the costs of water rights, land, system acquisition, easements, and rights of way. Legal costs, Fiscal agents' fees and refinancing of program loans are only eligible for loan funds.]~~ The following items are eligible for loan funds only: water rights, land, system acquisition, easements, rights-of-way, legal costs, fiscal agents' fees, and refinancing of program loans.

C. Administrative costs of the local authority are ineligible. [20.7.2.201 NMAC - Rp, 20 NMAC 7.2.201, 10/31/2001; A, 10/29/2007]

20.7.2.202 RESPONSIBILITIES OF THE DEPARTMENT; APPLICATION PROCEDURES:

A. The department shall administer the RIA Program. Money in the fund is appropriated to the department to carry out the provisions of the Rural Infrastructure Act. The department may allocate up to two percent of the total balance in the fund to pay for administrative expenses necessary to carry out the provisions of the Rural Infrastructure Act. Money allocated for administrative expenses shall be placed in a separate administrative account in the fund to be used solely for administrative expenses, and the department shall at the beginning of the fiscal year determine the projected administrative costs for the year and deposit in the account the appropriate amount; provided that the amount to be deposited does not exceed two percent of the total balance fund. Money in the account shall remain in the account at the end of a fiscal year.

B. Applications are to be submitted on standard forms provided by the department.

C. All applications for assistance under the RIA are due on the date(s) specified by the department.

D. The department shall review the application for eligibility, technical merits, and financial capability, and rate the applications based on the priority ranking system described in Section 20.7.2.300 NMAC.

E. The department shall make loans and, if applicable, average user cost reduction grants and/or zero percent loans to local authorities in order of priority

on the current fiscal year priority list and considering the following:

(1) willingness of a local authority to accept a loan;

(2) financial capability of the local authority to repay the loan, to properly operate and maintain the water supply, ~~[or]~~ wastewater, or solid waste facility, to maintain a replacement fund and a debt service reserve fund; and

(3) readiness to proceed with the project.

F. The department shall establish procedures to determine when the principal and interest portion of an average residential user cost is a reasonable cost.

G. The department shall establish procedures for the allocation and approval of average residential user cost reduction grants and zero percent loans which:

(1) shall reduce only the principal and interest portion of the average residential user cost for a recipient whose water supply, ~~[or]~~ wastewater, or solid waste facility serves a population of less than 3,000; and

(2) shall be for financially needy local authorities receiving RIA loan funds and which comply with the conditions outlined in the RIA:

(a) the construction project is designed using the most cost-effective and dependable option;

(b) the system is designed with adequate built-in expansion capacity;

(c) other sources of grant funds have been sought and are not available in a timely manner;

(d) the project cannot feasibly be reduced in scope or phased, so as to bring it within available loan funds and within reasonable user cost; and

(e) the local authority's median household income (MHI) is less than ninety percent of the statewide non-metropolitan MHI based on the most current decennial census.

H. Loan agreements will be prepared by the department and executed for those projects which can be financed with available funds.

I. The department may:
(1) conduct periodic reviews of the operation of a local authority that has received funding from the department;

(2) require the local authority to submit information relevant to the loan to the department;

(3) require the submission of financial reports relevant to the ability of the local authority to repay the loan; and

(4) review and require changes to the rate-setting analysis that supports the loan payments.

[20.7.2.202 NMAC - Rp, 20 NMAC 7.2.202, 10/31/2001; A, 10/29/2007]

20.7.2.204 LOAN AND GRANT LIMITATIONS:

A. The base interest rate shall be an annual interest rate ~~[of three percent]~~ set by the secretary that is at or below market interest rate.

B. No loan recipient eligible to receive a grant under the RIA shall receive a grant in any one year totaling more than ~~[\$200,000]~~ \$500,000.

C. A zero percent interest loan, in any one year, may not exceed ~~[\$200,000]~~ \$500,000.

D. The total of all loans in any one year for any single local authority may not exceed ~~[\$500,000]~~ \$2,000,000.

E. The maximum assistance, including both loans and grants, which a local authority may receive in any one year under the RIA is ~~[\$500,000]~~ \$2,000,000.

F. A loan under RIA shall be for a period of time not to exceed twenty years.

G. The repayment of a loan shall be in ~~[equal]~~ annual, quarterly or monthly installments as approved by the department beginning one year after completion of the project. The repayment of the interest on the loan accumulated during the design and construction of a project may be included in the final loan amount, but it shall not be counted in determining the maximum loan amount.

H. Existing loans under the Rural Infrastructure Act may be refinanced when the annual interest rate set by the department is at least one percentage point less than the annual interest rate on the existing loan. The request for refinance of an existing loan must be submitted in writing to the department.

[20.7.2.204 NMAC - Rp, 20 NMAC 7.2.204, 10/31/2001; A, 10/29/2007]

20.7.2.205 RATE-SETTING AUTHORITY:

In the event a local authority fails to make the prescribed loan repayment, the department is authorized to set water, ~~[or]~~ wastewater, or solid waste user rates in the area of the local authority's jurisdiction in order to provide sufficient money for repayment of the loan and proper operation and maintenance of the water supply, ~~[or]~~ wastewater, or solid waste facility.

[20.7.2.205 NMAC - Rp, 20 NMAC 7.2.205, 10/31/2001; A, 10/29/2007]

20.7.2.300 ELEMENTS OF [RATING] RANKING CRITERIA:

A. The department's ~~[rating]~~ ranking procedures for water supply construction projects submitted pursuant to the RIA shall include evaluation of:

(1) microbiological, turbidity, inorganic, organic, radiological, secondary

parameters, and any other water quality parameters determined by the department to be pertinent to the overall quality of the water provided by the water supply facility;

(2) components of the water supply facility, including but not limited to:

- (a) treatment;
- (b) disinfection;
- (c) storage;
- (d) distribution capacity;
- (e) reliability of the system;
- (f) potential for emergency assistance;
- (g) need for expansion;
- (h) age of the system; and
- (i) overall condition of the system; and

(3) the number of individuals served by the local authority's water supply facility, with a project serving a smaller number of individuals receiving a higher ~~rating~~ ranking than a project serving a larger number of individuals.

B. The department's ~~rating~~ ranking procedures for wastewater facility construction projects submitted pursuant to the RIA shall include evaluation of:

(1) stream standards, groundwater quality, quality of wastewater discharge, and any other water quality parameters determined by the department to be pertinent to the quality of surface or ground waters of the state;

(2) components of the wastewater facility, including but not limited to:

- (a) collection;
- (b) pumping;
- (c) treatment;
- (d) disposal;
- (e) reliability of the system;
- (f) potential for emergency assistance;
- (g) need for expansion;
- (h) age of the system;
- (i) overall condition of the system; and

(3) the number of individuals served by the local authority's wastewater facility, with a project serving a smaller number of individuals receiving a higher ~~rating~~ ranking than a project serving a larger number of individuals.

C. The department's ranking procedures for solid waste facility construction projects submitted pursuant to the RIA shall include evaluation of:

(1) current solid waste standards within the state, any potential impact of current solid waste systems to groundwater and/or surface water quality, closure or upgrades to facilities that do not meet current state standards for liner and/or cover systems, regionalization of substandard facilities, solid waste collection, recycling, re-use or disposal facilities that do not meet current state regulation(s) and/or have an

administrative order for compliance in force at the time of application, and any other solid waste practice standard determined by the department to be pertinent to the overall quality of solid waste collection, recycling, reuse, or disposal provided by the solid waste facility;

(2) components of the solid waste facility, including:

- (a) collection;
- (b) transportation;
- (c) disposal;
- (d) storage;
- (e) source separation;
- (f) recycling;
- (g) reuse;
- (h) capacity;
- (i) reliability of the system;
- (j) age of the system;
- (k) overall condition of the system; and

(3) the number of individuals served by the authority's solid waste system, with a project serving a smaller number of individuals receiving a higher ranking than a project serving a larger number of individuals.

[E] D. New systems shall be rated by evaluating only those applicable elements of the ~~rating~~ ranking criteria listed in Subsection A, ~~or B~~ B, or C of this section.

[20.7.2.300 NMAC - Rp, 20 NMAC 7.2.300, 10/31/2001; A, 10/29/2007]

NEW MEXICO ENVIRONMENT DEPARTMENT

This is an amendment to 20.7.6 NMAC, Sections 20.7.6.7, 20.7.6.11, 20.7.6.15, and 20.7.6.17 effective October 29, 2007.

20.7.6.7 DEFINITIONS. As used in this part.

A. Administrative fee" means a fee assessed and collected by the department from the local authority on each loan and expressed as a percentage per year on the outstanding principal amount of the loan, payable by the borrower on the same date that principal and interest on the loan are due, for deposit in the clean water administrative fund.

[A.] B. "Applicant" means a local authority that meets the following criteria: (1) placement on the current fiscal year priority list, (2) financial capability to service a loan, to perform operation and maintenance, to maintain a replacement fund and debt service reserve fund, and (3) readiness to proceed.

[B.] C. "Borrower" means a local authority whose application has been approved for eligibility and is ready to pro-

ceed to an interim loan agreement.

[E.] D. "Commission" or "WQCC" means the New Mexico water quality control commission.

[D.] E. "Department" or "NMED" means the New Mexico environment department.

[E.] F. "Event of default" means the borrower failed to make the complete annual payment of principal, plus interest and administrative fee when the same shall become due and payable, as identified in the repayment schedule of the final loan agreement.

[F.] G. "Final loan agreement" means a note issued by the borrower and the state upon completion of the project to evidence the permanent financing of the final loan amount in substantially the form as shown in the attachments.

[G.] H. "Final loan amount" means the aggregate amount of the principal disbursed by NMED to the borrower during the project, together with accrued interest on the aggregate principal thereof.

[H.] I. "Force account" means that the local authority provides the materials, equipment, or labor necessary to design or construct the project.

[I.] J. "Fund" or "SRF" means the state water pollution control revolving fund pursuant to Title VI of the Clean Water Act.

[J.] K. "Interim loan agreement" means a note, in the form of a line-of-credit, issued by the borrower and the state at the beginning of the project in anticipation of the issuance of the final loan agreement upon completion of the project in substantially the form as shown in the attachments.

[K.] L. "Loan issuance" means execution of the final loan agreement and revised promissory note.

[L.] M. "Local authority" means any municipality, county, water and sanitation district or any similar district, recognized Indian tribe or other issuing agency created pursuant to a joint powers agreement acting on behalf of any entity listed in this subsection.

[M.] N. "Operate and maintain" means all necessary activities including replacement of equipment or appurtenances to ~~ensure~~ ensure the dependable and economical function of a wastewater facility in accordance with its intended purpose.

[N.] O. "Priority system" means the system for ranking wastewater facility construction projects for which loan applications have been received pursuant to the Wastewater Facility Construction Loan Act.

[O.] P. "Priority list" means the list of wastewater facility construction projects ranked according to the priority

system pursuant to the Wastewater Facility Construction Loan Act.

[P.] Q. "Project" means the planning, design, construction, repair, extension, improvement, alteration, or reconstruction of the wastewater facilities by the borrower as described in the loan application.

[Q.] R. "Project completion" means the date that operations of the completed works are initiated or capable of being initiated, whichever is earlier. This also applies to individual phases or segments.

[R.] S. "Project engineer" means the NMED staff engineer assigned to the project.

[S.] T. "Wastewater facility" means a publicly owned system for treating or disposing of sewage or wastes either by surface or underground methods, including any equipment, plant, treatment works, structure, machinery, apparatus or land in any combination, that is acquired, used, constructed or operated for the storage, collection, reduction, recycling, reclamation, disposal, separation or treatment of water or wastes, or for the final disposal of residues resulting from the treatment of water or wastes, such as pumping stations, facilities, plants and works, outfall sewers, interceptor sewers and collector sewers and other real or personal property and appurtenances incidental to their use or operation. "Wastewater facility" also includes a non-point source water pollution control or Brownfield redevelopment project as eligible under the Clean Water Act.

[2-5-87; 10-22-88; 11-30-95; 20.7.6.7 NMAC - Rn, 20 NMAC 7.6.109 & A, 7/16/2000; A, 10/29/2007]

20.7.6.11 GENERAL.

A. Direct loans from the fund may be offered for up to 100% of total eligible project costs under state and federal statutes and regulations, subject to availability of loan monies.

B. Two types of loans are available: planning/design loans and construction loans.

(1) Planning/design loans. The maximum repayment period is limited to five years from the date of the interim loan agreement. If the borrower receives a construction loan for the same project, the borrower will be provided the option of reamortizing any remaining principal balance plus accrued interest and administrative fees on the planning/design loan upon completion of the construction project, or may make payments under both loans.

(2) Construction loans. The length of the loan repayment period will not exceed twenty (20) years or the expected life of the project improvements, whichever is less. Loans of lesser amounts will receive

a shorter repayment period depending upon the borrower's ability to service the debt in a reduced time period. The construction loan may include the cost of design and may precede the design phase of the project if the design period is relatively short and if a reasonable estimate of construction costs is available. Since the interim loan agreement is essentially a line-of-credit for planning, design and construction of the project the borrower must agree to complete the appropriate planning requirements prior to proceeding to the design and construction phases of the project.

C. A long-term commitment for future funding of a phased or segmented project will not be made; although, partial or phased funding for a project (without a guarantee of future funding) may be offered when deemed necessary to meet state water quality and financial assistance objectives.

D. Monies in the fund shall be loaned to eligible applicants as soon as possible after the monies become available. The fund will be managed so that a reserve is held available. The amount of the reserve will be dependent on the total size of the fund, including both available and committed monies. This reserve may be used for administration of the fund, investment, and limited purpose contingencies, including increases subject to federal and state statutes.

E. In the event project costs exceed the estimates in the interim loan agreement, the borrower may request that NMED consider an increase to the loan. Such request will be evaluated in respect to available uncommitted monies in the fund, financial risk of the request, and other criteria set by NMED. NMED may follow any procedure deemed appropriate under the circumstances, including renegotiation of the loan agreement in accordance with federal and state statutes.

F. In the event project costs are less than the estimates in the interim loan agreement, then the loan amount shall be adjusted downward by a corresponding amount at the time the final loan agreement is executed following completion of the project.

G. A loan shall be declared in default if the full payment is not received on the due date. Should a loan be declared in default, NMED may initiate legal action to collect past due amounts. NMED may also notify other state agencies and may take actions to preclude the borrower from receiving grant or other financial assistance from state agencies until all delinquent amounts due on the loan have been paid. In addition to these provisions, technical assistance will be provided to a borrower with a loan in default to help assess the problem and advise on corrective actions

needed to bring the loan current. Should these efforts fail to produce results and the borrower fails to adhere to the prescribed payment schedule, the NMED will dispatch an interdisciplinary team (representatives of the general counsel, state auditor, and local government division, as needed) to conduct a comprehensive assessment of the borrower, including, but not limited to, financial condition, management practices, fiscal capacity, economic circumstances, and violations of the terms and conditions of the legally binding final loan agreement. Upon the report of this team, NMED shall take whatever actions deemed appropriate, including court actions, to resolve the outstanding obligation.

H. NMED may waive or adjust any rule relative to the administration of the wastewater facility construction loan fund where it is deemed that the waiver or adjustment is in the best interest of the state and the community, and the waiver or adjustment does not violate any state or federal statute or regulation.

[10-22-88; 11-30-95; 20.7.6.11 NMAC - Rn, 20 NMAC 7.6.200 & A, 7/16/2000; A, 10/29/2007]

20.7.6.15 GENERAL PROJECT ADMINISTRATIVE REQUIREMENTS.

A. Loan Agreement.

(1) An interim loan agreement will be prepared by the NMED and executed by the borrower for the project which can be financed with available loan funds and which has completed requirements set by the NMED pursuant to the Clean Water Act, as amended, and the New Mexico Wastewater Facility Construction Loan Act. Projects which are not ready to proceed to the interim loan agreement stage within six months of allocation of available loan funds [will] may be bypassed by projects lower on the priority list which are ready to proceed.

(2) The interim loan agreement contains several conditions and certifications including:

(a) certification that the borrower is a legal entity with authority to execute a loan agreement by ordinance; certification that a resolution designating signatory authority has been passed;

(b) copies of all executed contracts, subcontracts, agreements, and related amendments entered into by the borrower prior to the interim loan agreement, but related to this project;

(c) request for proposals (RFP) documentation and an engineering agreement, or letter of certificate if employing staff engineers.

B. Security Interest.

(1) Upon execution of an interim loan agreement with the NMED for a construction project and before any proceeds of

the loan are paid out to the borrower, the borrower shall execute a promissory note for the principal amount of the interim loan agreement plus interest and administrative fee on the unpaid balance at the appropriate rate per annum, and may transfer title to the property upon which the facilities are to be constructed to the NMED. In lieu of, or in addition to, the transfer of title requirement, the borrower may transfer whatever interest it possesses in the property upon which facilities are to be constructed, to the NMED. In either case, the value of such property or interest so transferred shall be at least equal to the amount of the loan. All such titles and interest transferred to the NMED shall be secured by title insurance, if applicable, the cost of which shall be paid by the borrower. The NMED shall be named as primary beneficiary of all such title insurance policies. If title insurance for the property is not applicable or is not reasonably available, as determined by the NMED, then the borrower shall provide a title company's opinion on the abstract of title to the property up to the time the property was acquired by the borrower for use as a wastewater facility.

(2) Upon repayment of the loan, such interest or title shall be reconveyed to the borrower. Where the transfer of title or interest in the property would preclude the obtaining of federal grants, or where such transfer of title or interest is inappropriate or is prohibited by or would be in violation of existing grant-in-aid agreements, NMED may waive the requirements of transfer of title or transfer of any interest in the property, and substitute therefore such other security of sufficient value it deems necessary such as an irrevocable pledge of revenue covenant by the borrower.

(3) After the borrower transfers title or its interest in the property to the NMED as security, the borrower shall:

- (a) continue to insure the property;
- (b) be liable for all taxes and assessments; and
- (c) refrain from making major alterations that destroy the value of the security, unless NMED gives prior approval.

C. Allowable and Unallowable Costs.

(1) Allowable costs shall be limited to those costs which are necessary, reasonable, and directly related to the efficient achievement of the objectives of the project. Costs incurred by the borrower for work performed on the project prior to execution of the interim loan agreement, but which received NMED prior approval, may be considered as allowable costs. The borrower must justify all expenditures for which it requests a disbursement of loan funds

according to accepted NMED criteria and procedures. NMED may withhold disbursement of funds and may reclaim improperly documented disbursements until the borrower provides sufficient justification.

(2) All unallowable costs, including but not limited to overhead charges, administrative expenses, indirect costs, and all costs of borrower's employed inspectors and noneligible construction costs shall be paid by the borrower. The administrative fee shall not be included as principal in the loans and therefore considered an unallowable cost.

(3) The borrower agrees that it will implement, in all respects, the project outlined in the interim loan agreement.

(4) The borrower agrees to make no change in the project description without first submitting a written request to NMED and obtaining NMED approval of the required change.

D. Accounting. Funds received by the borrower from NMED and those funds which are contributed by the borrower shall be deposited in separate bank accounts or in a separate, identifiable ledger account. In addition, the borrower shall establish and maintain accounting procedures which will ensure strict accountability for all funds received and disbursements made by the borrower in connection with the interim loan agreement. NMED shall be responsible for examining the borrower's audited financial statements in accordance with the most recent circular on audits of states, local governments and non-profit organizations as published by the U.S. office of management and budget.

E. Records. The borrower shall maintain books, records, documents, and other evidence sufficient to reflect properly all costs of whatever nature claimed to have been incurred for the performance of this interim loan agreement. Such books, records, documents, ledgers, and other evidence shall be preserved and made available to NMED, state auditor, US governmental accounting office, and USEPA office of the inspector general during the loan agreement period and for a period of six (6) years from date of final repayment. If upon termination of the interim loan agreement, questions exist concerning proper expenditure of funds, then the borrower shall preserve and make available all books, records, documents, ledgers and other evidence relating to the interim loan agreement until such questions are settled and the borrower has received written notification to that effect from NMED.

F. Audit and Inspection. The project sites and borrower facilities which are in any part the subject of the loan agreement, and borrower records as defined

elsewhere herein, shall be subject at all reasonable times to inspection and audit by NMED, state auditor, US governmental accounting office, and USEPA office of the inspector general during the period of the loan agreement and for a period of six (6) years following final payment hereunder. All subcontracts let by the borrower, the cost of which are included in the interim loan agreement, shall include the substance of this audit and inspection clause.

G. Occupational Health and Safety. The borrower covenants that it will take affirmative action to ensure that the project shall be conducted in conformance with federal and state laws and regulations relating to occupational health and safety. In addition, the borrower shall assure that any contract entered into by the borrower for the performance of work on this project shall contain language by which the contractor and the borrower agree that authorized representatives of the NMED occupational health and safety bureau shall have free access to the project site, and shall not be impeded in any way from performance of their duties.

H. Nondiscrimination.

(1) During the performance of the interim loan agreement, the borrower shall not discriminate against any employee or applicant for employment because of race, color, age, religion, sex, or national origin. The borrower shall take affirmative action to ensure nondiscrimination in employee recruitment advertising, hiring, upgrading, promotion, and selection for training (including apprenticeship).

(2) The borrower agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this clause. All solicitation or advertisement for employees placed by or on behalf of the borrower shall state that all qualified applicants will receive consideration without regard to race, color, age, religion, sex, sexual preference, or national origin. The borrower shall comply with all provisions of Title VI of the Civil Rights Act of 1964, Executive Order 11246, dated September 24, 1965, and all relevant rules, regulations, and orders of the U. S. secretary of labor. The borrower shall include the provisions of the clause in all project subcontracts.

I. Termination. NMED shall have the right to terminate the interim loan agreement if at any time in the judgment of NMED, the terms of the interim loan agreement have been violated or the activities described in the project description are not progressing satisfactorily. The borrower may terminate the interim loan agreement with sufficient reason. In either case, the NMED shall establish following negotiations with the borrower a repayment

schedule for the funds disbursed to the borrower. Such termination must be in writing.

J. Procurement. The Procurement Code, NMSA 1978, Sections 13 1 28 through 13 1 199, imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities, and kick-backs.

[10-22-88; 11-30-95; 20.7.6.15 NMAC - Rn, 20 NMAC 7.6.301 & A, 7/16/2000; A, 10/29/2007]

20.7.6.17 INTERIM PAYMENTS.

A. For satisfactory performance of all work and services required to be performed under the terms of the interim loan agreement, NMED shall reimburse the borrower its actual costs incurred. The borrower may submit requests for reimbursement as often as every month. NMED shall disburse funds to the borrower when NMED determines, in its sole discretion, that expenditures have been properly documented, as provided for in general requirements for allowable and unallowable costs, accounting procedures, and record keeping. Copies of all pay request vouchers shall be submitted to NMED with request for payment. ~~[Three copies]~~ Copies of all requests shall be submitted on the appropriate form furnished by NMED and shall be accompanied by appropriate documentation to assure that those costs are correct and within the approved scope of work and attached budget form. Requests shall include expenditures to date by category.

B. ~~[Unless good cause exists which would justify a higher amount, NMED shall withhold five percent of payments due and owing a contractor from the borrower until fifty percent of the contract has been billed. Unless good cause exists, the NMED shall not withhold any additional retainage from billings after fifty percent of the contract has been billed by the borrower and approved by the NMED.]~~

~~(1) Such retainage shall be held by NMED pending its final project inspection and acceptance, which shall be performed promptly and the results of which conveyed to the borrower in writing.]~~

~~[(2)] NMED and the borrower will comply with the Retainage Act (Section 57-28-2 et. Seq. NMSA 1978) if money is to be withheld during construction.~~ The project will not be considered complete until the work as defined in the interim loan agreement has been fully performed and finally and unconditionally accepted by the borrower and NMED.

C. Interim payments will be made as the work progresses. Said payments will be based upon requests for payment prepared and certified by the borrower or the borrower's engineer to include

value of work performed, materials on hand, and materials in place in accordance with the contract. Interim payments for engineering, inspection, legal services, or other approved services shall be made in accordance with the approved contracts or agreements.

D. Any portion of funds allocated to the project which remain unexpended after completion of the project shall revert to the wastewater facility construction loan fund.

E. The borrower shall furnish NMED with an estimated disbursement schedule at the beginning of the project.

[10-22-88; 11-30-95; 20.7.6.17 NMAC - Rn, 20 NMAC 7.6.400 & A, 7/16/2000; A, 10/29/2007]

20.7.6.21 FINAL LOAN AGREEMENT AND REPAYMENT POLICY. Upon completion of the planning/design or construction project and after final disbursement of principal to the borrower:

A. NMED and borrower shall execute a final loan agreement which details the final loan amount, plus accrued interest and administrative fees due to the date of the final loan agreement.

B. NMED and borrower shall execute a revision to the promissory note and real estate mortgage (if applicable) which were recorded at the county seat at the time of the initial loan agreement. The revision shall reflect final loan amount, ~~[and] plus~~ accrued interest and administrative fees due.

C. NMED shall prepare a repayment schedule for the borrower which details principal, ~~[and] plus~~ accrued interest and administrative fees due. The schedule shall fully amortize the loan within twenty years of project completion. In some cases the amortization shall be less than twenty years. NMED shall address each loan on a case by case basis. The borrower may prepay the loan or any portion thereof at any time. The repayment period for a planning/design loan shall not exceed five years. The first annual repayment of principal, ~~[and] interest and administrative fees~~ shall be due within one year after completion of the project.

D. For borrowers with planning/design loans who subsequently receive a construction loan and who choose to reamortize (roll over) the planning/design loan, repayments for the planning/design loan may be postponed until construction of the project is completed, at which time the principal, plus accrued interest and administrative fees for the planning/design loan will be rolled into the final loan agreement for the construction loan with one subsequent repayment schedule.

E. NMED shall annually prepare and send to the borrower a notice of payment due.

F. The borrower shall make a check for the full amount of the notice payable to Wastewater Facility Construction Loan Fund, Attention:

C h i e f ,
Construction Programs Bureau
New Mexico
Environment Department
P. O. Box
26110
Santa Fe,
New Mexico 87502 6110
and mail in time to insure delivery by due date.

G. In the event of late payment or default by the borrower, NMED shall have the option to declare the principal, ~~[of, and]~~ interest accrued and administrative fee on, any outstanding indebtedness forthwith due and payable automatically without notice or demand of any kind, whereupon the same shall become forthwith due and payable; and NMED may take legal recourse to implement collection.

[10-22-88; 11-30-95; 20.7.6.21 NMAC - Rn, 20 NMAC 7.6.602 & A, 7/16/2000; A, 10/29/2007]

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION

LOCAL GOVERNMENT DIVISION

This is an amendment to 2.110.2 NMAC, Sections 7, 10, 11, 17, 18, 19, 20, 21, 25 and 26, effective September 28, 2007.

2.110.2.7 DEFINITIONS:

~~A.~~ "Asset management" is a systematic process of maintaining, upgrading, and operating physical assets cost-effectively. It combines engineering principles with sound business practices and economic theory, and it provides tools to facilitate a more organized, logical approach to decision making. It is a planning process that ensures the most value from each asset with a plan to rehabilitate and replace them when necessary. An accurate and up-to-date asset management plan will help communities comply with the Government Accounting Standards Board's Statement #34 (GASB 34), an accounting standard for publicly owned systems.

~~[A.] B.~~ "Council" means the New Mexico community development council.

~~[B.] C.~~ "Department" means the department of finance and administration.

~~[C.]~~ **D.** "Division" means the local government division.

~~[D.]~~ **E.** "Low and moderate income person" is a member of a household whose income would qualify as "very low income" under the Section 8 housing assistance payments program. Section 8 limits are based on 50 percent of the county median income. Similarly, CDBG moderate income is based on Section 8 "lower income" limits, which are generally tied to 80 percent of the county median income.

~~[E.]~~ **F.** "CDBG" means the small cities community development block grant program.

~~[F.]~~ **G.** "Rural" means a county with a population of less than 25,000 and an incorporated municipality with a population of less than 3,000.

~~[G.]~~ **H.** "Program income" means amounts earned by a unit of general local government or its sub recipient that were generated from the use of CDBG funds.

~~[H.]~~ **I.** "Slum area" as used in the Community Development Law (3-60-1 to 3-60-37 NMSA 1978) means an area in which there is a predominance of buildings or other improvements which are found by the local governing body by reason of 1) dilapidation, 2) deterioration, 3) age, or 4) obsolescence, 5) inadequate provision for ventilation, light, air, sanitation or open spaces, 6) overcrowding, 7) the existence of conditions which endanger life or property, or 8) any combination of such factors, to contribute to either ill health, the transmission of disease, infant mortality, juvenile delinquency or crime, and to be detrimental to the public health, safety, morals or welfare.

~~[I.]~~ **J.** "Blighted area" as used in the Community Development Law (3-60-1 to 3-60-37 NMSA 1978) means an area, other than a slum area, which is found by the local governing body by reason of the presence of a substantial number of slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty low layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivisions or obsolete platting, or the existence of conditions which endanger life or property, or any combination of such factors to substantially impair or arrest the sound growth of the municipality, retard the provision of housing accommodations or constitute an economic or social liability and is a menace to the public health, safety, morals or welfare in its present conditions and use.

~~[J.]~~ **K.** "Units of local government": Any incorporated municipality or county.

~~[K.]~~ **L.** "Councils of governments": A regional association of municipalities, counties and special districts formed to provide planning and other services to its member organization.

~~[L.]~~ **M.** "Water association": Political subdivisions of the state organized under Section 3-29-1 through Section 3-29-20, NMSA 1978, the "Sanitary Projects Act" or Section 73-21-1 through Section 73-21-55, NMSA 1978, the "Water and Sanitation District Act".

~~[M.]~~ **N.** Land Grant/Meced (political subdivision of the state organized under Section 49-1-1 through 49-1-23, NMSA 1978, Land Grants General Provisions.

[2.110.2.7 NMAC - Rp 2 NMAC 110.2.7, 08-30-01, 12-14-06; A, 09-28-07]

2.110.2.10 ELIGIBLE APPLICANTS

A. All counties, ~~and~~ incorporated municipalities, and New Mexico mortgage finance authority (MFA) 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, land grants, 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 A, 09-28-07]

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 facility capital outlay;

- (4) economic development;
- (5) emergency;
- (6) colonies;
- (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~~ 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) ~~[an average of \$30,000]~~ not to exceed fifty thousand dollars (\$50,000) in CDBG funds per home can be used on home rehabilitation/repair activities.

E. Public 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]~~ Application shall include written verification and adequate documentation by a state agency and with the applicant's assessment of the life threatening situation and shall be submitted no later than 18 months from the certification by the applicant and documentation of 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, and land grants as defined in Section 2.110.2.7, Subsection ~~[E]~~ M; are eligible to apply directly for planning grants only. ~~[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) that includes at a minimum the following:]~~ Planning grant assistance from the CDBG program, which is available only to a municipality or county, must be used for a comprehensive plan if the applicant does not have a current comprehensive plan. A comprehensive plan must be adopted by ordinance, and it must include as a minimum the following elements:

(1) elements:

(a) land use; including (i) an analysis and mapping of existing land patterns and an inventory of the amount, type and intensity of uses by land category, as well as an analysis of effects of various land use patterns on greenhouse gas emissions; (ii) an analysis of trends in the supply and demand of land by land use category, including a projection of the distribution, location and extent of future land uses by land use category over a twenty-year period; (iii) goals, objectives and policies that address maintaining a broad variety of land uses, including the range of uses existing when the plan is adopted or amended; and (iv) specific actions and incentives that the contracting agency may use to promote planned development, reduction in green-

house gas emissions, or otherwise encourage certain identified development patterns and the locations where such development patterns should be encouraged;

(b) housing; including (i) an analysis of existing housing supply and demand, analysis of greenhouse gas emissions from the housing sector, and forecasted housing needs; (ii) goals, objectives and policies for the improvement of housing quality, variety and affordability, for reduction of greenhouse gas emissions, and for provision of adequate sites for housing and housing opportunities for all segments of the community; and (iii) a description of the actions that will be taken to implement housing goals, objectives and policies; and (iv) must comply with the affordable housing act;

(c) transportation; including (i) description and assessment of the location, type, capacity and condition of existing transportation facilities, such as freeways, arterial and collector streets, mass transit or other modes of transportation as may be appropriate, and analysis of greenhouse gas emissions from the transportation sector; (ii) goals, objectives and policies for encouraging safe, convenient, efficient and economical transportation, including mass transit and facilities for bicyclists and pedestrians, for reduction of greenhouse gas emissions, and a description of proposed levels of service and funding mechanisms; and (iii) a description and assessment of proposed location, type and capacity of proposed transportation facilities designed to implement transportation goals, objectives and policies and a description of funding mechanisms that will be used to fund proposed transportation improvements;

(d) infrastructure; including (i) a description and assessment of the location, type, capacity and condition of existing infrastructure, including emergency services, sewage, drainage, local utilities and other types of facilities; (ii) goals, objectives and policies for promoting the efficient provision of infrastructure, including a description of proposed levels of service; and (iii) a description and assessment of proposed facility expansion and improvements designed to support planned uses and implement infrastructure goals, objectives and policies;

(e) economic development; including (i) a description of existing job composition and trends by industry and location characteristics, such as access to transportation or proximity to natural or human resources, that influence the economic development potential of the contracting agency, and analysis of greenhouse gas emissions from the commercial and industrial sectors; (ii) goals, objectives and policies for promoting economic development, and for reduction of greenhouse gas

emissions; and (iii) a description of the actions that the contracting agency will take to implement economic development goals, objectives and policies;

(f) water; including (i) description and assessment of the sources of water supply; (ii) the demand for water by residential, commercial, institutional, industrial and recreational sectors; (iii) assessment of the water unaccounted for water losses due to leaks, theft or other reasons; (iv) goals, objectives and policies for promoting the efficient use of water and for managing periods of drought; and (v) an analysis of the demand for water that will result from future growth projected in the plan, when added to existing uses, and how the demand for water that will result from future projected growth will be served by current water supplies, water conservation, water reuse or a plan to obtain additional water supplies or increase water use efficiencies;

(g) hazards; including (i) an analysis of the risks of hazards such as wildfire, floods, extreme weather conditions, accidents, and terrorism; (ii) goals, objectives and policies for hazard mitigation; and (iii) a description of the actions that will be taken to mitigate hazards;

(h) implementation; a compilation of ~~[programs and specific actions to be completed in a stated sequence.]~~ the plan's goals, objectives, policies, standards or guidelines, along with specific actions to be completed in a stated sequence, which start with adoption of the comprehensive plan by ordinance.

(2) 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;
 (i) asset management plan;

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

~~[(4)]~~ (a) data gathering analysis and special studies;

~~[(5)]~~ (b) base mapping, aerial photography, geographic information systems, or global positioning satellite studies;

~~[(6)]~~ (c) improvement of infrastructure capital improvement plans and individual project plans;

~~[(7)]~~ (d) development of codes and ordinances, ~~[(e)]~~ that further refine the implementation of the comprehensive plan;

~~[(8)]~~ other functional or comprehensive planning activities;

~~(9) related citizen participation or strategic planning processes;~~

~~(10) applicants may apply for funding assistance throughout the year as long as funds are available;~~

~~(11) preliminary engineering reports will follow the USDA/RUS guidelines.]~~

(e) climate change mitigation and adaptation plan;

(f) preliminary engineering report;

(g) related citizen participation or strategic planning process; or

(h) other functional or comprehensive planning activities;

(i) asset management plan;

(j) regionalization of infrastructure and service delivery.

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

(5) preliminary engineering reports must follow 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 set aside 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; A, 08-15-05; A, 12-14-06; A, 09-28-07]

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, public facility capital outlay, or colonias categories.

(1) Planning applicants may submit at anytime an additional application for funding and shall not exceed fifty thousand

dollars (\$50,000).

~~(2) [Requests for assistance from eligible] Applicants in the economic development, emergency [and planning categories can be] may be submitted at any time[.] and shall not exceed five hundred thousand dollars (\$500,000), subject to funding availability.~~

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

(4) Planning, economic development and emergency applications may be submitted, at anytime, even if the applicant has not completed other CDBG projects.

~~(3)~~ (5) 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 satisfying 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, stand alone and targeted project within a 24 month period.~~

~~(1) Applications may not exceed \$500,000 and planning applications may not exceed \$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 must submit an application in its new the current form.~~

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

D. Application requirements for the following minimum requirements apply to all applications for CDBG

funding:

(1) applications must involve a project that will be fully functional on a stand-alone basis once awarded CDBG and other committed funds have been expended and;

(2) projects shall be completed within twenty-four months of an award of funding;

(3) applications may not exceed \$500,000;

(4) if the applicant, after conducting the required public hearing, determines that the previous year's CDBG unfunded application is still a priority, the applicant must submit the original along with 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 shall be met prior to the application deadline.

(1) All projects for the eligible activities in the categories listed in Subsections C, D, E, and I of 2.110.2.11 NMAC must be completed at the time of application. (certificate of occupancy [and/or] or certification of operation must be in place).

(2) All audit and monitoring findings, [especially in general program administration] for CDBG projects, must be resolved.

(3) The current fiscal operating budget for any local public body applying for CDBG funds must be approved.

(4) The local government division financial management bureau will verify that financial quarterly/ monthly reports are current before CDBG applications deadline.

~~(3)~~ (5) The following set aside 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.] G.~~ 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 letters of commitments from the funding agency must be submitted with the application.

~~[I.] H.~~ 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.

~~[J.] I.~~ Asset management - In order to support the long term operation, maintenance, repair and replacement of system facilities, infrastructure, public facilities, or other eligible activities the following will be required.

(1) In order to ensure water and wastewater infrastructure is managed within a strategic framework driven by program and service deliver needs, communities that implement a rate analysis based upon an asset management program will be credited in the application process for their achievement. The model for the asset management program is the EPA publication "Asset Management: A Handbook for Small Water Systems (EPA 816-R-03-0160 September 2003).

(2) For community infrastructure and public facilities, or other eligible activities an asset management plan will be required to be submitted at the time of application (EPA 816-R-03-0160 September 2003).

[2.110.2.17 NMAC - Rp 2 NMAC 110.2.17, 08-30-01; A, 08-13-04; A, 08-15-05; A, 12-14-06; A, 09-28-07]

2.110.2.18 APPLICATION PROCEDURES AND CONTENT: The application packet provided by local government division will be used for infrastructure, housing, public facility, capital outlay, colonias, emergency categories, economic development and planning.

A. An applicant must submit an original and ~~two~~ three 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; A, 12-14-06; A, 09-28-07]

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 appropriate state agencies for technical review and comment. Review agencies ~~[include] may include, but are not limited to,~~ the environment department, ~~[energy, minerals and natural resources department, state highway and transportation department]~~ department of transportation, department of health, state engineer's office, state agency on aging, economic development department, ~~[department of human services, and]~~ state fire marshal and governor's commission on disability

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 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 facility, capital outlay and colonias applications.

(1) **Description and need** — (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 - (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 — (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 - (10 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 - (10 points) extent to which the applicant:

(a) (3) points: Applicant has adopted a local [~~infrastructure capital improvement plan~~] (ICIP), which has qualified for publication in the most recent local (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) 1 point: Degree to which applicant's proposed project shows consistency with applicant's comprehensive plan.

(d) 1 point: Adopting a drought contingency plan, setting in place various drought management stages and accompanying restrictions on water use.

(e) 1 point: Adopting a water conservation ordinance, setting in place various methods for conserving potable water.

(f) 1 point: Implementing a water conservation ordinance, accompanied by evidence of exercising at least two various methods for conserving potable water.

(6) Feasibility/readiness - (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 - (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.

(8) User fees and revenues - (10 points) What best demonstrates the rates or revenues that support the long term operation, maintenance, repair, and replacement of the system or facility?

(a) Rates developed by asset management as presented by the New Mexico Tech, environmental finance center (EFC). (10 points)

(b) rates developed by a rate analysis, excluding asset management [~~and/or~~] or allowance for replacement of reserve funds. (5 points)

(c) rates developed by other. (1 point)

(9) Non-funded applicants - (10 points) - Applicants that were not funded in the prior year.

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 pres-

ent its [~~evaluations~~] recommendations 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; A, 12-14-06; A, 09-28-07]

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~~] the applicant's presence at the hearings, the applicant's presentation at the hearings, the council summary of the project application, and the current economic and environmental conditions.

E. The council may deviate from staff [~~rankings~~] recommendations, 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 or minimum application requirements were not met or other applications were deemed to be a priority or the application was not well conceived.

(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.

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

~~G.~~ ~~The council may consider funding projects ranked in the bottom thirty five (35%) of non setaside applications received each year.]~~

~~H.] E.~~ The council will make funding determinations by a majority vote.

~~F.] G.~~ 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.

~~J.] H.~~ At the yearly allocation hearing, if the council sets aside amount of funding for emergency, economic development or planning, the council may at any time during the calendar year, transfer funds from the economic development, planning and emergency setasides 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; A, 09-28-07]

2.110.2.21 REVERSIONS, SUPPLEMENTAL FUNDING AND UNDER-RUNS

A. The purpose of this section is to provide guidance to the council, division staff, applicants, and grantees in terms of the referenced situations.

B. Decision by the council to revert funds - If, within twelve months of a CDBG award for a project by the council, the CDBG award has not resulted in a signed grant agreement between the division and the applicant or the applicant has not made adequate progress on the project or the council determines there was fraud or misrepresentation regarding the project by the applicant, the council may vote to revert all or part of the award. The applicant shall receive written notice of the council's decision to revert all or part of award by certified mail. The applicant may appeal, in writing, the council's decision to revert all or part of the award within thirty days of receipt of the written notice of the council's decision. The appeal of the council's decision by the applicant shall be held at a council meeting no later than ninety days from the council's receipt of the written appeal. The council's decision on the appeal of the reversion shall be final. The council may grant the applicant a reasonable period of time to cure the particular default that was the basis of the reversion. At the end of the cure period, a quorum of the council shall vote again on the issue of the reversion, by telephonic conference call with the applicant, and this decision is final.

~~B.] C.~~ Reversions and supplemental funding - When funds are reverted

from a previously approved project grant or additional funds are made available for any other reason, the council may decide that the funds will:

(1) be added to the emergency fund[;] or

(2) be returned to the category of the program from which it was awarded[;] or

(3) go into any other category[;] or

(4) take other action as deemed appropriate.

~~C.] D.~~ Underruns - On occasion, upon completion of the approved activities, a balance of funds remains after all payments have been made. This balance of funds referred to as an underrun shall be handled as follows: if the grantee has not accomplished all work called for in the original application submitted for funding consideration, the grantee may request division staff to approve the expenditure of underrun funds for a portion or all of the remaining work.

(1) if appropriate justification and sufficient funding exist, division staff may approve the request for use of underrun funds and amend the grant agreement accordingly;

(2) a negative decision may be appealed to the council.

~~D.] E.~~ If the grantee proposes to undertake activities not included in the approved application, the grantee may request council approval to expend underrun funds for other eligible activities. The council may approve the request if appropriate justification and sufficient funding exist.

~~E.] E.~~ If the council disapproves a request for use of an underrun, associated funds shall revert to the council for disposition.

~~F.] G.~~ The processes described above for handling underruns are intended to encourage the grantee to use the most cost efficient means possible to construct projects funded by the council. Grantees shall not take advantage of this process by inflating initial funding requests. [2.110.2.21 NMAC - Rp 2 NMAC 110.2.21, 08-30-01; A, 09-28-07]

2.110.2.25 MEETING PROCEDURES:

A. Special meetings. Special meetings of the council may be called by a majority of the council members or the chairman of the council, and will be held at the time and place fixed by the division.

B. Notice. Written notice stating the time, place and, if a special meeting, the purpose, will be delivered either personally, by mail, or email by the division, to each council member at least 24

hours before the scheduled date of the meeting. The council may establish dates and times for regularly scheduled meetings.

C. Quorum. A majority of the current members of the council in attendance either in person or by telephone will constitute a quorum at council meetings.

D. Record of meetings. The meeting shall be tape recorded and the division shall have the minutes made into a written record. The original of this record shall be retained by the division and a copy shall be forwarded to the council members. Copies shall be available upon request.

E. Participation methods. If otherwise allowed by law or rule of the public body, a member of a public body may participate in a meeting of the public body by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person, provided that each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting are able to hear any member of the public body who speaks during the meeting.

[2.110.2.25 NMAC - Rp 2 NMAC 110.2.25, 08-30-01; 2.110.2.25 NMAC - N, 09-28-07]

2.110.2.26 ECONOMIC DEVELOPMENT PROGRAM GUIDELINES: Within the context of the CDBG program and for purposes of meeting its goals and objectives, economic development can typically be defined as improving a community's economic base by using private and public investments that provide expanded business activity, jobs, personal income and increased local revenues in a defined geographic area.

A. Goals and objectives: The state's CDBG economic development goals and objectives include:

(1) creating or retaining jobs for low- and moderate-income persons;

(2) preventing or eliminating slums and blight;

(3) meeting urgent needs;

(4) creating or retaining businesses owned by community residents;

(5) assisting businesses that provide goods or services needed by, and affordable to low - and moderate-income residents;

(6) providing technical assistance to promote any of the activities under [26.1.1 through 26.1.5] Subsection A, Paragraphs (1) through (5) above.

B. Eligible activities: CDBG eligible activities authorized under Sections 570.200, 570.201, 570.202, 570.203, 570.204, 570.482 and 570.483 of 24 CFR Part 570 of the federal rules and regulations governing the community

development block grant program and directly affecting the creation or retention of employment opportunities, the majority of which are made available to low and moderate income persons, may include activities which are carried out by public, private nonprofit, or private for-profit entities when such activities are appropriate.

(1) To meet the needs and objectives of the community economic development plan, a project may include; acquisition of real property, construction, reconstruction rehabilitation, or installation of public facilities, site improvements, and utilities, and commercial or industrial buildings or structures and other commercial or industrial real property improvements and planning.

(2) Grantees and nonprofit subrecipients may carry out for the purpose of economic development, a wide range of activities such as those listed in Section 570.203.

(3) The for-profit businesses, however, may carry out only the activities listed in that section and rehabilitation activities listed in Section 570.202.

C. Financing policies and techniques: The New Mexico CDBG program, as a development tool, can provide flexibility and take greater risks in its lending policies and financing techniques. For example, the program may:

(1) offer a negotiated period for repayment of principal and interest;

(2) take greater risk than banks are traditionally prepared to take, provided substantial economic development benefits will result if the loan is granted;

(3) leverage capital by reducing risk for commercial lenders and by taking a subordinate;

(4) security/collateral position;

(5) provide more favorable rates and terms than are generally available through conventional sources.

D. Project requirements: Project requirements for eligible CDBG economic development assistance include, but are not limited to:

(1) specific employment commitments for low and moderate income residents, generally with no more than \$15,000 in CDBG funds being used for each job created or retained;

(2) at least 51% of the jobs created/retained must be held or made available to persons of low to moderate income persons;

(3) within six (6) months of completion of the project, the grantee is required to report to LGD, documentation to reflect the total number of jobs created;

(4) a firm commitment for private financial participation in carrying out the proposed project, contingent on award of

CDBG funding only, must be included with the application;

(5) a minimum leveraging ratio of [2] 1 new private investment dollars to 1 CDBG dollar is required, {additional leveraging will enhance a project's competitiveness};

(6) an "appropriate" determination that there is a well documented need for CDBG assistance to make the project financing feasible and that the level of assistance requested is commensurate with the public benefits expected to be derived from the economic development project;

(7) evidence of project feasibility including a business plan which contains financial statements, project pro forma (cash flow projections) and specific source and intended use of all funds or assets used in the project;

(8) generally, projects that directly assist in the relocation of a business or industry from one community to another, intrastate or interstate, will be disqualified;

(9) prior to submission of an application, applicants should thoroughly review the credit worthiness of the proposed borrower and should obtain appropriate credit reports, audited financial statements, tax returns and verify collateral.

E. Program income: The community development council has adopted a policy of strongly encouraging and, when possible, requiring applicants in the economic development category to return program income to the state for use in fostering critical economic development opportunities that occur throughout the state. By pooling program income at the state level more of an impact can be made on the overall economic conditions of the state. The Housing and Urban Rural Recovery Act which amended the Housing and Community Development Act of 1974, provides, relative to economic development, specifically the following:

(1) states may require program income to be returned to the state but local governments must be allowed to keep program income when used for the same activity which generated the income (104(i)2);

(2) if the applicant intends to retain program income, a program income utilization plan must be submitted with the application for approval.

F. Application cycle: Applications for economic development can be made at any time, and the division staff have thirty days to review the them.

G. Pre-application conference: It is recommended that a preapplication conference be held prior to the submission of the final application to insure that all elements are adequately addressed. The preapplication conference will also provide an opportunity to review any new fed-

eral guidelines that may be issued which relate to economic development activities. Contact the LGD, economic development representative for information. More detailed and extensive financial and project data may be required depending on the specific project. In addition, meeting the national objective to benefit low and moderate income requires documentation certifying that the majority of the jobs go to low and moderate income persons or the majority of jobs are considered available to them. Please contact the local government division for a copy of the HUD guidelines.

H. APPLICATION REQUIREMENTS: (These must be included along with the regular CDBG application, and should be submitted in lieu of question #2 in the regular application.)

(1) **Economic development plan:** The applicant must submit as an attachment to the application a short (5 page maximum) description of its plan for encouraging local economic development. The plan, incorporating references to the proposed project, should include a discussion of the following elements

(a) **Need** - What are the community's underlying economic problems? Need might include recent major industry shutdowns or extended layoffs, substantial increases in population without a corresponding increase in job opportunities, substantial population decreases due to lack of available or appropriate job opportunities, a lack of industrial diversification, the existence of large numbers of workers in the area with obsolete skills or skills for which there is no current demand, or other problems unique to the applicant's community.

(b) **Goals** - What is the community attempting to accomplish through its overall economic development program (not just that activity for which CDBG funding is sought)? Goals might include trying to preserve existing businesses or industries, attempting to encourage community growth, attempting to foster industrial diversification, revitalizing the central business district, or creating complementary industries which would provide jobs in the off-season for workers now only seasonally employed.

(c) **Resources** - What public and private resources, both financial and technical, does the community have available to it to help carry out its economic development program? Resources may be of a wide variety. For example, does the community have a local development corporation or similar body? Has any agency organization assigned staff member(s) to work on economic development activities for a major portion of their time? Has the financial community demonstrated its willingness to participate in development activities? Is

there an adequate available labor force to meet the demands of new or expanding businesses and industries? Does the community have some unique development advantages, e.g., location, transportation facilities, industrial park or other plant sites, available raw materials, abundant power supplies, employee training capabilities, a locally-administered revolving loan fund to assist growing businesses or industries, technical assistance programs to help business persons deal with marketing, management, or financial planning problems.

(d) Strategy - What strategy is the community using to pursue its economic development goals? Strategy might include a description of the specific activities that have been identified as components of the community's strategy for encouraging local economic development. For example, which has been assigned first, second, and third priority? How much will each cost? What funding sources have been identified for each? What can or will the local government do to support those activities?

(e) Results - What actions has the community already undertaken to implement its economic development plan? What sources of funding were used? What were the results? Results might include a discussion of actions the community has taken to encourage development. For example, has it offered property tax reductions to new or expanding industries? Has it formed a local development corporation or prepared industrial or tourism promotion packages? What results have been achieved? How many new jobs have been created or existing jobs retained? How many new firms have begun operations in the community? How many existing firms have undertaken expansion activities?

(2) Hiring and training plan:

(a) Applicants must establish procedures for the project to ensure preferential recruitment, hiring, and training of local workers, particularly those of low and moderate income.

(b) In the event of a grant award, the applicant's commitment to the hiring plan will be considered binding and will be incorporated by reference in the grant agreement between the local governing body and the local government division.

(3) Private sector commitments:

(a) Applicants must provide evidence of firm commitments of financial resources from the private sector.

(b) Such commitments should be binding, contingent only upon receipt of CDBG funds.

(c) Investments made or costs incurred prior to the grant application are not eligible for use as matching funds or leverage but should be referenced as related

to the total project, if applicable.

(4) Public sector commitments:

(a) If public sector resources are to be involved in the proposed economic development project, applicants must demonstrate evidence of a firm commitment of public funds ~~and~~ for other resources.

(b) Such commitments should be binding, contingent only upon receipt of CDBG funds to the project.

(c) Evidence may include resolutions or ordinances passed by the local governing body and other appropriate local groups.

(5) Use of CDBG funds for economic development loans (if applicable):

(a) Any project that includes a loan should provide an explanation of the proposed interest rate, terms and rationale for the proposed financing structure.

(b) Any loan made by a local governing body with CDBG funds as a part of an approved CDBG economic development project must be adequately secured.

(c) Subordinated loans may be made when justifiable and appropriate.

(d) The applicant must include a detailed description of the proposed use of program income. (principal and interest). Applicants are encouraged to designate program income to be returned to the state for future economic development setaside-eligible activities.

(6) Viability of assisted enterprises: Any for-profit entity to be assisted with CDBG funds must document that without participation of CDBG funds the proposed activity would not be feasible and that after receipt of CDBG assistance the enterprise will be viable and self-sustaining. All applicants proposing an economic development activity shall submit the following for any entity to be assisted with CDBG funds.

(a) a business plan which consists of at least a description of the history of the firm, background, and experience of the principals, organizational structure, a description of its major products or services, market area and market share, goals, and planned expansions or changes in operations; the plan should also describe the impact the CDBG project, if funded, would have on the firm's activities;

(b) a three-year to five-year operating plan forecast (profit and loss projection); applicants may use U.S. small business administration (SBA) forms or equivalent;

(c) a monthly cash flow analysis, SBA forms or equivalent.

(d) for any existing business, the two most recent year-end financial statements, including an income statement and balance sheet.

I. RATING CRITERIA:

The selection criteria in the rating and ranking system will give priority to projects which firmly demonstrate the following: need, appropriateness, impact, and benefit to low and moderate income persons. These factors are discussed below and are intended to provide additional information. Since each application will be a unique response to particular community-specific needs, there are no "right" or "wrong" activities or solutions. The ranking of "appropriateness" (and later, of "impact") will necessarily be in part subjective, with the division taking into account not only how well each applicant addresses the problems it has defined, but also how its problems and responses compare with those of other applicants. Responses may vary considerably depending upon the size and location of the community and the type of project proposed.

(1) NEED - (200 points) - In analyzing an applicant's need for a project, the division will use statistical information provided by the New Mexico department of labor and the U.S. bureau of the census which is uniformly available for all thirty-three (33) counties. Since similar data is not accumulated at the municipal level, cities and towns will be scored with the figures for the county in which they are located. The three factors which will be considered are: the average number of unemployed persons in the county during the last calendar year; the percent of unemployment (average) in the county during the last calendar year; long-term unemployment (measured by average unemployment rates in the county for the last five calendar years).

(a) The data will be calculated and each applicant assigned a relative score.

(b) The division will consider assigning a different score in exceptional cases, where an applicant can conclusively demonstrate that the first two factors used to measure economic need are not reflective of local economic conditions (such as major recent plant closings) and the situation is substantiated by the New Mexico department of labor. A request for consideration of local economic data must be submitted with the CDBG application. The applicant should identify sources of data and define methodologies.

(2) APPROPRIATENESS - (200 points) - Two major factors will be weighted in this ranking category: the soundness of the applicant's economic development plan and the related project for which CDBG funding is sought; the strength of the applicant's hiring and training plan for ensuring that local residents, particularly those of low and moderate income, will be hired to fill the stated number of jobs created or retained as a result of CDBG-funded activities. These two factors will be ranked as follows:

(a) Plan and program - (140 points) - Some factors which might contribute to the achievement of an "outstanding" score are:

(i) that the applicant has developed a complete, well reasoned, appropriate, and achievable plan for dealing with its total economic development needs, taking into consideration all available public and private resources and local capacity;

(ii) that the local governing body has officially adopted the economic development plan as a matter of public policy;

(iii) that the proposed project for which CDBG funding is sought is an integral part of that plan; (it need not be the first priority item identified in the overall plan if other, more appropriate, resources are available and already being used to meet higher priority items);

(iv) that the applicant has made substantial local efforts to deal with its economic development problems;

(v) that the proposed CDBG project is realistic and workable, and the job savings or creation expected to result from its implementation will occur within a reasonable time following the date of grant award;

(vi) that if income is to be generated by CDBG-funded activities, and retained locally, a plan for the use of that money has been developed and submitted with the application; this plan must include mechanisms established for administration of the funds, (if a revolving loan fund is to be established with program income, procedures must be outlined covering local application processing, time frames, approval, negotiation, pricing, packaging, servicing, etc.);

(vii) that there has been active citizen participation in the development of the economic development plan and in the selection of the CDBG project.

(b) Hiring and training plan - (60 points) - Since a primary goal of CDBG-funded economic development grants is to increase job opportunities for local residents, particularly persons of low and moderate income, it is essential that applicants take every measure to bring about that result. Each applicant must include in its application an employment and training plan to be used in filling jobs created or saved as a result of CDBG activities. Factors which would most likely contribute to the achievement of a high score are:

(i) that the applicant's employment and training plan provides clear, complete procedures for outreach, recruitment, screening, selection, training, and placement of workers which will ensure maximum access of local residents, particu-

larly persons of low and moderate income, to jobs created or saved by the project;

(ii) that attention has been given to necessary supportive services for trainees needing them;

(iii) that a complete training curriculum has been developed and all training resources identified;

(iv) that responsibility has been assigned for all phases of the training program;

(v) that a written agreement to follow the plan has been obtained from each firm expected to benefit directly from the program.

(3) IMPACT - (200 points) - In weighing the anticipated impact of the applicant's proposed CDBG grant activities on the community's identified problems, the following four factors will be considered and evaluated:

(a) Leverage - (50 points) - In preparing its proposed project budget, the applicant is required to identify all sources of funds to be used and the amounts to be contributed by each. To be eligible for consideration, an applicant must provide at least ~~two~~ one private non-CDBG dollars for each dollar of CDBG funds requested (a ~~2:1~~ 1:1 ratio). The non-CDBG funds may come from a variety of private sources, such as new investment by a firm to be assisted, bank loans, or local development corporation loans and debentures. Applicants will be ranked against each other. If, for instance, community A has the highest leverage ratio (~~[\$6] \$3~~ of non-CDBG funds for each \$1 of CDBG funds, a ~~[6:1] 3:1~~ ratio) and community B has a ~~[2:1] 1:1~~ leverage, community A would receive the maximum score and community B and all other applicants would be relatively scored against community A.

(b) CDBG dollars per job - (50 points) - The applicant is required to specify the number of permanent full-time jobs to be created or retained as a result of the requested CDBG program. In determining an applicant's score in this category, the total CDBG funds to be used (exclusive of administrative funds) will be divided by the total number of full-time jobs expected to result. NOTE: In evaluating an applicant's job creation projections, the local government division will consider the historical relationships of sales, space, and machines to jobs. It will also look at typical ratios for the industry of which the firm to be assisted is a part. Applicants should be prepared to justify job creation claims which substantially exceed industry norms or \$15,000 per job created or retained.

(c) Type of jobs - (50 points) - Although all new or retained jobs provide some measure of economic benefit to the community, full-time, skilled or semi-

skilled positions are more desirable for most workers than part-time jobs or those requiring unskilled labor. One objective of CDBG economic development activities is to foster the creation and retention of permanent, full-time employment with growth potential for persons of low and moderate income, which offers those workers an opportunity for advancement in a firm or industry. Applicants are required to indicate the percentage of jobs to be created or retained which are full-time or part-time, skilled, semi skilled, or unskilled.

(d) Overall economic impact - (50 points) - The applicant must discuss both the direct and indirect effects the CDBG program is expected to have on the community's economy. Some of the factors which will be considered in evaluating impact are:

(i) the size of the additional payroll expected to be generated for the jobs created or retained by the program;

(ii) the total number of jobs to be created or retained;

(iii) whether the firm to be assisted is a primary industry (producing goods or services mainly to be sold outside the area or state, thereby importing dollars into the community and state);

(iv) whether local property tax revenues will be significantly increased as a result of the proposed business start-up, expansion, retention, etc.;

(v) the applicant demonstrating the greatest positive impact will be scored highest; all other applicants will be ranked correspondingly;

(vi) when applications have been scored in all four categories (leverage, dollars per job, types of jobs, and overall economic impact), those scores will be totaled.

(4) BENEFIT TO LOW AND MODERATE INCOME PERSONS - (200 points)

(a) This ranking criterion assesses the extent to which persons of low and moderate income will directly benefit from the expenditure of CDBG grant funds. To determine this score, the number of jobs to be created or retained and made available to low and moderate income persons will be divided by the total number of jobs to be created or retained as a result of the CDBG program.

(b) The highest score will receive up to a maximum of 200 points and all other applicants will be scored accordingly.

(c) To be eligible for consideration a project must demonstrate that it will benefit principally persons of low and moderate income.

[2.110.2.26 NMAC - Rp 2 NMAC 110.2.26, 08-30-01; A, 12-14-06; A; 09-28-07]

**NEW MEXICO
DEPARTMENT OF GAME
AND FISH**

**TITLE 19 N A T U R A L
RESOURCES AND WILDLIFE
CHAPTER 31 HUNTING AND
FISHING
PART 18 BIG GAME
ENHANCEMENT AUTHORIZATION
PACKAGES**

19.31.18.1 ISSUING AGENCY:
New Mexico Department of Game and Fish.

[19.31.18.1 NMAC - N, 9-28-2007]

19.31.18.2 SCOPE: Big game hunters. Additional requirements may be found in Chapter 17, NMSA 1978, and Chapters 30, 31, 32 and 33 of Title 19.

[19.31.18.2 NMAC - N, 9-28-2007]

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

[19.31.18.3 NMAC - N, 9-28-2007]

19.31.18.4 D U R A T I O N :
Permanent.

[19.31.18.4 NMAC - N, 9-28-2007]

19.31.18.5 EFFECTIVE DATE:
September 28, 2007, unless later date is cited at the end of individual sections.

[19.31.18.5 NMAC - N, 9-28-2007]

19.31.18.6 OBJECTIVE: To establish and define the procedures and restrictions for the sale, issuance, and use of not more than two big game enhancement authorization packages which will allow for the taking of one each; deer, elk, oryx, ibex, and pronghorn.

[19.31.18.6 NMAC - N, 9-28-2007]

19.31.18.7 DEFINITIONS:

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

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

C. "Big game enhancement authorization package," as used herein, shall mean a package of 5 authorizations, 1 deer, 1 elk, 1 oryx, 1 ibex, and 1 pronghorn antelope that allows for the holder of each authorization to purchase a license to hunt for and take the species list-

ed on each authorization.

D. "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.

E. "MB or mature buck pronghorn antelope" shall mean a pronghorn antelope with at least one horn longer than its ears.

F. "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.

G. "ES or either sex" shall mean any one animal of the species.

H. "Authorization certificate" shall mean a document issued by the department that authorizes the holder to purchase a license or permit, or participate in the activity as specified on the certificate.

[19.31.18.7 NMAC - N, 9-28-2007]

19.31.18.8 BIG GAME HABITAT ENHANCEMENT PROGRAM:

The director of the department shall collect all proceeds generated through the auction of not more than 2 enhancement authorization packages annually. Money collected shall be deposited into the game protection fund and shall be used exclusively for big game habitat enhancement, conservation, and protection.

[19.31.18.8 NMAC - N, 9-28-2007]

19.31.18.9 REQUIREMENTS FOR ISSUANCE, SALE, AND USE:

A. Issuance: The state game commission shall authorize the director of the department to issue not more than 2 big game enhancement authorization packages in any one license year. Each authorization package shall consist of 1 authorization certificate for each of the following species; deer, elk, ibex, oryx, and pronghorn. Each authorization certificate will allow the holder to purchase a license for the species, bag limit, weapon type, season dates, and hunt area defined on the authorization.

B. Sale:

(1) The director shall allow the sale of the two big game enhancement authorization packages through auction to the highest bidder. The auction may be conducted by the department or by an incorporated, nonprofit organization dedicated to the conservation of wildlife.

(2) Selection of an organization to administer the auction of the wildlife enhancement authorization packages shall be pursuant to 1.4.1 NMAC, Sections 31-44 Procurement Code Regulations described in New Mexico Administrative Code (NMAC).

C. Use:

(1) Each authorization issued with a package may be transferred through sale, barter, donation, or gift by the successful purchaser of the package to other individuals qualified to purchase a license and hunt.

(2) Hunting licenses that result from the conversion of any big game enhancement authorization pursuant to this rule shall not be considered "once-in-a-lifetime".

(3) Unless his/her hunting privileges have been revoked pursuant to law, any resident of New Mexico, nonresident, or alien is eligible to submit bids for the big game enhancement authorization packages.

(4) The bag limit for authorizations contained in each package shall be as follows:

- (a) deer - FAD or forked antler deer
- (b) elk - MB or mature bull
- (c) oryx - ES or either sex
- (d) ibex - ES or either sex
- (e) pronghorn - MB or mature buck

(5) The season dates for authorizations contained in each package shall be as follows:

- (a) deer - September 1 through January 31 each license year.
- (b) elk - September 1 through January 31 each license year.
- (c) oryx - April 1 through March 31 each license year.
- (d) ibex - April 1 through March 31 each license year.
- (e) pronghorn - August 1 through November 1 each license year.

(6) The hunt area for authorizations contained in each package shall be as follows:

- (a) deer - any legally accessible public lands where hunting is allowed and private land with written permission.
- (b) elk - any legally accessible public lands where hunting is allowed and private land with written permission.
- (c) oryx - any legally accessible public lands where hunting is allowed and private land with written permission. The holder of an oryx authorization or license must contact the department 2 weeks in advance of proposed hunt start date to schedule access to WSMR and must be accompanied by a badged department employee or a WSMR escort when on WSMR lands.

(d) ibex - any legally accessible public lands where hunting is allowed and private land with written permission.

(e) pronghorn - any legally accessible public lands where hunting is allowed and private land with written permission.

(7) The weapon type for all authorizations in each package shall be "any

legal weapon” unless specific weapon restrictions exist pursuant to public land management agency regulations.

(8) The hunt code for authorizations in each package shall be as follows:

(a) deer - DER-1-501

(b) elk - ELK-1-501

(c) oryx - ORX-1-501

(d) ibex - IBX-1-501

(e) pronghorn - ANT-1-501

[19.31.18.9 NMAC - N, 9-28-2007]

**HISTORY OF 19.31.18 NMAC:
[RESERVED]**

**NEW MEXICO
DEPARTMENT OF GAME
AND FISH**

**TITLE 19 N A T U R A L
RESOURCES AND WILDLIFE
CHAPTER 31 HUNTING AND
FISHING
PART 19 GOVERNOR'S SPE-
CIAL EVENTS AUTHORIZATIONS**

19.31.19.1 ISSUING AGENCY:

New Mexico Department of Game and Fish.

[19.31.19.1 NMAC - N, 9-28-2007]

19.31.19.2 SCOPE: Big game hunters, game bird hunters, and fishermen. Additional requirements may be found in Chapter 17, NMSA 1978, and Chapters 30, 31, 32 and 33 of Title 19.

[19.31.19.2 NMAC - N, 9-28-2007]

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

[19.31.19.3 NMAC - N, 9-28-2007]

19.31.19.4 DURATION: Permanent.

[19.31.19.4 NMAC - N, 9-28-2007]

19.31.19.5 EFFECTIVE DATE: September 28, 2007, unless later date is cited at the end of individual sections.

[19.31.19.5 NMAC - N, 9-28-2007]

19.31.19.6 OBJECTIVE: To establish procedures and restrictions for the provision, sale, issuance, and use of no more than 12 big game special authorizations and 12 game bird or trophy fish special authorizations available to the governor each license year in conjunction with special events to raise money for fish and

wildlife conservation in New Mexico.
[19.31.19.6 NMAC - N, 9-28-2007]

19.31.19.7 DEFINITIONS:

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

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

C. “Special authorization certificate” shall mean a document issued by the department that authorizes the holder to purchase a license or permit, or participate in the activity as specified on the certificate.

D. “Big game” shall mean deer, bear, cougar, elk, antelope (American pronghorn), Barbary sheep, bighorn sheep, javelina, oryx, and Persian ibex.

E. “Small game” shall mean blue grouse, dove, pheasant, quail, band-tailed pigeon, sandhill crane, teal, ducks, geese, coots, moorhen, sora, rails, snipe, and squirrel.

F. “Trophy fish” shall mean an enhanced angling opportunity as defined on a special authorization certificate issued by the department.

[19.31.19.7 NMAC - N, 9-28-2007]

19.31.19.8 GOVERNOR'S HUNTING AND FISHING AUTHORIZATION PROGRAM: The director of the department shall collect all proceeds generated through the auction of not more than 12 big game special authorizations and 12 game bird or trophy fish special authorizations annually. All authorizations shall be auctioned in conjunction with special events called by the governor and all money collected shall be deposited into the game protection fund to be used exclusively for fish and wildlife conservation activities or projects in New Mexico.

[19.31.19.8 NMAC - N, 9-28-2007]

19.31.19.9 REQUIREMENTS AND RESTRICTIONS:

A. Requirements for the provision of governor's hunting and fishing authorizations:

(1) The director shall, upon notification from the governor, ensure that the requested hunting or fishing opportunity complies with rules adopted by the state game commission. Upon confirmation the director shall initiate the development of a special authorization certificate that designates the allowable season dates, bag limits, weapon types, hunting or fishing areas and any other manner or method restrictions as may be appropriate to the species noted on the authorization. Each special authorization certificate auctioned will allow the holder to purchase a license for the species

and allowances listed on the authorization certificate, and will allow the holder to participate in the activity as listed or allowed on the authorization certificate.

(2) Upon ensuring that the requested hunting or fishing opportunity is in compliance with rules adopted by the state game commission and establishing the specific allowances and restrictions for each special authorization certificate, the director may issue the special authorization certificate(s) to the special event coordinator as designated by the governor or may hold the authorization certificate(s) for delivery to the successful high bidder(s).

(3) No more than 3 special authorization certificates shall be issued for any one big game species each license year.

B. Requirements for sale of governor's hunting and fishing authorizations:

(1) The sale of all special authorization certificates issued pursuant to this rule shall be through auction to the highest bidder and only in association with special events called by the governor to raise money for fish and wildlife conservation.

(2) Each special authorization certificate shall have an associated minimum bid, determined by the director with concurrence of the chairman of the state game commission. In no case shall the special authorization certificate be sold for less than this established minimum.

(3) In no case shall any auction-associated administration or other costs become the responsibility of the department of game and fish.

(4) All proceeds collected pursuant to the sale at auction of special authorization certificates shall be forwarded to the department within 30 days of sale as well as the auction purchaser's name and contact information.

C. Restrictions for the use of governor's hunting and fishing authorizations:

(1) Each special authorization certificate auctioned may be transferred through sale, barter, donation, or gift by the successful auction purchaser of the special authorization certificate to other individuals qualified to purchase a license and hunt or fish. If a special authorization certificate is transferred via sale, the sale price may not exceed the original purchase price paid at auction.

(2) Big game hunting licenses that result from the conversion of any big game special authorization certificate pursuant to this rule shall not be considered “once-in-a-lifetime”.

(3) Unless his/her hunting privileges have been revoked pursuant to law, any resident of New Mexico, nonresident, or alien is eligible to submit bids for special

authorization certificates pursuant to this rule.

(4) All big game special authorizations provided for auction shall allow for hunt specifics exactly as listed, by hunt code, in the associated species rule for the applicable license year. (NoValles Caldera national preserve or private land only hunts will be available to auction unless arrangements with the Valles Caldera national preserve or specific private landowners are made prior to issuance of authorization.)

(5) Requests for extended hunt dates, alternative hunt dates, or expanded hunt areas may be allowed pursuant to evaluation by the director and concurrence by the chairman of the state game commission.

(6) The provision of extended hunt dates, alternative hunt dates, or expanded hunt areas should minimize the allowance of hunting during the rut or critical breeding period of the species involved except as is consistent with public hunt periods specified in rule for that license year or as approved by the director with concurrence of the chairman. The provision of extended hunt dates, alternative hunt dates, or expanded hunt areas for migratory birds shall not exceed or violate federal frameworks established by the United States fish and wildlife service annually.

(7) The provision of extended hunt dates, alternative hunt dates, or expanded hunt areas should not result in conflict with the quality of opportunities intended for the holder of any "big game enhancement authorization package", "lieutenant governor's deer enhancement permits", "elk enhancement permits", "Gould's turkey enhancement permits", or "bighorn sheep enhancement permits", as allowed for in statute.

(8) Any individual who hunts or fishes pursuant to this rule must adhere to all manner and method and licensing restrictions and requirements established by commission rule, including any specifications or limitations printed on the special authorization certificate or associated license.

(9) No special authorization certificates for bighorn sheep or ibex shall be made available for auction until such time as the department determines that populations can sustain additional harvest that will not conflict with current level of available hunting opportunities.

(10) The director, with concurrence of the chairman of the state game commission, may consider any governor's requests for specific game bird or trophy fishing opportunities, and provide authorization listing specifics that are consistent with sound and appropriate fish and wildlife management.

[19.31.19.9 NMAC - N, 9-28-2007]

HISTORY OF 19.31.19 NMAC: [RESERVED]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.31.13 NMAC, Section 15, effective 9-28-2007

19.31.13.15 DEER HUNTS:

A. Public land (and private lands in GMUs 2A, 2B, 2C, 4 and 5A) deer hunts for any legal sporting arms, listing the open GMUs or areas, hunt dates, hunt code, number of permits and bag limit shall be as indicated below. Military only hunters must be full time active military and proof of military status must accompany application or, if applying online, forwarded to the department by the application deadline date. Youth hunters must provide hunter education certificate number on application.

(1) 2007 -2008 hunt season:

open GMUs or areas	hunt start	hunt end	hunt code	permits	bag limit
2A, YO	10/27/2007	10/31/2007	DER-1-100	50	FAD
2A	11/03/2007	11/07/2007	DER-1-101	200	FAD
2A private land only	11/03/2007	11/07/2007	DER-1-102	55	FAD
2B, YO	10/20/2007	10/24/2007	DER-1-103	150	FAD
2B	10/27/2007	10/31/2007	DER-1-104	300	FAD
2B private land only	10/27/2007	10/31/2007	DER-1-105	25	FAD
2B	11/03/2007	11/07/2007	DER-1-106	390	FAD
2B private land only	11/03/2007	11/07/2007	DER-1-107	25	FAD
2B	11/10/2007	11/14/2007	DER-1-108	465	FAD
2B private land only	11/10/2007	11/14/2007	DER-1-109	75	FAD
2C	11/17/2007	11/21/2007	DER-1-110	50	FAD
2C private land only	11/17/2007	11/21/2007	DER-1-111	12	FAD
4 Humphries/Rio Chama WMAs	10/20/2007	10/24/2007	DER-1-112	20	FAD
4 Humphries/Rio Chama WMAs, YO	10/20/2007	10/24/2007	DER-1-113	5	FAD
4 Humphries/Rio Chama WMAs	10/27/2007	10/31/2007	DER-1-114	20	FAD
4 Humphries/Rio Chama WMAs, YO	11/21/2007	11/25/2007	DER-1-115	5	FAD
4 private land only	10/20/2007	10/24/2007	DER-1-116	175	FAD
4 private land only	10/27/2007	10/31/2007	DER-1-117	175	FAD
5A public land only	11/06/2007	11/12/2007	DER-1-118	30	FAD
5A private land only	11/06/2007	11/12/2007	DER-1-119	220	FAD
5B	11/10/2007	11/14/2007	DER-1-120	15	FAD

5B, YO	11/21/2007	11/25/2007	DER-1-121	5	FAD
6A and 6C, MI	10/20/2007	10/24/2007	DER-1-122	20	FAD
6A and 6C	11/10/2007	11/14/2007	DER-1-123	100	FAD
7	10/20/2007	10/24/2007	DER-1-124	25	FAD
9 (including Water canyon and Marquez WMAs)	11/10/2007	11/14/2007	DER-1-125	10	FAD
9 (including Water canyon and Marquez WMAs), YO	11/10/2007	11/14/2007	DER-1-126	10	FAD
10, MI	10/20/2007	10/24/2007	DER-1-127	20	FAD
10	10/20/2007	10/24/2007	DER-1-128	70	FAD
10	10/27/2007	10/31/2007	DER-1-129	65	FAD
10	11/03/2007	11/07/2007	DER-1-130	90	FAD
10 (4 day Thanksgiving holiday and following two weekends only), YO.	11/22/2007 12/01/2007 12/08/2007	11/25/2007 12/02/2007 12/09/2007	DER-1-131	25	FAD
12	11/03/2007	11/07/2007	DER-1-132	200	FAD
13, YO	09/29/2007	10/03/2007	DER-1-133	50	FAD
13	11/03/2007	11/07/2007	DER-1-134	500	FAD
13	11/10/2007	11/14/2007	DER-1-135	500	FAD
14 (bows only on Sandia ranger district of the Cibola national forest)	10/27/2007	10/31/2007	DER-1-136	25	FAD
16, YO	09/29/2007	10/03/2007	DER-1-137	50	FAD
16, MI	11/03/2007	11/07/2007	DER-1-138	25	FAD
16	11/03/2007	11/07/2007	DER-1-139	300	FAD
16	11/10/2007	11/14/2007	DER-1-140	300	FAD
17	11/03/2007	11/07/2007	DER-1-141	150	FAD
17	11/10/2007	11/14/2007	DER-1-142	150	FAD
17(4 day Thanksgiving holiday and following two weekends only) , YO	11/22/2007 12/01/2007 12/08/2007	11/25/2007 12/02/2007 12/09/2007	DER-1-143	50	FAD
18	11/03/2007	11/07/2007	DER-1-144	100	FAD
18	11/10/2007	11/14/2007	DER-1-145	100	FAD
20	11/03/2007	11/07/2007	DER-1-146	200	FAD
20	11/10/2007	11/14/2007	DER-1-147	200	FAD
21, YO	09/29/2007	10/03/2007	DER-1-148	50	FAD
21	11/03/2007	11/07/2007	DER-1-149	700	FAD
21	11/10/2007	11/14/2007	DER-1-150	750	FAD
22	11/03/2007	11/07/2007	DER-1-151	100	FAD
22	11/10/2007	11/14/2007	DER-1-152	100	FAD
23 (except the Burro mountains hunt area)	11/03/2007	11/07/2007	DER-1-153	475	FAMD
23 (except the Burro mountains hunt area)	11/03/2007	11/07/2007	DER-1-154	50	FAWTD
23 (except the Burro mountains hunt area)	11/10/2007	11/14/2007	DER-1-155	400	FAMD
23 (except the Burro mountains hunt area)	11/10/2007	11/14/2007	DER-1-156	50	FAWTD
23 Burro mountains hunt area	11/17/2007	11/21/2007	DER-1-157	25	FAMD
23 Burro mountains hunt area	11/17/2007	11/21/2007	DER-1-158	25	FAWTD
23 Burro mountain hunt area, (4 day Thanksgiving holiday and following two weekends only), YO.	11/22/2007 12/01/2007 12/08/2007	11/25/2007 12/02/2007 12/09/2007	DER-1-159	25	FAD
24	11/03/2007	11/07/2007	DER-1-160	375	FAMD
24	11/03/2007	11/07/2007	DER-1-161	50	FAWTD
24	11/10/2007	11/14/2007	DER-1-162	200	FAMD
24	11/10/2007	11/14/2007	DER-1-163	50	FAWTD
25	11/03/2007	11/07/2007	DER-1-164	75	FAD
25	11/10/2007	11/14/2007	DER-1-165	75	FAD
26	11/03/2007	11/07/2007	DER-1-166	75	FAD
26	11/10/2007	11/14/2007	DER-1-167	75	FAD
27	11/10/2007	11/14/2007	DER-1-168	25	FAMD

27	11/10/2007	11/14/2007	DER-1-169	25	FAWTD
28 McGregor range	10/13/2007	10/14/2007	DER-1-170	10	FAD
28 McGregor range, military only	10/13/2007	10/14/2007	DER-1-171	10	FAD
29	10/27/2007	10/31/2007	DER-1-172	150	FAD
29	11/10/2007	11/14/2007	DER-1-173	150	FAD
30	10/27/2007	10/31/2007	DER-1-174	1000	FAD
30	11/10/2007	11/14/2007	DER-1-175	1500	FAD
31	11/03/2007	11/07/2007	DER-1-176	400	FAD
31	11/17/2007	11/21/2007	DER-1-177	400	FAD
32	11/03/2007	11/07/2007	DER-1-178	600	FAD
32	11/17/2007	11/21/2007	DER-1-179	600	FAD
33	10/27/2007	10/31/2007	DER-1-180	150	FAD
33	11/10/2007	11/14/2007	DER-1-181	150	FAD
34, MI	10/27/2007	10/31/2007	DER-1-182	50	FAD
34	10/27/2007	10/31/2007	DER-1-183	950	FAD
34	11/10/2007	11/14/2007	DER-1-184	1000	FAD
36 (except Fort Stanton)	11/03/2007	11/07/2007	DER-1-185	300	FAD
36 (except Fort Stanton)	11/17/2007	11/21/2007	DER-1-186	300	FAD
36 including Fort Stanton, (4 day Thanksgiving holiday and following two weekends only), YO	11/22/2007 12/01/2007 12/08/2007	11/25/2007 12/02/2007 12/09/2007	DER-1-187	25	FAD
37 (excluding Capitan mountains portion)	11/03/2007	11/07/2007	DER-1-188	300	FAD
37 Capitan mountains portion only	11/03/2007	11/07/2007	DER-1-189	300	FAD
37 (excluding Capitan mountains portion)	11/17/2007	11/21/2007	DER-1-190	300	FAD
37 Capitan mountains portion only	11/17/2007	11/21/2007	DER-1-191	300	FAD
38	11/03/2007	11/07/2007	DER-1-192	350	FAD
38	11/17/2007	11/21/2007	DER-1-193	350	FAD

39	10/27/2007	10/31/2007	DER-1-194	50	FAD
39	11/03/2007	11/07/2007	DER-1-195	50	FAD
40	11/03/2007	11/07/2007	DER-1-196	50	FAD
40	11/17/2007	11/21/2007	DER-1-197	50	FAD
41	10/27/2007	10/31/2007	DER-1-198	70	FAD
41	11/03/2007	11/07/2007	DER-1-199	70	FAD
41, YO	11/22/2007	11/25/2007	DER-1-200	10	FAD
41	11/22/2007	11/25/2007	DER-1-201	10	FAWTD
42	10/27/2007	10/31/2007	DER-1-202	60	FAD
42	11/03/2007	11/07/2007	DER-1-203	60	FAD
42	11/22/2007	11/25/2007	DER-1-204	10	FAWTD
43	10/27/2007	10/31/2007	DER-1-205	90	FAD
43	11/03/2007	11/07/2007	DER-1-206	90	FAD
44/45, MI	10/27/2007	10/31/2007	DER-1-207	25	FAD
44/45	10/27/2007	10/31/2007	DER-1-208	275	FAD
44/45	11/03/2007	11/07/2007	DER-1-209	275	FAD
44/45, (4 day Thanksgiving holiday and following two week ends only), YO	11/22/2007 12/01/2007 12/08/2007	11/25/2007 12/02/2007 12/09/2007	DER-1-210	25	FAD
47	10/27/2007	10/31/2007	DER-1-211	20	FAD
47	11/03/2007	11/07/2007	DER-1-212	20	FAD
48	10/27/2007	10/31/2007	DER-1-213	100	FAD
48	11/03/2007	11/07/2007	DER-1-214	100	FAD
49	10/27/2007	10/31/2007	DER-1-215	100	FAD
49	11/03/2007	11/07/2007	DER-1-216	100	FAD
50	10/27/2007	10/31/2007	DER-1-217	50	FAD
50	11/03/2007	11/07/2007	DER-1-218	50	FAD
51	10/27/2007	10/31/2007	DER-1-219	100	FAD
51	11/03/2007	11/07/2007	DER-1-220	100	FAD
52	10/27/2007	10/31/2007	DER-1-221	100	FAD

52	11/03/2007	11/07/2007	DER-1-222	100	FAD
53	10/27/2007	10/31/2007	DER-1-223	100	FAD
53	11/03/2007	11/07/2007	DER-1-224	100	FAD
54/55 Colin Neblett WMA	10/27/2007	10/31/2007	DER-1-225	15	FAD
54/55 Colin Neblett WMA	11/03/2007	11/07/2007	DER-1-226	15	FAD
55 E. S. Barker WMA	10/27/2007	10/31/2007	DER-1-227	5	FAD
55 E. S. Barker WMA, YO	11/22/2007	11/25/2007	DER-1-228	5	FAD
55 Urraca WMA	10/27/2007	10/31/2007	DER-1-229	10	FAD
55 Urraca WMA	11/03/2007	11/07/2007	DER-1-230	10	FAD
56	10/27/2007	10/31/2007	DER-1-231	15	FAD
56	11/03/2007	11/07/2007	DER-1-232	15	FAD
56 Sierra Grande hunt area	10/27/2007	10/31/2007	DER-1-233	10	FAD
56 Sierra Grande hunt area	11/03/2007	11/07/2007	DER-1-234	10	FAD
57	10/27/2007	10/31/2007	DER-1-235	25	FAD
57	11/03/2007	11/07/2007	DER-1-236	25	FAD
57, YO	11/22/2007	11/25/2007	DER-1-237	10	FAD
57	11/22/2007	11/25/2007	DER-1-238	10	FAWTD
58	10/27/2007	10/31/2007	DER-1-239	30	FAD
58	11/03/2007	11/07/2007	DER-1-240	30	FAD
58, YO	11/22/2007	11/25/2007	DER-1-241	10	FAD
58	11/22/2007	11/25/2007	DER-1-242	10	FAWTD

(2) 2008 -2009 hunt season:

open GMUs or areas	hunt start	hunt end	hunt code	permits	bag limit
2A, YO	10/25/2008	10/29/2008	DER-1-100	50	FAD
2A	11/01/2008	11/05/2008	DER-1-101	200	FAD
2A private land only	11/01/2008	11/05/2008	DER-1-102	55	FAD
2B, YO	10/18/2008	10/22/2008	DER-1-103	150	FAD
2B	10/25/2008	10/29/2008	DER-1-104	300	FAD
2B private land only	10/25/2008	10/29/2008	DER-1-105	25	FAD
2B	11/01/2008	11/05/2008	DER-1-106	390	FAD
2B private land only	11/01/2008	11/05/2008	DER-1-107	25	FAD
2B	11/08/2008	11/12/2008	DER-1-108	465	FAD
2B private land only	11/08/2008	11/12/2008	DER-1-109	75	FAD
2C	11/15/2008	11/19/2008	DER-1-110	50	FAD
2C private land only	11/15/2008	11/19/2008	DER-1-111	12	FAD
4 Humphries/Rio Chama WMAs	10/18/2008	10/22/2008	DER-1-112	20	FAD
4 Humphries/Rio Chama WMAs, YO	10/18/2008	10/22/2008	DER-1-113	5	FAD
4 Humphries/Rio Chama WMAs	10/25/2008	10/29/2008	DER-1-114	20	FAD
4 Humphries/Rio Chama WMAs, YO	11/26/2008	11/30/2008	DER-1-115	5	FAD
4 private land only	10/18/2008	10/22/2008	DER-1-116	175	FAD
4 private land only	10/25/2008	10/29/2008	DER-1-117	175	FAD
5A public land only	11/04/2008	11/10/2008	DER-1-118	30	FAD
5A private land only	11/04/2008	11/10/2008	DER-1-119	220	FAD
5B	11/08/2008	11/12/2008	DER-1-120	15	FAD
5B, YO	11/26/2008	11/30/2008	DER-1-121	5	FAD
6A and 6C, MI	10/18/2008	10/22/2008	DER-1-122	20	FAD
6A and 6C	11/08/2008	11/12/2008	DER-1-123	100	FAD
7	10/18/2008	10/22/2008	DER-1-124	25	FAD
9 (including Water canyon and Marquez WMAs)	11/08/2008	11/12/2008	DER-1-125	10	FAD
9 (including Water canyon and Marquez WMAs), YO	11/08/2008	11/12/2008	DER-1-126	10	FAD
10, MI	10/18/2008	10/22/2008	DER-1-127	20	FAD
10	10/18/2008	10/22/2008	DER-1-128	70	FAD
10	10/25/2008	10/29/2008	DER-1-129	65	FAD
10	11/01/2008	11/05/2008	DER-1-130	90	FAD
10, (4 day Thanksgiving holiday and following two weekends only), YO.	11/27/2008 12/06/2008 12/13/2008	11/30/2008 12/07/2008 12/14/2008	DER-1-131	25	FAD

12	11/01/2008	11/05/2008	DER-1-132	200	FAD
13, YO	09/27/2008	10/01/2008	DER-1-133	50	FAD
13	11/01/2008	11/05/2008	DER-1-134	500	FAD
13	11/08/2008	11/12/2008	DER-1-135	500	FAD
14 (bows only on Sandia ranger district of the Cibola national forest)	10/25/2008	10/29/2008	DER-1-136	25	FAD
16, YO	09/27/2008	10/01/2008	DER-1-137	50	FAD
16, MI	11/01/2008	11/05/2008	DER-1-138	25	FAD
16	11/01/2008	11/05/2008	DER-1-139	300	FAD
16	11/08/2008	11/12/2008	DER-1-140	300	FAD
17	11/01/2008	11/05/2008	DER-1-141	150	FAD
17	11/08/2008	11/12/2008	DER-1-142	150	FAD
17, (4 day Thanksgiving holiday and following two weekends on ly), YO.	11/27/2008 12/06/2008 12/13/2008	11/30/2008 12/07/2008 12/14/2008	DER-1-143	50	FAD
18	11/01/2008	11/05/2008	DER-1-144	100	FAD
18	11/08/2008	11/12/2008	DER-1-145	100	FAD
20	11/01/2008	11/05/2008	DER-1-146	200	FAD
20	11/08/2008	11/12/2008	DER-1-147	200	FAD
21, YO	09/27/2008	10/01/2008	DER-1-148	50	FAD
21	11/01/2008	11/05/2008	DER-1-149	700	FAD
21	11/08/2008	11/12/2008	DER-1-150	750	FAD
22	11/01/2008	11/05/2008	DER-1-151	100	FAD
22	11/08/2008	11/12/2008	DER-1-152	100	FAD
23 (except the Burro mountains hunt area)	11/01/2008	11/05/2008	DER-1-153	475	FAMD
23 (except the Burro mountains hunt area)	11/01/2008	11/05/2008	DER-1-154	50	FAWTD
23 (except the Burro mountains hunt area)	11/08/2008	11/12/2008	DER-1-155	400	FAMD
23 (except the Burro mountains hunt area)	11/08/2008	11/12/2008	DER-1-156	50	FAWTD
23 Burro mountains hunt area	11/15/2008	11/19/2008	DER-1-157	25	FAMD
23 Burro mountains hunt area	11/15/2008	11/19/2008	DER-1-158	25	FAWTD
23 Burro mountain hunt area, (4 day Thanksgiving holiday and following two weekends only), YO	11/27/2008 12/06/2008 12/13/2008	11/30/2008 12/07/2008 12/14/2008	DER-1-159	25	FAD
24	11/01/2008	11/05/2008	DER-1-160	375	FAMD
24	11/01/2008	11/05/2008	DER-1-161	50	FAWTD
24	11/08/2008	11/12/2008	DER-1-162	200	FAMD
24	11/08/2008	11/12/2008	DER-1-163	50	FAWTD
25	11/01/2008	11/05/2008	DER-1-164	75	FAD
25	11/08/2008	11/12/2008	DER-1-165	75	FAD
26	11/01/2008	11/05/2008	DER-1-166	75	FAD
26	11/08/2008	11/12/2008	DER-1-167	75	FAD
27	11/08/2008	11/12/2008	DER-1-168	25	FAMD
27	11/08/2008	11/12/2008	DER-1-169	25	FAWTD
28 McGregor range	10/11/2008	10/12/2008	DER-1-170	10	FAD
28 McGregor range, military only	10/11/2008	10/12/2008	DER-1-171	10	FAD
29	10/25/2008	10/29/2008	DER-1-172	150	FAD
29	11/08/2008	11/12/2008	DER-1-173	150	FAD
30	10/25/2008	10/29/2008	DER-1-174	1000	FAD
30	11/08/2008	11/12/2008	DER-1-175	1500	FAD
31 <u>including Brantley WMA</u>	11/01/2008	11/05/2008	DER-1-176	400	FAD
31 <u>including Brantley WMA</u>	11/15/2008	11/19/2008	DER-1-177	400	FAD
32	11/01/2008	11/05/2008	DER-1-178	600	FAD
32	11/15/2008	11/19/2008	DER-1-179	600	FAD
33	10/25/2008	10/29/2008	DER-1-180	150	FAD
33	11/08/2008	11/12/2008	DER-1-181	150	FAD

34, MI	10/25/2008	10/29/2008	DER-1-182	50	FAD
34	10/25/2008	10/29/2008	DER-1-183	950	FAD
34	11/08/2008	11/12/2008	DER-1-184	1000	FAD
36 (except Fort Stanton)	11/01/2008	11/05/2008	DER-1-185	300	FAD
36 (except Fort Stanton)	11/15/2008	11/19/2008	DER-1-186	300	FAD
36 including Fort Stanton, (4 day Thanksgiving holiday and following two weekends only), YO.	11/27/2008 12/06/2008 12/13/2008	11/30/2008 12/07/2008 12/14/2008	DER-1-187	25	FAD
37 (excluding Capitan mountains portion)	11/01/2008	11/05/2008	DER-1-188	300	FAD
37 Capitan mountains portion only	11/01/2008	11/05/2008	DER-1-189	300	FAD
37 (excluding Capitan mountains portion)	11/15/2008	11/19/2008	DER-1-190	300	FAD
37 Capitan mountains portion only	11/15/2008	11/19/2008	DER-1-191	300	FAD
38	11/01/2008	11/05/2008	DER-1-192	350	FAD
38	11/15/2008	11/19/2008	DER-1-193	350	FAD
39	10/25/2008	10/29/2008	DER-1-194	50	FAD
39	11/01/2008	11/05/2008	DER-1-195	50	FAD
40	11/01/2008	11/05/2008	DER-1-196	50	FAD
40	11/15/2008	11/19/2008	DER-1-197	50	FAD
41	10/25/2008	10/29/2008	DER-1-198	70	FAD
41	11/01/2008	11/05/2008	DER-1-199	70	FAD
41, YO	11/27/2008	11/30/2008	DER-1-200	10	FAD
41	11/27/2008	11/30/2008	DER-1-201	10	FAWTD
42	10/25/2008	10/29/2008	DER-1-202	60	FAD
42	11/01/2008	11/05/2008	DER-1-203	60	FAD
42	11/27/2008	11/30/2008	DER-1-204	10	FAWTD
43	10/25/2008	10/29/2008	DER-1-205	90	FAD
43	11/01/2008	11/05/2008	DER-1-206	90	FAD
44/45, MI	10/25/2008	10/29/2008	DER-1-207	25	FAD
44/45	10/25/2008	10/29/2008	DER-1-208	275	FAD
44/45	11/01/2008	11/05/2008	DER-1-209	275	FAD
44/45, (4 day Thanksgiving holiday and following two weekends only), YO	11/27/2008 12/06/2008 12/13/2008	11/30/2008 12/07/2008 12/14/2008	DER-1-210	25	FAD
47	10/25/2008	10/29/2008	DER-1-211	20	FAD
47	11/01/2008	11/05/2008	DER-1-212	20	FAD
48	10/25/2008	10/29/2008	DER-1-213	100	FAD
48	11/01/2008	11/05/2008	DER-1-214	100	FAD
49	10/25/2008	10/29/2008	DER-1-215	100	FAD
49	11/01/2008	11/05/2008	DER-1-216	100	FAD
50	10/25/2008	10/29/2008	DER-1-217	50	FAD
50	11/01/2008	11/05/2008	DER-1-218	50	FAD
51	10/25/2008	10/29/2008	DER-1-219	100	FAD
51	11/01/2008	11/05/2008	DER-1-220	100	FAD
52	10/25/2008	10/29/2008	DER-1-221	100	FAD
52	11/01/2008	11/05/2008	DER-1-222	100	FAD
53	10/25/2008	10/29/2008	DER-1-223	100	FAD
53	11/01/2008	11/05/2008	DER-1-224	100	FAD
54/55 Colin Neblett WMA	10/25/2008	10/29/2008	DER-1-225	15	FAD
54/55 Colin Neblett WMA	11/01/2008	11/05/2008	DER-1-226	15	FAD
55 E. S. Barker WMA	10/25/2008	10/29/2008	DER-1-227	5	FAD
55 E. S. Barker WMA, YO	11/27/2008	11/30/2008	DER-1-228	5	FAD
55 Urraca WMA	10/25/2008	10/29/2008	DER-1-229	10	FAD
55 Urraca WMA	11/01/2008	11/05/2008	DER-1-230	10	FAD
56	10/25/2008	10/29/2008	DER-1-231	15	FAD
56	11/01/2008	11/05/2008	DER-1-232	15	FAD
56 Sierra Grande hunt area	10/25/2008	10/29/2008	DER-1-233	10	FAD
56 Sierra Grande hunt area	11/01/2008	11/05/2008	DER-1-234	10	FAD
57	10/25/2008	10/29/2008	DER-1-235	25	FAD
57	11/01/2008	11/05/2008	DER-1-236	25	FAD
57, YO	11/27/2008	11/30/2008	DER-1-237	10	FAD
57	11/27/2008	11/30/2008	DER-1-238	10	FAWTD
58	10/25/2008	10/29/2008	DER-1-239	30	FAD
58	11/01/2008	11/05/2008	DER-1-240	30	FAD
58, YO	11/27/2008	11/30/2008	DER-1-241	10	FAD
58	11/27/2008	11/30/2008	DER-1-242	10	FAWTD

31/33 Brantley WMA and W.S. Huey Waterfowl area only YO	10/25/2008	10/26/2008	DER-1-243	15	ES
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B. Public land (and private lands in GMUs 2A, 2B, 2C, 4 and 5A) deer hunts for bows only, listing the open GMUs or areas, hunt dates, hunt code, number of permits and bag limit shall be as indicated below.

(1) 2007 - 2008 hunt season:

open GMUs or areas	hunt start	hunt end	hunt code	permits	bag limit
2A	09/01/2007	09/22/2007	DER-2-100	40	FAD
2A private land only	09/01/2007	09/22/2007	DER-2-101	20	FAD
2A	01/01/2008	01/15/2008	DER-2-102	80	FAD
2A private land only	01/01/2008	01/15/2008	DER-2-103	20	FAD
2B, YO	09/01/2007	09/22/2007	DER-2-104	20	FAD
2B	09/01/2007	09/22/2007	DER-2-105	130	FAD
2B private land only	09/01/2007	09/22/2007	DER-2-106	10	FAD
2B	01/01/2008	01/15/2008	DER-2-107	180	FAD
2B private land only	01/01/2008	01/15/2008	DER-2-108	30	FAD
2C	01/01/2008	01/15/2008	DER-2-109	50	FAD
2C private land only	01/01/2008	01/15/2008	DER-2-110	12	FAD
4 private land only	09/01/2007	09/22/2007	DER-2-111	150	FAD
5A public land only	09/01/2007	09/22/2007	DER-2-112	30	FAD
5A private land only	09/01/2007	09/22/2007	DER-2-113	220	FAD
6A and 6C	09/01/2007	09/22/2007	DER-2-114	100	FAD
7	09/01/2007	09/22/2007	DER-2-115	10	FAD
8, YO	11/17/2007	11/25/2007	DER-2-116	50	FAD
8	01/01/2008	01/15/2008	DER-2-117	50	FAD
9 (including Water canyon and Marquez WMAs)	09/01/2007	09/22/2007	DER-2-118	10	FAD
10	09/01/2007	09/22/2007	DER-2-119	120	FAD
12	09/01/2007	09/22/2007	DER-2-120	75	FAD
13	09/01/2007	09/24/2007	DER-2-121	200	FAD
13	01/01/2008	01/15/2008	DER-2-122	75	FAD
14	09/01/2007	09/22/2007	DER-2-123	25	FAD
15	09/01/2007	09/24/2007	DER-2-124	150	FAD
15	01/01/2008	01/15/2008	DER-2-125	50	FAD
16	09/01/2007	09/24/2007	DER-2-126	200	FAD
16	01/01/2008	01/15/2008	DER-2-127	200	FAD
17	09/01/2007	09/24/2007	DER-2-128	200	FAD
17	01/01/2008	01/15/2008	DER-2-129	120	FAD
18	09/01/2007	09/24/2007	DER-2-130	50	FAD
18	01/01/2008	01/15/2008	DER-2-131	100	FAD
20	09/01/2007	09/24/2007	DER-2-132	25	FAD
20	01/01/2008	01/15/2008	DER-2-133	50	FAD
21	09/01/2007	09/24/2007	DER-2-134	50	FAD
21	01/01/2008	01/15/2008	DER-2-135	200	FAD
22	09/01/2007	09/24/2007	DER-2-136	25	FAD
22	01/01/2008	01/15/2008	DER-2-137	25	FAD
23 (except the Burro mountains hunt area)	09/01/2007	09/24/2007	DER-2-138	50	FAMD
23 (except the Burro mountains hunt area)	09/01/2007	09/24/2007	DER-2-139	100	FAWTD
23 (except the Burro mountains hunt area)	01/01/2008	01/15/2008	DER-2-140	150	FAMD
23 (except the Burro mountains hunt area)	01/01/2008	01/15/2008	DER-2-141	50	FAWTD
23 Burro mountains hunt area	01/01/2008	01/15/2008	DER-2-142	50	FAMD
23 Burro mountains hunt area	01/01/2008	01/15/2008	DER-2-143	50	FAWTD
24	09/01/2007	09/24/2007	DER-2-144	100	FAMD
24	09/01/2007	09/24/2007	DER-2-145	50	FAWTD
24	01/01/2008	01/15/2008	DER-2-146	100	FAMD

24	01/01/2008	01/15/2008	DER-2-147	50	FAWTD
25	09/01/2007	09/24/2007	DER-2-148	25	FAD
25	01/01/2008	01/15/2008	DER-2-149	50	FAD
26	09/01/2007	09/24/2007	DER-2-150	25	FAD
26	01/01/2008	01/15/2008	DER-2-151	25	FAD
27	01/01/2008	01/15/2008	DER-2-152	25	FAMD
27	01/01/2008	01/15/2008	DER-2-153	30	FAWTD
29	09/01/2007 01/01/2008	09/22/2007 01/15/2008	DER-2-154	200	FAD
30	09/01/2007 01/01/2008	09/22/2007 01/15/2008	DER-2-155	300	FAD
31	09/01/2007 01/01/2008	09/22/2007 01/15/2008	DER-2-156	200	FAD
32	09/01/2007 01/01/2008	09/22/2007 01/15/2008	DER-2-157	175	FAD
33	09/01/2007 01/01/2008	09/22/2007 01/15/2008	DER-2-158	100	FAD
34	09/01/2007 01/01/2008	09/22/2007 01/15/2008	DER-2-159	800	FAD
36 (including Fort Stanton)	09/01/2007 01/01/2008	09/22/2007 01/15/2008	DER-2-160	250	FAD
37 (excluding Capitan mountains portion)	09/01/2007 01/01/2008	09/22/2007 01/15/2008	DER-2-161	100	FAD
37 Capitan mountains portion only	09/01/2007 01/01/2008	09/22/2007 01/15/2008	DER-2-162	100	FAD
38	09/01/2007 01/01/2008	09/22/2007 01/15/2008	DER-2-163	200	FAD
39	09/01/2007 01/01/2008	09/22/2007 01/15/2008	DER-2-164	50	FAD
40	09/01/2007 01/01/2008	09/22/2007 01/15/2008	DER-2-165	50	FAD
41	09/01/2007	09/22/2007	DER-2-166	10	FAD
42	09/01/2007	09/22/2007	DER-2-167	10	FAD
43	09/01/2007	09/22/2007	DER-2-168	50	FAD
44/45	09/01/2007	09/22/2007	DER-2-169	120	FAD
47	09/01/2007	09/22/2007	DER-2-170	10	FAD
48	09/01/2007	09/22/2007	DER-2-171	50	FAD
49	09/01/2007	09/22/2007	DER-2-172	100	FAD
50	09/01/2007	09/22/2007	DER-2-173	10	FAD
51	09/01/2007	09/22/2007	DER-2-174	80	FAD
52	09/01/2007	09/22/2007	DER-2-175	100	FAD
53	09/01/2007	09/22/2007	DER-2-176	90	FAD
56	09/01/2007	09/22/2007	DER-2-177	5	FAD
56 Sierra Grande hunt area	09/01/2007	09/22/2007	DER-2-178	5	FAD
57	09/01/2007	09/22/2007	DER-2-179	15	FAD
57 Sugarite canyon state park	11/01/2007	11/30/2007	DER-2-180	40	FAD
58	09/01/2007	09/22/2007	DER-2-181	15	FAD

(2) 2008 -2009 hunt season:

open GMUs or areas	hunt start	hunt end	hunt code	permits	bag limit
2A	09/01/2008	09/22/2008	DER-2-100	40	FAD
2A private land only	09/01/2008	09/22/2008	DER-2-101	20	FAD
2A	01/01/2009	01/15/2009	DER-2-102	80	FAD
2A private land only	01/01/2009	01/15/2009	DER-2-103	20	FAD
2B	09/01/2008	09/22/2008	DER-2-104	130	FAD
2B, YO	09/01/2008	09/22/2008	DER-2-105	20	FAD
2B private land only	09/01/2008	09/22/2008	DER-2-106	10	FAD
2B	01/01/2009	01/15/2009	DER-2-107	180	FAD
2B private land only	01/01/2009	01/15/2009	DER-2-108	30	FAD

2C	01/01/2009	01/15/2009	DER-2-109	50	FAD
2C private land only	01/01/2009	01/15/2009	DER-2-110	12	FAD
4 private land only	09/01/2008	09/22/2008	DER-2-111	150	FAD
5A public land only	09/01/2008	09/22/2008	DER-2-112	30	FAD
5A private land only	09/01/2008	09/22/2008	DER-2-113	220	FAD
6A and 6C	09/01/2008	09/22/2008	DER-2-114	100	FAD
7	09/01/2008	09/22/2008	DER-2-115	10	FAD
8, YO	11/22/2008	11/30/2008	DER-2-116	50	FAD
8	01/01/2009	01/15/2009	DER-2-117	50	FAD
9 (including Water canyon and Marquez WMAs)	09/01/2008	09/22/2008	DER-2-118	10	FAD
10	09/01/2008	09/22/2008	DER-2-119	120	FAD
12	09/01/2008	09/22/2008	DER-2-120	75	FAD
13	09/01/2008	09/24/2008	DER-2-121	200	FAD
13	01/01/2009	01/15/2009	DER-2-122	75	FAD
14	09/01/2008	09/22/2008	DER-2-123	25	FAD
15	09/01/2008	09/24/2008	DER-2-124	150	FAD
15	01/01/2009	01/15/2009	DER-2-125	50	FAD
16	09/01/2008	09/24/2008	DER-2-126	200	FAD
16	01/01/2009	01/15/2009	DER-2-127	200	FAD
17	09/01/2008	09/24/2008	DER-2-128	200	FAD
17	01/01/2009	01/15/2009	DER-2-129	120	FAD
18	09/01/2008	09/24/2008	DER-2-130	50	FAD
18	01/01/2009	01/15/2009	DER-2-131	100	FAD
20	09/01/2008	09/24/2008	DER-2-132	25	FAD
20	01/01/2009	01/15/2009	DER-2-133	50	FAD
21	09/01/2008	09/24/2008	DER-2-134	50	FAD
21	01/01/2009	01/15/2009	DER-2-135	200	FAD
22	09/01/2008	09/24/2008	DER-2-136	25	FAD
22	01/01/2009	01/15/2009	DER-2-137	25	FAD
23 (except the Burro mountains hunt area)	09/01/2008	09/24/2008	DER-2-138	50	FAMD
23 (except the Burro mountains hunt area)	09/01/2008	09/24/2008	DER-2-139	100	FAWTD
23 (except the Burro mountains hunt area)	01/01/2009	01/15/2009	DER-2-140	150	FAMD
23 (except the Burro mountains hunt area)	01/01/2009	01/15/2009	DER-2-141	50	FAWTD
23 Burro mountains hunt area	01/01/2009	01/15/2009	DER-2-142	50	FAMD
23 Burro mountains hunt area	01/01/2009	01/15/2009	DER-2-143	50	FAWTD
24	09/01/2008	09/24/2008	DER-2-144	100	FAMD
24	09/01/2008	09/24/2008	DER-2-145	50	FAWTD
24	01/01/2009	01/15/2009	DER-2-146	100	FAMD
24	01/01/2009	01/15/2009	DER-2-147	50	FAWTD
25	09/01/2008	09/24/2008	DER-2-148	25	FAD
25	01/01/2009	01/15/2009	DER-2-149	50	FAD
26	09/01/2008	09/24/2008	DER-2-150	25	FAD
26	01/01/2009	01/15/2009	DER-2-151	25	FAD
27	01/01/2009	01/15/2009	DER-2-152	25	FAMD
27	01/01/2009	01/15/2009	DER-2-153	30	FAWTD
29	09/01/2008	09/22/2008	DER-2-154	200	FAD
	01/01/2009	01/15/2009			
30	09/01/2008	09/22/2008	DER-2-155	300	FAD
	01/01/2009	01/15/2009			

31 <u>including Brantley WMA</u>	09/01/2008 01/01/2009	09/22/2008 01/15/2009	DER-2-156	200	FAD
32	09/01/2008 01/01/2009	09/22/2008 01/15/2009	DER-2-157	175	FAD
33	09/01/2008 01/01/2009	09/22/2008 01/15/2009	DER-2-158	100	FAD
34	09/01/2008 01/01/2009	09/22/2008 01/15/2009	DER-2-159	800	FAD
36 (including Fort Stanton)	09/01/2008 01/01/2009	09/22/2008 01/15/2009	DER-2-160	250	FAD
37 (excluding Capitan mountains portion)	09/01/2008 01/01/2009	09/22/2008 01/15/2009	DER-2-161	100	FAD
37 (Capitan mountains portion only)	09/01/2008 01/01/2009	09/22/2008 01/15/2009	DER-2-162	100	FAD
38	09/01/2008 01/01/2009	09/22/2008 01/15/2009	DER-2-163	200	FAD
39	09/01/2008 01/01/2009	09/22/2008 01/15/2009	DER-2-164	50	FAD
40	09/01/2008 01/01/2009	09/22/2008 01/15/2009	DER-2-165	50	FAD
41	09/01/2008	09/22/2008	DER-2-166	10	FAD
42	09/01/2008	09/22/2008	DER-2-167	10	FAD
43	09/01/2008	09/22/2008	DER-2-168	50	FAD
44/45	09/01/2008	09/22/2008	DER-2-169	120	FAD
47	09/01/2008	09/22/2008	DER-2-170	10	FAD
48	09/01/2008	09/22/2008	DER-2-171	50	FAD
49	09/01/2008	09/22/2008	DER-2-172	100	FAD
50	09/01/2008	09/22/2008	DER-2-173	10	FAD
51	09/01/2008	09/22/2008	DER-2-174	80	FAD
52	09/01/2008	09/22/2008	DER-2-175	100	FAD
53	09/01/2008	09/22/2008	DER-2-176	90	FAD
56	09/01/2008	09/22/2008	DER-2-177	5	FAD
56 Sierra Grande hunt area	09/01/2008	09/22/2008	DER-2-178	5	FAD
57	09/01/2008	09/22/2008	DER-2-179	15	FAD
57 Sugarite canyon state park	11/01/2008	11/30/2008	DER-2-180	40	FAD
58	09/01/2008	09/22/2008	DER-2-181	15	FAD

C. Public land (and private land in GMUs 2A, 2B, 2C, 4 and 5A) deer hunts for legal muzzle loading rifles or bows, listing the open GMUs or areas, hunt dates, hunt code, number of permits and bag limit shall be as indicated below. Youth hunters must provide hunter education certificate number on application.

(1) **2007 - 2008 hunt season:**

open GMUs or areas	hunt start	hunt end	hunt code	permits	bag limit
2A	09/24/2007	09/30/2007	DER-3-100	60	FAD
2A private land only	09/24/2007	09/30/2007	DER-3-101	10	FAD
2B	09/24/2007	09/30/2007	DER-3-102	175	FAD
2B, YO	09/24/2007	09/30/2007	DER-3-103	20	FAD
2B private land only	09/24/2007	09/30/2007	DER-3-104	10	FAD
2C	09/24/2007	09/30/2007	DER-3-105	50	FAD
2C private land only	09/24/2007	09/30/2007	DER-3-106	12	FAD
4 private land only	09/24/2007	09/30/2007	DER-3-107	100	FAD
6A and 6C	09/24/2007	09/30/2007	DER-3-108	100	FAD
7	09/24/2007	09/30/2007	DER-3-109	10	FAD
10	09/24/2007	09/30/2007	DER-3-110	90	FAD
12	09/24/2007	09/30/2007	DER-3-111	75	FAD
13	10/27/2007	10/31/2007	DER-3-112	500	FAD
14 (bows only on Sandia ranger district, Cibola national forest)	09/24/2007	09/30/2007	DER-3-113	50	FAD
15, YO	09/29/2007	10/03/2007	DER-3-114	50	FAD
15	10/27/2007	10/31/2007	DER-3-115	250	FAD
16	10/27/2007	10/31/2007	DER-3-116	500	FAD

17	10/27/2007	10/31/2007	DER-3-117	200	FAD
18	10/27/2007	10/31/2007	DER-3-118	50	FAD
19 (except White Sands missile range)	10/27/2007	10/31/2007	DER-3-119	10	FAD
20	10/27/2007	10/31/2007	DER-3-120	75	FAD
21	10/27/2007	10/31/2007	DER-3-121	400	FAD
22	10/27/2007	10/31/2007	DER-3-122	50	FAD
23 (except the Burro mountains hunt area)	10/27/2007	10/31/2007	DER-3-123	150	FAMD
23 (except the Burro mountains hunt area)	10/27/2007	10/31/2007	DER-3-124	50	FAWTD
24	10/27/2007	10/31/2007	DER-3-125	200	FAMD
24	10/27/2007	10/31/2007	DER-3-126	50	FAWTD
25	10/27/2007	10/31/2007	DER-3-127	35	FAD
26	10/27/2007	10/31/2007	DER-3-128	50	FAD
27	10/27/2007	10/31/2007	DER-3-129	25	FAMD
27	10/27/2007	10/31/2007	DER-3-130	25	FAWTD
29	10/20/2007	10/24/2007	DER-3-131	50	FAD
31	10/20/2007	10/24/2007	DER-3-132	120	FAD
31/33 Brantley WMA, Seven rivers & Huey waterfowl management areas, YO	11/21/2007	11/25/2007	DER-3-133	30	ES
31/33 Brantley WMA, Seven rivers & Huey waterfowl management areas, YO	12/26/2007	01/01/2008	DER-3-134	10	ES
32	10/20/2007	10/24/2007	DER-3-135	125	FAD
34	10/20/2007	10/24/2007	DER-3-136	350	FAD
36 (except Fort Stanton)	10/20/2007	10/24/2007	DER-3-137	50	FAD
36 (including Fort Stanton), YO	10/20/2007	10/24/2007	DER-3-138	25	FAD
38	10/20/2007	10/24/2007	DER-3-139	200	FAD
39	10/20/2007	10/24/2007	DER-3-140	50	FAD
40	10/20/2007	10/24/2007	DER-3-141	25	FAD
41	09/24/2007	09/30/2007	DER-3-142	50	FAD
42	09/24/2007	09/30/2007	DER-3-143	10	FAD
43	09/24/2007	09/30/2007	DER-3-144	20	FAD
44/45	09/24/2007	09/30/2007	DER-3-145	150	FAD
47	09/24/2007	09/30/2007	DER-3-146	20	FAD
56	09/24/2007	09/30/2007	DER-3-147	5	FAD
56 Sierra Grande hunt area	09/24/2007	09/30/2007	DER-3-148	10	FAD
57	09/24/2007	09/30/2007	DER-3-149	15	FAD
58	09/24/2007	09/30/2007	DER-3-150	15	FAD

(2) 2008 - 2009 hunt season:

open GMUs or areas	hunt start	hunt end	hunt code	permits	bag limit
2A	09/24/2008	09/30/2008	DER-3-100	60	FAD
2A private land only	09/24/2008	09/30/2008	DER-3-101	10	FAD
2B	09/24/2008	09/30/2008	DER-3-102	175	FAD
2B, YO	09/24/2008	09/30/2008	DER-3-103	20	FAD
2B private land only	09/24/2008	09/30/2008	DER-3-104	10	FAD
2C	09/24/2008	09/30/2008	DER-3-105	50	FAD
2C private land only	09/24/2008	09/30/2008	DER-3-106	12	FAD
4 private land only	09/24/2008	09/30/2008	DER-3-107	100	FAD
6A and 6C	09/24/2008	09/30/2008	DER-3-108	100	FAD
7	09/24/2008	09/30/2008	DER-3-109	10	FAD
10	09/24/2008	09/30/2008	DER-3-110	90	FAD
12	09/24/2008	09/30/2008	DER-3-111	75	FAD
13	10/25/2008	10/29/2008	DER-3-112	500	FAD
14 (bows only on Sandia ranger district of the Cibola national forest)	09/27/2008	10/03/2008	DER-3-113	50	FAD
15, YO	09/27/2008	10/01/2008	DER-3-114	50	FAD
15	10/25/2008	10/29/2008	DER-3-115	250	FAD
16	10/25/2008	10/29/2008	DER-3-116	500	FAD

17	10/25/2008	10/29/2008	DER-3-117	200	FAD
18	10/25/2008	10/29/2008	DER-3-118	50	FAD
19 (except White Sands missile range)	10/25/2008	10/29/2008	DER-3-119	10	FAD
20	10/25/2008	10/29/2008	DER-3-120	75	FAD
21	10/25/2008	10/29/2008	DER-3-121	400	FAD
22	10/25/2008	10/29/2008	DER-3-122	50	FAD
23 (except the Burro mountains hunt area)	10/25/2008	10/29/2008	DER-3-123	150	FAMD
23 (except the Burro mountains hunt area)	10/25/2008	10/29/2008	DER-3-124	50	FAWTD
24	10/25/2008	10/29/2008	DER-3-125	200	FAMD
24	10/25/2008	10/29/2008	DER-3-126	50	FAWTD
25	10/25/2008	10/29/2008	DER-3-127	35	FAD
26	10/25/2008	10/29/2008	DER-3-128	50	FAD
27	10/25/2008	10/29/2008	DER-3-129	25	FAMD
27	10/25/2008	10/29/2008	DER-3-130	25	FAWTD
29	10/18/2008	10/22/2008	DER-3-131	50	FAD
31 including Brantley WMA	10/18/2008	10/22/2008	DER-3-132	120	FAD
31/33 Brantley WMA, Seven rivers & Huey waterfowl management areas, YO	11/26/2008	11/30/2008	DER-3-133	30	ES
31/33 Brantley WMA, Seven rivers & Huey waterfowl management areas, YO	12/26/2008	01/01/2009	DER-3-134	10	ES
32	10/18/2008	10/22/2008	DER-3-135	125	FAD
34	10/18/2008	10/22/2008	DER-3-136	350	FAD
36 (except Fort Stanton)	10/18/2008	10/22/2008	DER-3-137	50	FAD
36 (including Fort Stanton), YO	10/18/2008	10/22/2008	DER-3-138	25	FAD
38	10/18/2008	10/22/2008	DER-3-139	200	FAD
39	10/18/2008	10/22/2008	DER-3-140	50	FAD
40	10/18/2008	10/22/2008	DER-3-141	25	FAD
41	09/24/2008	09/30/2008	DER-3-142	50	FAD
42	09/24/2008	09/30/2008	DER-3-143	10	FAD
43	09/24/2008	09/30/2008	DER-3-144	20	FAD
44/45	09/24/2008	09/30/2008	DER-3-145	150	FAD
47	09/24/2008	09/30/2008	DER-3-146	20	FAD
56	09/24/2008	09/30/2008	DER-3-147	5	FAD
56 Sierra Grande hunt area	09/24/2008	09/30/2008	DER-3-148	10	FAD
57	09/24/2008	09/30/2008	DER-3-149	15	FAD
58	09/24/2008	09/30/2008	DER-3-150	15	FAD

D. Public land deer hunts for restricted legal muzzle loading rifles only, as defined in 19.31.13.7 NMAC, listing the open GMUs or areas, hunt dates, hunt code, number of permits and bag limit shall be as indicated below. Youth hunters must provide hunter education certificate number on application.

(1) 2007 - 2008 hunt season:

open GMUs or areas	hunt start	hunt end	hunt code	permits	bag limit
9 (including Water canyon and Marquez WMAs)	09/24/2007	09/30/2007	DER-3-151	10	FAD
23 Burro mountains hunt area	10/27/2007	10/31/2007	DER-3-152	25	FAMD
23 Burro mountains hunt area	10/27/2007	10/31/2007	DER-3-153	25	FAWTD
30	10/13/2007	10/17/2007	DER-3-154	500	FAD
33	10/20/2007	10/24/2007	DER-3-155	50	FAD
37 (except Capitan mountains portion)	10/20/2007	10/24/2007	DER-3-156	125	FAD
37 Capitan mountains portion only	10/20/2007	10/24/2007	DER-3-157	100	FAD
52	09/24/2007	09/30/2007	DER-3-158	30	FAD

(2) 2008 - 2009 hunt season:

open GMUs or areas	hunt start	hunt end	hunt code	permits	bag limit
9 (including Water canyon and Marquez WMAs)	09/24/2008	09/30/2008	DER-3-151	10	FAD
23 Burro mountains hunt area	10/25/2008	10/29/2008	DER-3-152	25	FAMD

23 Burro mountains hu nt area	10/25/2008	10/29/2008	DER-3-153	25	FAWTD
30	10/11/2008	10/15/2008	DER-3-154	500	FAD
33	10/18/2008	10/22/2008	DER-3-155	50	FAD
37 (except Capitan mountains portion)	10/18/2008	10/22/2008	DER-3-156	125	FAD
37 Capitan mountains portion only	10/18/2008	10/22/2008	DER-3-157	100	FAD
52	09/24/2008	09/30/2008	DER-3-158	30	FAD

E. Private land-only deer hunts: Private land-only deer permits shall be restricted to the season dates, sporting arms type, and bag limit that corresponds to the public land hunt code listed in Subsections A, B, C and D of 19.31.8.15 NMAC above for the GMU where the private landowner's property lies. The private land-only deer permits shall be unlimited and available from any license vendor; however, only one private land-only deer permit will be issued per license. Private land-only hunters in GMUs 2A, 2B, 2C, 4 and 5A must obtain a special application form from landowner and apply through the draw. Hunts in GMUs 8, 46, 54, and 55 shall be as indicated below:

(1) 2007 - 2008 hunt season:

open GMUs or areas	hunt start	hunt end	hunt code	permits	bag limit
8 for any legal sporting arm	10/20/2007	10/24/2007	DER-1-300	unlimited	FAD
8 for legal muzzle loading rifles or bows	09/24/2007	09/30/2007	DER-3-301	unlimited	FAD
46 for any legal sporting arm	10/27/2007	10/31/2007	DER-1-302	unlimited	FAD
46 for any legal sporting arm	11/03/2007	11/07/2007	DER-1-303	unlimited	FAD
46 for bows only	09/01/2007	09/22/2007	DER-2-304	unlimited	FAD
46 for legal muzzle loading rifles or bows	09/24/2007	09/30/2007	DER-3-305	unlimited	FAD
54 for any legal sporting arm	10/27/2007	10/31/2007	DER-1-306	unlimited	FAD
54 for any legal sporting arm	11/03/2007	11/07/2007	DER-1-307	unlimited	FAD
54 for any legal sporting arm	11/22/2007	11/25/2007	DER-1-308	unlimited	FAWTD
54 for bows only	09/01/2007	09/22/2007	DER-2-309	unlimited	FAD
54 for legal muzzle loading rifles or bows	09/24/2007	09/30/2007	DER-3-310	unlimited	FAD
55 for any legal sporting arm	10/27/2007	10/31/2007	DER-1-311	unlimited	FAD
55 for any legal sporting arm	11/03/2007	11/07/2007	DER-1-312	unlimited	FAD
55 for bows only	09/01/2007	09/22/2007	DER-2-313	unlimited	FAD
55 for legal muzzle loading rifles or bows	09/24/2007	09/30/2007	DER-3-314	unlimited	FAD
55B for any legal sporting arm	11/22/2007	11/25/2007	DER-1-315	unlimited	FAWTD

(2) 2008 - 2009 hunt season:

open GMUs or areas	hunt start	hunt end	hunt code	permits	bag limit
8 for any legal sporting arm	10/18/2008	10/22/2008	DER-1-300	unlimited	FAD
8 for legal muzzle loading rifles or bows	09/24/2008	09/30/2008	DER-3-301	unlimited	FAD
46 for any legal sporting arm	10/25/2008	10/29/2008	DER-1-302	unlimited	FAD
46 for any legal sporting arm	11/01/2008	11/05/2008	DER-1-303	unlimited	FAD
46 for bows only	09/01/2008	09/22/2008	DER-2-304	unlimited	FAD
46 for legal muzzle loading rifles or bows	09/24/2008	09/30/2008	DER-3-305	unlimited	FAD
54 for any legal sporting arm	10/25/2008	10/29/2008	DER-1-306	unlimited	FAD
54 for any legal sporting arm	11/01/2008	11/05/2008	DER-1-307	unlimited	FAD
54 for any legal sporting arm	11/27/2008	11/30/2008	DER-1-308	unlimited	FAWTD
54 for bows only	09/01/2008	09/22/2008	DER-2-309	unlimited	FAD
54 for legal muzzle loading rifles or bows	09/24/2008	09/30/2008	DER-3-310	unlimited	FAD
55 for any legal sporting arm	10/25/2008	10/29/2008	DER-1-311	unlimited	FAD
55 for any legal sporting arm	11/01/2008	11/05/2008	DER-1-312	unlimited	FAD
55 for bows only	09/01/2008	09/22/2008	DER-2-313	unlimited	FAD
55 for legal muzzle loading rifles or bows	09/24/2008	09/30/2008	DER-3-314	unlimited	FAD
55B for any legal sporting arm	11/27/2008	11/30/2008	DER-1-315	unlimited	FAWTD

**NEW MEXICO
DEPARTMENT OF GAME AND FISH**

This is an amendment to 19.31.16 NMAC, Sections 9 and 12, effective 9-28-2007.

19.31.16.9 TURKEY LICENSE APPLICATION REQUIREMENTS AND RESTRICTIONS:

A. License limitations: A hunter is limited to purchasing only one license in the fall and one in the spring during the current license year, unless otherwise allowed by rule.

B. Valid dates of license or permit: All turkey entry permits or licenses shall be valid only for the specified dates, legal sporting arms, bag limit and area specified by the hunt code printed on the permit, license, or carcass tag. Over-the counter licenses shall be valid only for the specified dates, legal sporting arms, bag limit and area specified by rule or regulation.

C. Youth only (YO) hunts: It shall be unlawful for anyone to apply for youth only (YO) turkey license, except as allowed by 19.31.3.11 NMAC.

D. Sub-unit 6B, Valles Caldera national preserve: It shall be unlawful for anyone to hunt turkeys in sub-unit 6B, Valles Caldera national preserve, without having in their possession a valid turkey hunting license, a valid turkey tag, and a Valles Caldera national preserve wild turkey access authorization.

[19.31.16.9 NMAC - N, 4-1-2007; A, 9-28-2007]

19.31.16.12 TURKEY HUNTS:

A. Over-the-counter hunts for any legal firearms, including shotguns and muzzle loading shotguns firing shot, bows, and crossbows (certified mobility impaired hunters only), shall be as indicated below, listing the hunt dates, hunt code, maximum number of licenses, and bag limits. The areas and GMUs open are: 4 (spring only, excluding Sargent, Humphries, and Rio Chama WMAs), 5 (spring only), 6 (spring only, **sub-unit 6B Valles Caldera national preserve hunters must secure a VCNP wild turkey access authorization prior to hunting**), 7, 9 (Except Marquez WMA. The water canyon WMA is open in spring only), 10, 12, 13, 14 (spring only, Sandia ranger district of the Cibola national forest is open only for bows), 15, 16, 17,18 (spring only), 20 (spring only, Doña Ana county portion closed), 21 (except Doña Ana county), 22, 23, 24, 29, 34, 36, 37, 39 (spring only), 40, 41, 42, 43(spring only), 44 (spring only), 45, 46, 47, 48, 49(spring only), 51(spring only), 52 (spring only), 53 (spring only), 54 (including Colin Neblett south), 55 (except Urraca WMA and except Valle Vidal and Greenwood wildlife areas), 55:Colin Neblett north WMA, 55:E. S. Barker WMA (spring only), 56, 57 (Sugarite canyon state park is open only for bow and only in spring), 58.

(1) 2007-2008 hunt seasons

hunt seasons	hunt start	hunt end	hunt code	licenses	bag limit
spring	04/15/2007	05/10/2007	TUR-1-001	unlimited	2 turkeys with visible beards
spring, YO	05/12/2007	05/13/2007	TUR-1-001	unlimited	2 turkeys with visible beards
fall	09/10/2007	09/18/2007	TUR-1-001	unlimited	1 turkey

(2) 2008-2009 hunt seasons

hunt seasons	hunt start	hunt end	hunt code	licenses	bag limit
spring	04/15/2008	05/10/2008	TUR-1-001	unlimited	2 turkeys with visible beards
spring, YO	05/17/2008	05/18/2008	TUR-1-001	unlimited	2 turkeys with visible beards
fall	09/08/2008	09/16/2008	TUR-1-001	unlimited	1 turkey
spring (sub-unit 6B, VCNP)	04/15/2008	05/10/2008	TUR-1-001	unlimited (must possess VCNP wild turkey access auth.)	1 turkey with visible beard

B. Entry hunts for any legal firearms, listing the areas open, hunt dates, hunt code, maximum number of licenses, and bag limits shall be as indicated below. Youth hunters must provide hunter education certificate number on application.

(1) 2007-2008 hunt season.

open GMUs or areas	hunt start	hunt end	hunt code	licenses	bag limit
2 except sub-unit 2A	04/15/2007	04/30/2007	TUR-1-100	100	1 turkey with visible beard
4 Sargent WMA	04/15/2007	04/30/2007	TUR-1-101	5	1 turkey with visible beard
6 Valles caldera national preserve	04/15/2007	04/30/2007	TUR-1-102	TBD	1 turkey with visible beard
9 Marquez WMA	04/15/2007	04/30/2007	TUR-1-103	5	1 turkey with visible beard

33 WS Huey WMA, YO	04/21/2007	04/22/2007	TUR-1-104	3	1 turkey with visible beard
33 WS Huey WMA, YO	04/28/2007	04/29/2007	TUR-1-105	3	1 turkey with visible beard
33 WS Huey WMA, YO	05/05/2007	05/06/2007	TUR-1-106	3	1 turkey with visible beard
55 Valle Vidal area	04/15/2007	04/30/2007	TUR-1-107	20	1 turkey with visible beard

(2) 2008-2009 hunt season.

Open GMUs or areas	hunt start	hunt end	hunt code	licenses	bag limit
2 except sub-unit 2A	04/15/2008	04/30/2008	TUR-1-100	100	1 turkey with visible beard
4 Sargent WMA	04/15/2008	04/30/2008	TUR-1-101	5	1 turkey with visible beard
[6 Valles caldera-national preserve]	04/15/2008	04/30/2008	TUR-1-102	TBD	1 turkey with visible beard]
9 Marquez WMA	04/15/2008	04/30/2008	TUR-1-103	5	1 turkey with visible beard
33 WS Huey WMA, YO	04/19/2008	04/20/2008	TUR-1-104	3	1 turkey with visible beard
33 WS Huey WMA, YO	04/26/2008	04/27/2008	TUR-1-105	3	1 turkey with visible beard
33 WS Huey WMA, YO	05/03/2008	05/04/2008	TUR-1-106	3	1 turkey with visible beard
55 Valle Vidal area	04/15/2008	04/30/2008	TUR-1-107	20	1 turkey with visible beard
4 Humphries/Rio Chama WMAs	04/15/2008	04/30/2008	TUR-1-102	12	1 turkey with visible beard
33 W.S. Huey WMA, YO	04/12/2008	04/13/2008	TUR-1-104	3	2 turkeys with visible beard
33 W.S. Huey WMA, YO	09/13/2008	09/14/2008	TUR-1-108	4	any 1 turkey
33 W.S. Huey WMA, YO	09/20/2008	09/21/2008	TUR-1-109	4	any 1 turkey
33 W.S. Huey WMA, YO	09/27/2008	09/28/2008	TUR-1-110	4	any 1 turkey

[19.31.16.12 NMAC - Rp, 19.31.8.10 & 21 NMAC, 4-1-2007; A, 9-28-2007]

**NEW MEXICO
DEPARTMENT OF GAME
AND FISH**

This is an amendment to 19.34.7 NMAC, Sections 6-10, effective 9-28-2007. The part name is also amended.

PART 7 ~~[PRIVATE LAND ENTRY AND SPORTSMEN ENJOYMENT PROGRAM]~~ OPEN GATE: HUNTING AND FISHING ACCESS PROGRAM

19.34.7.6 OBJECTIVE: To establish fees, and other rules for accessing private lands, **state lands (including lands of counties and other instrumentalities of the state) and federal lands** for recreational uses like hunting, fishing, trapping &

other endeavors.
[19.34.7.6 NMAC - N, 10-31-2005; A, 9-28-2007]

19.34.7.7 DEFINITIONS:

A. "Commission" shall mean the New Mexico state game commission.

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

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

D. ~~["Private Land Entry And Sportsmen Enjoyment" (PLEASE)]~~ **"Open gate"** shall mean a program of the department to provide hunters, anglers, trappers and other wildlife associated recreationists with increased access to recreational endeavors on and through private

lands, **state lands (including lands of counties and other instrumentalities of the state) and federal lands** not previously open to public entry **within the past year**.
[19.34.7.7 NMAC - N, 10-31-2005; A, 9-28-2007]

19.34.7.8 CONSERVATION & ACCESS FEE: On or after April 1, 2006 each resident and nonresident license or permit shall include a \$1.00 ~~[PLEASE]~~ **open gate** conservation and access fee. No resident and nonresident license or permit shall be considered to be a proper and valid license unless the licensee can demonstrate, by a stamp, check-off or other official mark, that the fee for conservation and access has been paid, provided that an individual purchaser shall be required to pay for only one conservation and access fee each license

year, regardless of the number of licenses or permits purchased by the licensee. Exceptions: No person under the age of 18, no resident angler age 70 and older and no person designated by the department as 100% disabled resident veteran is required to purchase the ~~PLEASE~~ **open gate** conservation and access fee.

[19.34.7.8 NMAC - N, 10-31-2005; A, 3-31-2006; A, 10-31-2006; A, 9-28-2007]

19.34.7.9 PROHIBITION OF DISCRIMINATION: If otherwise qualified as stated above, no one shall be denied use of leased private lands, **state lands (including lands of counties and other instrumentalities of the state) and federal lands** on the basis of race, color, religion, sex or national origin.

[19.34.7.9 NMAC - N, 10-31-2005; A, 9-28-2007]

19.34.7.10 ACCESS AGREEMENTS FOR ~~PRIVATE LAND ENTRY AND SPORTSMEN ENJOYMENT~~ THE OPEN GATE PROGRAM:

A. The director may from time to time enter into **open gate** access agreements ~~[with private landowners]~~ so hunting, fishing, trapping or other recreational endeavors may take place. Such access agreements shall include the name of the landowner, map of the property, the permitted uses, responsibilities of the landowner and department, term, dollar amount, liability clauses for the department and landowner, and signatures of the director ~~[]~~ **and** landowner ~~[and department of finance and administration designee]~~.

B. Upon approval of the access agreement, on a form approved by the director and subject to any designated fair and impartial selection process, in consideration for access rights granted by the landowner, the landowner shall be paid a fee ~~[not to exceed \$1.00 per acre of property per year or a fee]~~ approved by the director consistent with the opportunities provided and consistent with state purchasing constraints.

[19.34.7.10 NMAC - N, 10-31-2005; A, 9-28-2007]

**NEW MEXICO HUMAN
SERVICES DEPARTMENT
INCOME SUPPORT DIVISION**

**TITLE 8 SOCIAL SERVICES
CHAPTER 150 LOW INCOME
HOME ENERGY ASSISTANCE PROGRAM
PART 610 GASOLINE AND
HOME HEATING RELIEF FUND**

8.150.610.1 ISSUING AGENCY:

New Mexico Human Services Department.
[8.150.610.1 NMAC - N, 10-01-07]

8.150.610.2 SCOPE: The rule applies to the general public.
[8.150.610.2 NMAC - N, 10-01-07]

8.150.610.3 STATUTORY AUTHORITY: 27 NMSA 1978 (1992 Repl.) provides for the department to "...adopt, amend and repeal bylaws, rules and regulations...". It also provides for administration of public assistance programs. 27-6-18.1 designates HSD as one of the administering authorities regarding program eligibility.

[8.150.610.3 NMAC - N, 10-01-07]

8.150.610.4 DURATION: Permanent.

[8.150.610.4 NMAC - N, 10-01-07]

8.150.610.5 EFFECTIVE DATE: October 1, 2007, unless a later date is at the end of a section.

[8.150.610.5 NMAC - N, 10-01-07]

8.150.610.6 OBJECTIVE: The objective of the gasoline and home heating relief fund is to provide state general fund for the purposes of the LIHEAP program.

[8.150.610.6 NMAC - N, 10-01-07]

8.150.610.7 DEFINITIONS: [RESERVED]

8.150.610.8 STATE LIHEAP FUNDING

A. Purpose: To reduce the home heating and cooling costs of low-income New Mexicans.

B. Benefits:

(1) payments that assist low-income households to reduce the costs of home heating/cooling; or

(2) weatherization services for the homes of low-income households.

[8.150.610.8 NMAC - N, 10-01-07]

8.150.610.9 FUND USES: Unless specified by the New Mexico state legislature, the secretary of the human services department has the authority to specify the uses of the funding. Funding will be used for purposes similar to those allowed under the federal low income home energy assistance program.

[8.150.610.9 NMAC - N, 10-01-07]

8.150.610.10 WINTER MORATORIUM ON UTILITY DISCONNECTION: No utility shall discontinue or disconnect residential utility service for heating from November 15 through March 15 of the subsequent year for certain customers.

A. Administering authority:

The human services department or a tribal entity that administers its own low income home energy assistance program are designated as the authorities to identify customers who meet the qualifications.

B. **Qualification:** Customers who meet the qualifications to receive assistance pursuant to the low-income home energy assistance program.

(1) The customer is a member of a households in which one or more members:

(a) receive(s) supplemental security income; or

(b) are eligible for any federally funded assistance program administered by ISD with income guidelines at or below 150% of the current federal poverty guidelines; or

(c) reside in a household whose total gross income is at or below 150% of the current federal poverty guidelines.

(2) The person in whose name a utility account is listed and the name of the public assistance recipient need not match in order for the customer to be entitled to protection under this section.

C. **Proof of qualification:**

(1) HSD generated approval notice for certain public assistance programs;

(2) computer generated notice from HSD;

(3) form completed by hand from a local ISD office;

(4) HSD generated data file listing qualified households;

(5) form completed by any agency charged with determining eligibility for a public assistance program; or

(6) HSD and a utility company/municipality may mutually agree on a method of notification.

[8.150.610.10 NMAC - N, 10-01-07]

HISTORY OF 8.150.610 NMAC:
[RESERVED]

**NEW MEXICO HUMAN
SERVICES DEPARTMENT
INCOME SUPPORT DIVISION**

This is an emergency amendment to 8.102.500 NMAC, Section 8, effective 10/01/07

8.102.500.8 GENERAL REQUIREMENTS:

A. **Need determination process:** Eligibility for NMW or refugee cash assistance based on need requires a finding that:

(1) the benefit group's countable gross monthly income does not exceed the gross income limit for the size of the benefit group;

(2) the benefit group's countable net income after all allowable deductions does not equal or exceed the standard of need for the size of the benefit group;

(3) the countable resources owned by and available to the benefit group do not exceed the \$1500 liquid and \$2000 non-liquid resource limits;

(4) the benefit group is eligible for a cash assistance payment after subtracting from the standard of need the benefit group's countable income, and any payment sanctions or recoupments.

B. Gross income limits: The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

(1) Income eligibility limits are revised and adjusted each year in October.

(2) The gross income limit for the size of the benefit group is as follows:

- (a) one person [~~.....\$ 695~~] \$ 723
- (b) two persons [~~.....\$ 935~~] \$ 970
- (c) three persons [~~.....\$1,177~~] \$1,216
- (d) four persons [~~.....\$1,417~~] \$1,463
- (e) five persons [~~.....\$1,658~~] \$1,709
- (f) six persons [~~.....\$1,899~~] \$1,956
- (g) seven persons [~~.....\$2,140~~] \$2,202
- (h) eight persons [~~.....\$2,380~~] \$2,449
- (i) add [~~\$242~~] \$247 for each additional person.

C. Eligibility for support services only: Subject to the availability of state and federal funds, a benefit group that is not receiving cash assistance but has countable gross income that is less than 100% of the federal poverty guidelines applicable to the size of the benefit group may be eligible to receive services. The gross income guidelines for the size of the benefit group are as follows:

- (1) one person [~~\$ 817~~] \$ 851
- (2) two persons [~~\$1,100~~] \$1,141
- (3) three persons [~~\$1,384~~] \$1,431
- (4) four persons [~~\$1,667~~] \$1,721
- (5) five persons [~~\$1,950~~] \$2,011
- (6) six persons [~~\$2,234~~] \$2,301
- (7) seven persons [~~\$2,517~~] \$2,591
- (8) eight persons [~~\$2,800~~] \$2,881
- (9) add [~~\$284~~] \$290 for each additional person.

D. Standard of need:

(1) The standard of need is based on the number of individuals included in the benefit group and allows for a financial standard and basic needs.

(2) Basic needs include food, clothing, shelter, utilities, personal requirements and the individual's share of benefit group supplies.

(3) The financial standard includes approximately \$79 per month for each individual in the benefit group.

(4) The standard of need for the NMW, and refugee cash assistance benefit group is:

- (a) one person \$ 231
- (b) two persons \$ 310
- (c) three persons \$ 389
- (d) four persons \$ 469
- (e) five persons \$ 548
- (f) six persons \$ 627
- (g) seven persons \$ 706
- (h) eight persons \$ 802
- (i) add \$79 for each additional person.

E. Special needs:

(1) **Special clothing allowance:** In order to assist in preparing a child for school, a special clothing allowance is made each year in the amount of \$100 for the month of August only.

(a) For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age if the child is six years of age or older and less than age 19 by the end of August.

(b) The clothing allowance shall be allowed for each school-age child who is included in the NMW, or refugee cash assistance benefit group for the month of August.

(c) The clothing allowance is not allowed in determining eligibility for NMW, or refugee cash assistance.

(2) **Layette:** A one-time layette allowance of \$25 is allowed upon the birth of a child who is or will be included in the benefit group. The allowance shall be authorized by no later than the end of the month following the month in which the child is born.

[8.102.500.8 NMAC - Rp 8.102.500.8 NMAC, 07/01/2001; A, 10/01/2001; A, 10/01/2002; A, 10/01/2003; A/E, 10/01/2004; A/E, 10/01/2005; A, 7/17/2006; A/E, 10/01/2006; A/E, 10/01/07]

NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

This is an emergency amendment to 8.106.500 NMAC, Section 8, effective 10/01/07.

8.106.500.8 GA - GENERAL REQUIREMENTS:

A. Need determination process: Eligibility for the GA program based on need requires a finding that the:

(1) countable resources owned by and available to the benefit group do not exceed either the \$1500 liquid or \$2000 non-liquid resource limit;

(2) benefit group's countable gross earned and unearned income does not equal or exceed eighty-five percent (85%) of the federal poverty guideline for the size of the benefit group; and

(3) benefit group's countable net income does not equal or exceed the standard of need for the size of the benefit group.

B. GA payment determination: The benefit group's cash assistance payment is determined after subtracting from the standard of need the benefit group's countable income and any payment sanctions or recoupments.

C. Gross income test: The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent (85%) of the federal poverty guidelines for the size of the benefit group.

(1) Income eligibility limits are revised and adjusted each year in October.

(2) The gross income limit for the size of the benefit group is as follows:

- (a) one person [~~\$ 695~~] \$ 723
- (b) two persons [~~\$ 935~~] \$ 970
- (c) three persons [~~\$1,177~~] \$1,216
- (d) four persons [~~\$1,417~~] \$1,463
- (e) five persons [~~\$1,658~~] \$1,709
- (f) six persons [~~\$1,899~~] \$1,956
- (g) seven persons [~~\$2,140~~] \$2,202
- (h) eight persons [~~\$2,380~~] \$2,449
- (i) add [~~\$242~~] \$247 for each additional person.

D. Standard of need:

- (1) The standard of need is based on the number of individuals included in the benefit group and allows for a financial standard and basic needs.
- (2) Basic needs include food, clothing, shelter, utilities, personal requirements and an individual benefit group member's share of supplies.
- (3) The financial standard includes approximately \$79 per month for each individual in the benefit group.
- (4) The standard of need for the GA cash assistance benefit group is:
 - (a) one person \$ 231
 - (b) two persons \$ 310
 - (c) three persons \$ 389
 - (d) four persons \$ 469
 - (e) five persons \$ 548
 - (f) six persons \$ 627
 - (g) seven persons \$ 706
 - (h) eight persons \$ 802
 - (i) add \$79 for each additional person.

E. Net income test: The total countable earned and unearned income of the benefit group after all allowable deductions cannot equal or exceed the standard of need for the size of the GA benefit group.

F. Special clothing allowance for school-age dependent children: In order to assist in preparing a child for school, a special clothing allowance is made each year in the amount of \$100 for the month of August only.

- (1) For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age if the child is six years of age or older and less than age nineteen (19) by the end of August.
- (2) The clothing allowance shall be allowed for each school-age child who is included in the GA cash assistance benefit group for the month of August.
- (3) The clothing allowance is not counted in determining eligibility for GA cash assistance.

[8.106.500.8 NMAC - N, 07/01/2004; A/E, 10/01/2004; A/E, 10/01/2005; A, 7/17/2006; A/E, 10/01/2006; A/E, 10/01/07]

NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

This is an emergency amendment to 8.139.500 NMAC, Section 8, effective 10/01/07.

8.139.500.8 BASIS OF ISSUANCE

A. Income standards: Determination of need in the food stamp program is based on federal guidelines. Participation in the program is limited to households whose income is determined to be a substantial limiting factor in permitting them to obtain a nutritious diet. The net and gross income eligibility standards are based on the federal income poverty levels established in the Community Services Block Grant Act [42 USC 9902(2)].

B. Gross income standards: The gross income eligibility standards for the 48 contiguous states, District of Columbia, Guam and the Virgin Islands is 130 percent (130%) of the federal income poverty levels for the 48 states and the District of Columbia. One hundred thirty percent (130%) of the annual income poverty guidelines is divided by 12 to determine monthly gross income standards, rounding the results upward as necessary. For households larger than eight, the increment in the federal income poverty guidelines is multiplied by 130%, divided by 12, and the results rounded upward if necessary.

C. Net income standards: The net income eligibility standards for the 48 contiguous states, District of Columbia, Guam and the Virgin Islands are the federal income poverty levels for the 48 contiguous states and the District of Columbia. The annual income poverty guidelines are divided by 12 to determine monthly net income eligibility standards, (results rounded upward if necessary). For households larger than eight, the increment in the federal income poverty guidelines is divided by 12, and the results rounded upward if necessary.

D. Yearly adjustment: Income eligibility limits are revised each October 1st to reflect the annual adjustment to the federal income poverty guidelines for the 48 states and the District of Columbia.

E. Issuance table: The issuance table lists applicable income guidelines used to determine food stamp (FS) eligibility based on household size. Some amounts are increased to meet the needs of certain categorically eligible households. Some of the net income amounts listed are higher than the income limits for some household sizes. Households not categorically eligible for FS benefits must have income below the appropriate gross income limit for household size.

Household Size

Household Size	Maximum Gross Monthly Income Elderly/Disabled Separate Status at 165% of Poverty	Maximum Gross Monthly Income At 130% of Poverty	Maximum Net Monthly Income At 100% of Poverty	Maximum Allotment (benefit amount)
	[\$1,348] \$1,404	[\$1,062] \$1,107	[\$ 817] \$ 851	[\$155] \$162
2	[\$1,815] \$1,883	[\$1,430] \$1,484	[\$1,100] \$1,141	[\$284] \$298
3	[\$2,283] \$2,361	[\$1,799] \$1,861	[\$1,384] \$1,431	[\$408] \$426
4	[\$2,750] \$2,840	[\$2,167] \$2,238	[\$1,667] \$1,721	[\$518] \$542

5	[\$3,218] \$3,318	[\$2,535] \$2,615	[\$1,950] \$2,011	[\$615] \$643
6	[\$3,685] \$3,797	[\$2,904] \$2,992	[\$2,234] \$2,301	[\$738] \$772
7	[\$4,153] \$4,275	[\$3,272] \$3,369	[\$2,517] \$2,591	[\$816] \$853
8	[\$4,620] \$4,754	[\$3,640] \$3,746	[\$2,800] \$2,881	[\$932] \$975
\$Each Additional Member	[\$468] +\$479	[\$369] +\$377	[\$284] +\$290	[\$117] +\$122

F. Deductions and standards:

(1) **Determination:** Expense and standard deduction amounts are determined by federal guidelines and may be adjusted each year. Households eligible based on income and resource guidelines, and other relevant eligibility factors, are allowed certain deductions to determine countable income.

(2) **Yearly adjustment:** The expense and standard deductions may change each year. If federal guidelines mandate a change, it is effective each October 1st.

(3) **Expense deductions and standards table:**

Standard Deduction for Household Size of 1 through 3	\$134.00
Standard Deduction for Household of 4	[\$139.00] \$143.00
Standard Deduction for Household Size of 5	[\$162.00] \$167.00
Standard Deduction for Household Size of 6 or more	[\$186.00] \$191.00
Earned Income Deduction (EID)	20%
Dependent Care Deduction Limit (per dependent)	
Under age 2	\$200.00
All others including elderly dependent	\$175.00
Heating/Cooling Standard Utility Allowance (HCSUA)	[\$232.00] \$234.00
Limited Utility Allowance (LUA)	[\$ 94.00] \$100.00
Telephone Standard (TS)	[\$ 31.00] \$ 32.00
Excess Shelter Cost Deduction Limit for Non -Elderly/Disabled Households	[\$417.00] \$431.00
Homeless Household Shelter Standard	\$ 143.00
Minimum Allotment for Eligible One -and Two-Person Households	\$ 10.00

[02/1/95, 10/01/95, 02/29/96, 10/01/96, 3/15/97, 01/15/98,11/15/98, 12/15/99, 01/01/01, 03/01/01; 8.139.500.8 NMAC - Rn, 8 NMAC 3.FSP.501, 05/15/2001; A, 10/01/2001; A, 10/01/2002, A, 09/01/2003; A, 10/01/2003; A/E, 10/01/2004; A/E, 10/01/2005; A/E, 10/01/2006; A/E, 10/01/07]

**NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION**

This is an amendment to 8.150.102 NMAC, Section 8, effective 10-1-2007.

8.150.102.8 ISD FIELD OFFICE RESPONSIBILITIES: Each of the field offices of the income support division in the state is responsible for:

A. providing outreach and referral for low-income clients, particularly disabled and elderly clients, regarding the LIHEAP program;

B. informing low-income households, particularly disabled and elderly clients, about the eligibility determination process and application procedures for the LIHEAP program;

C. providing documentation to households requesting verification of cash benefits received from the human services department or other documentation available to the department or in the case file;

D. complying with other LIHEAP program directives as may be

issued by ISD;

E. assisting all applicant households to complete the LIHEAP application and when necessary interviewing the household when LIHEAP benefits have been requested;

F. entering the completed LIHEAP application into the designated LIHEAP computer system;

G. responding to inquires about the status of a LIHEAP application; and

H. processing payment errors when identified; the ISD office must issue a supplement in cases of benefit under-issuances or complete and submit paperwork to restitution for over-issuances. [7-1-95, 11-1-95, 11-15-96, 10-01-97, 10-1-00; 8.150.102.8 NMAC - Rn, 8 NMAC 22.LHP.023, 10-1-01; A, 10-1-05; A, 10-01-06; A, 10-01-07]

**NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION**

This is an amendment to 8.150.500 NMAC, Sections 8 and 10, effective 10-1-2007.

8.150.500.8 NEED DETERMINATION: To be eligible for LIHEAP benefits households must do the following:

A. Application: A household member or representative must complete an application for LIHEAP benefits and be interviewed; and

B. Documentation: ~~[The household must provide the following.]~~ The household must provide proof that they meet the qualifications of the LIHEAP program. Current documents used in other public assistance programs may be used for LIHEAP application processes, unless questionable.

(1) proof of identity ~~[of applicant by]~~ for the applicant using any of the following documentation:

- (a) birth certificates(s); or
- (b) baptism certificate; or
- (c) hospital or birth record; or

(d) divorce papers; or
 (e) alien registration card; or
 (f) immigration & naturalization service (INS) records; or
 (g) U. S. passport; or
 (h) Indian census records; or
 (i) family bible; or
 (j) school or day care records; or;
 (k) government records; or
 (l) social security records; or
 (m) social service records; or
 (n) insurance policy; or
 (o) court records; or
 (p) church records; or
 (q) voter registration card; or
 (r) letter from doctor, religious official or school official, or someone else who knows the applicant; or
 (s) applicant sworn statement.

(2) proof of citizenship or legal resident status if questionable, such as birth certificate, permanent resident card, naturalization papers, etc.;

(3) social security numbers for all household members. A social security card is required if the number has not been issued by the social security administration or is being used by another person in the ISD data bases;

(4) proof of gross income for all household members, such as check stubs, award letters, statement from employer, etc.;

(5) ~~[Proof of utility expense in past twelve months and account number at current residence.]~~ proof of a utility responsibility with an expense incurred in the past twelve months for the household's current residence unless expense information is made available to HSD by a utility, bulk fuel vendor or municipality:

(a) bill for metered service for a one-month period, or
 (b) purchase receipt for propane, or
 (c) receipt for wood purchase, or
 (d) rental agreement or landlord statement that utilities are included in rent, or
 (e) signed statement or billing history from a utility or fuel vendor.

(6) account number at current address for the selected heating or cooling expense:

~~(6)~~ (7) proof of crisis when the situation exists, such as a disconnect notice, statement of non-delivery of bulk fuel or statement detailing the cost of initiating service;

~~(7)~~ (8) proof of disability for at least one household member, if claimed, such as a doctor's statement, SSI award letter, statement of receipt of worker's compensation or DVR services, other disability-based income, etc.; and

~~(8)~~ (9) proof of emergency

expenditures that apply to 8.150.526 NMAC.

C. Eligibility criteria: The household must meet the identity, social security number, income, citizenship, utility responsibility, and residency requirements. [7-1-95, 11-1-95, 11-15-96, 10-1-97, 10-15-98; 8.150.500.8 NMAC - Rn, 8 NMAC 22.LHP.501.11 & A, 10-1-01; A, 10-01-06; A, 10-01-07]

8.150.500.10 GROSS INCOME DETERMINATION: Gross income is defined as all income received prior to deductions, including taxes, and garnishments, whether voluntary or involuntary.

A. Income sources: Gross income includes income from both earned and unearned sources.

B. Countable income: The gross unearned income of all household members is counted in its entirety, and the gross earned income of all household members over the age of 18 is counted in its entirety, unless:

(1) the income is specifically exempted; or

(2) the income is self-employment (see LIHEAP 8.150.520.9 NMAC); or

(3) the income is that of an ineligible alien, in which case the income is prorated (see LIHEAP policy 8.150.520.10 NMAC);

(4) the income is a full month's income and is anticipated to be received on a weekly or biweekly basis; in these circumstances, the income shall be converted to a monthly amount as follows:

(a) income received on a weekly basis is multiplied by 4.3;

(b) income received on a biweekly basis is multiplied by 2.15;

(c) using the conversion factors accounts for those months in which an extra paycheck is received;

(d) averaged income shall be rounded to the nearest whole dollar prior to application of the conversion factor; amounts resulting in \$.50 or more are rounded up; amounts resulting in \$.49 or lower are rounded down.

C. Gross income receipt period: Gross income received or anticipated to be received by the household in the month of application is used to establish income eligibility for LIHEAP applications unless Subsection D of 8.150.500.10 NMAC applies.

D. Current income verified in other public assistance programs: Current income that has been verified by ISD in another active public assistance programs may be used to verify income for the LIHEAP application, unless questionable. [7-1-95, 11-1-95, 11-15-96, 10-15-98, 10-1-

00; 8.150.500.10 NMAC - Rn, 8 NMAC 22.LHP.501.2 & A, 10-1-01; A, 10-1-05; A, 10-01-07]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.150.620 NMAC, Sections 9 and 11, effective 10-1-2007.

8.150.620.9 CALCULATING THE BENEFIT/ASSIGNMENT OF POINTS: To determine the amount of the benefit for households with an energy cost, HSD assigns points for each following factors.

A. Energy costs points: Points are assigned based on the ~~[cost of heating and cooling for a household at their current residence]~~ energy burden at the household's current residence for households that have a direct cost for heating or cooling expenses.

(1) Energy burden: Energy burden is "the expenditures of the household for home energy divided by the income of the household." Points are assigned to the household by determining the households' percentage of energy burden. The point allocation for energy burden is:

(a) 0 points for 0 - 5% energy burden;

(b) 1 point for 6 - 10% energy burden;

(c) 2 points for 11 - 15% energy burden;

(d) 3 points for 16% or more energy burden; or

(2) ~~[Energy matrix: When there is insufficient information to calculate energy burden, the energy matrix will be used to determine energy cost points. Households that have never had utility service or bulk fuel usage at their current residence will have their energy cost points determined by using the energy matrix. The matrix will be used for households who have moved into a new residence or when new heating or cooling appliances have been installed. The matrix is calculated using prior year recipient data to determine average energy cost points based on housing type, utility type and zip code. When no data is available for the housing type, utility type and zip code, the average for the zip code will be used.]~~ Energy cost standard: Each year an energy cost standard will be determined. The standard amount will be based on the fuel and electricity standards calculated for the standard utility allowance (SUA) used in the New Mexico food stamp program. The energy cost standard may be used when the monthly utility costs provided by the applicant are less than the standard or the applicant has new service and costs are not avail-

able.

(3) Receipt of energy cost points: Certain households do not receive energy cost points.

(a) households whose utilities are included in the rent; or

(b) households that use wood to heat their home and do not purchase wood.

B. Income points: HSD assigns income points using the household's monthly total countable gross income and the household size. The number of points is determined by identifying what percentage the household's income is of the federal poverty guidelines (FPG) for the LIHEAP FFY. For example, if the total monthly income is 60% of the FPG, the household will receive three income points. (See below.)

(1) 3 points - income is 0 - 100% of the FPG

(2) 2 points - income is 100 - 150% of the FPG

C. Vulnerable population points: HSD assigns additional points for any household members in the following vulnerable groups.

(1) Age 60 and over: Two (2) points are assigned to eligible households based on the inclusion of one or more household members age 60 or over as determined by birthdate data.

(2) Age 5 and under: Two (2) points are assigned to eligible households based on the inclusion of one or more household members age 5 and under as determined by birthdate data.

(3) Disability: Two (2) points are assigned to eligible households having one or more members with a disability. Disability is defined as physical or mental impairment resulting in substantial reduction in the ability of an individual to care for him/herself or carry out normal activities. When one or more members receive disability based income, the household is entitled to the points. A doctor's statement of current disability will be required for assignment of the point for this factor if the disabled member does not receive disability-based income.

[7-1-95, 11-1-95, 11-15-96, 10-1-97, 12-1-97, 10-1-00; 8.150.620.9 NMAC - Rn, 8 NMAC 22.LHP.621.1 & A, 10-1-01; A, 10-1-05; A, 10-01-06; A, 10-01-07]

8.150.620.11 POINTS INFORMATION SOURCE: The LIHEAP points guidelines are available from all human services department income support division offices, by writing to: Human Services Department LIHEAP P O Box 25607 Albuquerque NM 87125-6507, or by contacting the income support division customer service desk at 1 800 283-4465, or Relay New Mexico at 1-800 659-8331. If you are disabled and need the guidelines in

an alternative format, please make the request when you contact us. The points guidelines are also located on the HSD income support division web site at [<http://www.state.nm.us/hsd/isd.html>] <http://www.hsd.state.nm.us/pdf/LIHEAPPoIntGuidelines.pdf>.

[8.150.620.11 - N, 10-1-01; A, 10-01-06; A, 10-01-07]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.235.400 NMAC, Section 17, which will be effective on October 1, 2007. The Medical Assistance Division amended the section to restrict eligibility for family planning Medicaid to women who are between the ages of 18 and 50 years.

8.235.400.17 AGE: To be eligible for pregnancy related medicaid, specific age requirements are not a factor. To be eligible for family planning medicaid a woman must be ~~[between the ages of 19 and 44 years]~~ from 18 through 50 years of age.

[2/1/95; 8.235.400.17 NMAC - Rn, 8 NMAC 4.PSO.421, 7/1/03; A, 6-1-07; A, 10/1/07]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.306.4 NMAC, Section 10 which will be effective on October 1, 2007.

8.306.4.10 SPECIAL SITUATIONS:

A. **Clients in third trimester of pregnancy:** A woman in her third trimester of pregnancy at the time of enrollment, who has an established obstetrical provider, may continue that relationship. Refer to Paragraph (4) of Subsection I of 8.305.11.9 NMAC for special payment requirements.

B. **Newborn enrollment:** ~~[Newborns of SCI enrolled mothers who are determined to be eligible for the medicaid SALUD! program will be eligible for a period of 12 month starting with the month of birth. The newborn is enrolled retroactive to the date of birth with the same contractor the mother had during the birth month, as soon as the newborn medicaid eligibility is approved.]~~ SCI enrolled mothers may apply for medicaid for their newborn. If medicaid eligible, the newborn is enrolled into SALUD! during the next applicable enrollment cycle.

[8.306.4.10 NMAC - N, 7-1-05; A, 4-16-07; A/E, 8-1-07; A, 10/1/07]

NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

This is an amendment to 13.8.2 NMAC, Sections 3, 4, 7, 8, 10, 14, 15, 17, 20, 23, 24 and 25. This action also adds new sections 26, 27, 28 and 29, effective October 1, 2007.

13.8.2.3 STATUTORY AUTHORITY: Sections 59A-2-9, 59A-17-2, 59A-17-3, 59A-17-4, 59A-17-5, 59A-17-6.1, 59A-17-6.2, 59A-17-16, 59A-17-17, 59A-17-28, 59A-17-29 and 59A-32-13 NMSA 1978.

[7-1-97; 13.8.2.3 NMAC - Rn & A, 13 NMAC 8.2.3, 1-15-02; A, 3-1-06; A, 10-1-07]

13.8.2.4 DURATION: ~~[Permanent]~~ Sections 1 through 27 and 29 of 13.8.2 NMAC are permanent. 13.8.2.28 NMAC shall expire on October 1, 2010.

[7-1-97; 13.8.2.4 NMAC - Rn, 13 NMAC 8.2.4, 1-15-02; A, 10-1-07]

13.8.2.7 DEFINITIONS:

A. **Advisory filing** means any filing by a licensed ~~[rate service]~~ advisory organization within the scope of its license, solely for informational purposes and such limited uses as provided in 13.8.2.20 NMAC. The term includes a rate filing limited to pure premium rates, supplementary rates, and supporting data developed and trended as appropriate.

B. **Advisory organization** has the meaning given in Section 59A-17-4 NMSA 1978.

~~[B]~~ C. **Credible or credibility** in connection with statistical data is used in conformance with generally-accepted actuarial standards.

~~[E]~~ D. **Commercial insurance** [means property or casualty insurance that is within the scope of Chapter 59A, Article 17 NMSA 1978 where the insured is a business, government entity or non profit organization] has the meaning given in Section 59A-17-4 NMSA 1978.

~~[D]~~ E. **Expenses** include acquisition expenses, field supervision and collection expenses, general expenses, taxes, licenses and fees.

~~[E]~~ F. **Filing** means any submission to the superintendent to establish or revise rates.

~~[F]~~ G. **Line of business** means a line of business as shown in the annual statement to the superintendent.

~~[G]~~ H. **Pure premium rate** means that portion of a rate which represents the loss cost per unit of exposure, and may include loss adjustment expense.

[H] I. Regular business day means every day except Saturday, Sunday and official state government holidays.

[J] J. Regular business hours are 8:00 a.m. to 5:00 p.m., mountain standard or mountain daylight time, whichever is applicable, on regular business days; provided that regular business hours may be shortened on certain days without notice by official action of the governor or the public regulation commission.

[J- Rate service organization] has the meaning given in Section 59A-17-4 NMSA 1978.]

K. Supplementary rate information has the meaning given in Section 59A-17-4 NMSA 1978.

L. Supporting data means data and information which justifies, supports, interprets, describes, explains or underlies any rate or supplementary rate information, including but not limited to data the superintendent requires or may require pursuant to this rule.

M. Reference filing as used in 13.8.2 NMAC and in Paragraph C of Section 59A-17-9 NMSA 1978, means a filing by an insurer to adopt a legally effective filing by an advisory organization to which the insurer is a member, a subscriber or an affiliate.

[7-1-97; 13.8.2.7 NMAC - Rn & A, 13 NMAC 8.2.7, 1-15-02; A, 3-1-06; A, 10-1-07]

[See Section 59A-17-4 NMSA 1978 for additional definitions]

13.8.2.8 FILING PROCEDURES:

A. Every filing shall be made by submitting it to the superintendent in accordance with 13.8.2.8 NMAC.

B. Filings shall be made separately from policy form filings.

C. Filings may be made by mail, courier, the national association of insurance commissioners' system for electronic rate and forms filing (SERFF) or in person and shall be addressed to the superintendent.

D. Paper filings shall be submitted in an original and one copy, along with a self-addressed stamped envelope.

E. All filings shall be submitted with the appropriate current completed transmittal documents in substantially the format of the national association of insurance commissioners' uniform transmittal documents, which are available online at www.naic.org.

(1) The *property and casualty transmittal* document shall include:

(a) group name and "NAIC" number;

(b) company name, domicile, "NAIC" number and "FEIN" number;

(c) company tracking number;

(d) contact information of filer or corporate officer, including: name and address; title; telephone numbers; fax numbers and e-mail address;

(e) signature and printed name of authorized filer;

(f) type and sub-type of insurance;

(g) state specific product code, if applicable;

(h) company program title;

(i) filing type;

(j) effective date requested, including: new or renewal;

(k) a statement indicating whether the filing is a reference filing, including the reference organization name and reference organization number and title, if applicable;

(l) company's date of filing;

(m) status of filing in domicile;

(n) company tracking number;

(o) filing description; and

(p) the appropriate filing fees, including check number and fee amount, if applicable.

(2) The *rate/rule filing schedule* document shall include:

(a) company tracking number;

(b) corresponding company tracking number of form filing, if applicable;

(c) a statement indicating whether the filing is for a rate increase or rate decrease or is rate neutral;

(d) a description of the filing method;

(e) a description of the rate change proposed by the company, including: company name, overall indicated change, when applicable, overall percentage rate impact; written premium change for the program; number of policyholders affected for the program; written premium for the program; ~~and~~ maximum percentage change and minimum percentage change;

(f) overall percentage of last rate revision;

(g) effective date of last rate revision;

(h) a description of the filing method of the company's last filing; and

(i) a statement of the rule number or page number submitted for review, including whether the filing is new, a replacement or a withdrawal and the previous state filing number.

F. If the filing includes a loss cost multiplier, the filer shall also submit the appropriate current completed national association of insurance commissioners' loss cost transmittal documents which are available online at www.naic.org.

(1) The *lost cost data entry* document shall include:

(a) company tracking number;

(b) name of advisory organization and reference or item filing number if the filing is an adoption of an advisory organization loss cost filing;

(c) company name and "NAIC" number;

(d) product coding matrix for line of business (type of insurance) and line of insurance (sub-type of insurance);

(e) a statement describing coverage, indicated percentage rate level change, requested percentage rate level change, and for loss costs only: expected loss ratio; loss cost modification factor; selected loss cost multiplier; expense constant, if applicable; and company current loss cost multiplier;

(f) a five year rate change history, including: year; policy count; percentage of change; effective date; state earned premium; incurred losses, state loss ratio and countrywide loss ratio;

(g) a statement of selected provisions for expense constants, including: total production expense; general expense; taxes, license and fees; underwriting profit and contingencies; other expenses; and the total of all figures listed;

(h) a statement of whether the company will apply lost cost factors to future filings; and

(i) a statement of the estimated maximum rate increase for any insured.

(2) The *expense constant supplement* document shall include:

(a) company tracking number;

(b) corresponding company tracking number of form filing, if applicable;

(c) a description of development of expected loss ratio;

(d) a statement of selected overall, variable, and fixed provisions for total production expense; general expense; taxes, license and fees; underwriting profit and contingencies; other expenses; and the total of all figures listed;

(e) a statement of the expected loss ratio and the variable expected loss ratio;

(f) a statement of the formula expense constant and the formula variable loss cost multiplier;

(g) a statement of the selected expense constant and the selected variable loss cost multiplier;

(h) an explanation of any differences between Subparagraphs (f) and (g) of Paragraph (2) of Subsection F of 13.8.2.8 NMAC; and

(i) a statement of the rate level change for the coverage to which the *expense constant supplement* document applies.

(3) The *loss cost filing for other than workers' compensation* document shall

include:

- (a) company tracking number;
 - (b) corresponding company tracking number of form filing, if applicable;
 - (c) loss cost reference filing number or a statement that the filing is an independent rate filing;
 - (d) a statement that:
 - (i) the insurer files to have its loss cost multipliers and, if utilized, expense constants be applicable to future revisions of the advisory organization's prospective loss costs for this line of insurance; the insurer's rates will be the combination of the advisory organization's prospective loss costs and the insurer's loss cost multipliers and if utilized, expense constants specified in the attachments; the rates will apply to policies written on or after the effective date of the advisory organization's prospective loss costs; this authorization is effective until disapproved by the commissioner, or until amended or withdrawn by the insurer; or
 - (ii) the insurer files to have its loss cost multipliers and, if utilized, expense constants be applicable only to the identified advisory organization reference filing;
 - (e) a statement of the line, sub line, coverage, territory, class or combination thereof to which the *loss cost filing* document applies;
 - (f) a description of loss cost modification;
 - (g) if expense constants are utilized, the filer shall attach *expense constant supplement* or other supporting information and shall not include the items listed in Subparagraphs (h) through (l) of Paragraph (3) of Subsection F of 13.8.2.8 NMAC;
 - (h) a description of development of expected loss ratio, including selected provisions for:
 - (i) total production expense;
 - (ii) general expense;
 - (iii) taxes, licenses and fees;
 - (iv) underwriting profit and contingencies;
 - (v) other expense, and
 - (vi) total of all figures listed;
 - (i) a statement of expected loss ratio;
 - (j) a statement of the company formula loss cost multiplier;
 - (k) a statement of the company selected loss cost multiplier; and
 - (l) a statement of the rate level change for the coverage(s) to which the *loss cost filing* document applies.
- (4) The *loss cost filing for workers' compensation* document shall include:
- (a) company tracking number;

- (b) corresponding form filing number;
- (c) loss cost reference filing number or a statement that the filing is an independent rate filing;
- (d) a statement that:
 - (i) the insurer files to have its loss cost multipliers and, if utilized, expense constants be applicable to future revisions of the advisory organization's prospective loss costs for this line of insurance; the insurer's rates will be the combination of the advisory organization's prospective loss costs and the insurer's loss cost multipliers and if utilized, expense constants specified in the attachments; the rates will apply to policies written on or after the effective date of the advisory organization's prospective loss costs; this authorization is effective until disapproved by the commissioner, or until amended or withdrawn by the insurer; or
 - (ii) the insurer files to have its loss cost multipliers and, if utilized, expense constants be applicable only to the identified advisory organization reference filing;
- (e) applicable class codes;
- (f) description of loss cost modification;
- (g) if expense constants are utilized, the filer shall attach *expense constant supplement* or other supporting information and shall not include the items listed in Subparagraphs (h) through (o) of Paragraph (4) of Subsection F of 13.8.2.8 NMAC;
- (h) a description of development of expected loss and loss adjustment expense ratio, including selected provisions for:
 - (i) total production expense;
 - (ii) general expense;
 - (iii) taxes, licenses and fees;
 - (iv) underwriting profit and contingencies;
 - (v) other expenses, and
 - (vi) total of all figures listed;
- (i) a statement of expected loss ratio;
- (j) a statement of the overall impact of expense constant and minimum premiums;
- (k) a statement of the overall impact of size-of-risk discounts plus expense graduation recognition in retrospective rating;
- (l) a statement of the company formula loss cost multiplier;
- (m) a statement of the company selected loss cost multiplier;
- (n) a statement disclosing whether the filer is amending its minimum premium formula; and
- (o) a statement disclosing

whether the filer is changing its premium discount schedules.

(5) If a filer desires acknowledgment of receipt, a suitable receipt shall be submitted together with a second self-addressed, stamped envelope. Such receipts are returned as a courtesy and accommodation to the filer. Failure to return a receipt, even though requested in accordance with Paragraph (5) of Subsection A of 13.8.2.8 NMAC, shall not stay, toll, extend or otherwise affect any time period, or limit or otherwise affect any action the superintendent may take.

(6) Filings shall be date stamped as of the date received. Each filing shall be reviewed upon receipt for compliance with procedural requirements. If found to comply, the filing shall be accepted as of the date received. If found not to comply, the filing shall be returned to the filer or the filer shall be otherwise notified.

(7) Filings not received during regular business hours on a regular business day shall be deemed received on the next regular business day.

G. In computing periods of time, the last day shall be counted and the first day shall not be counted. Saturdays, Sundays and holidays shall be counted. If the last day of a time period falls on a day which is not a regular business day, the time period shall be extended to the close of business on the next regular business day.

H. Every filing shall be open to public inspection during regular business hours. A copy of any filing or a designated portion thereof may be obtained by making request to the superintendent and paying the charge he shall prescribe.

I. Any filing may be withdrawn at any time prior to the time it becomes effective. In the interest of efficiency, filers should notify the superintendent of withdrawals at the earliest possible date.

J. Filings subject to prior approval may contain a request to become effective on any specified date on or after their date of filing.

[7-1-97; 13.8.2.8 NMAC - Rn, 13 NMAC 8.2.8, 1-15-02; A, 3-1-06; A, 10-1-07]

13.8.2.10 [ADDITIONAL INFORMATION: ~~The superintendent may require additional information in accordance with this section.~~

~~**A.** The superintendent shall notify a filer of any additional supporting data, clarification or other information he deems necessary to adequately review the filing. Alternatively or additionally, the superintendent may schedule and hold an informal public hearing for the same purpose.~~

B. Where additional information is sought pursuant to this section,

~~the filing shall be deemed made as of the date all requested information is provided, unless waived by the superintendent.]~~ **FILINGS OF CONFIDENTIAL MATERIAL:** Materials that are required by statute to be kept confidential or that are considered by the filer to be trade secrets shall be filed separately from materials that are required to be open to public inspection.

A. Filings of underwriting guidelines pursuant to Section 59A-17-5.1 NMSA 1978 shall be submitted with the following words in bold uppercase type on the heading of the cover letter: **CONFIDENTIAL UNDERWRITING GUIDELINES.**

B. Filings of materials other than underwriting guidelines or insurance scoring models that the filer considers to be a trade secret shall be submitted with the following words in bold uppercase type on the heading of the cover letter: **REQUESTED CONFIDENTIAL MATERIALS.** The superintendent shall advise the filer within 30 days whether such material shall be open to public inspection. The superintendent shall keep such materials closed from public inspection prior to his determination on their confidentiality. [7-1-97; 13.8.2.10 NMAC - Rn, 13 NMAC 8.2.10, 1-15-02; A, 3-1-06; A, 10-1-07]

13.8.2.14 COMPANY FILINGS:

A. Any insurer may make rates and rate filings on its own behalf in accordance with this section and other applicable portions of this rule.

B. Any insurer may file at any time any rate or supplementary rate information applicable to any line or part of a line of property and casualty insurance business for which the insurer is certificated.

C. Every company filing shall be accompanied by the exhibits required under 13.8.2.17 NMAC.

D. Every company filing, except filings pursuant to 13.8.2.16 NMAC, shall comply with 13.8.2.18 NMAC.

E. The review period for a company filing begins when the filing is received by the superintendent, unless delayed for amendment or lack of sufficient information pursuant to Chapter 59A, Article 17 NMSA 1978 and 13.8.2 NMAC.

F. Except as provided in 13.8.2.25 NMAC, company filings based on ~~a rate service~~ an advisory organization advisory ~~pure premium~~ loss cost filing may not be used until either the superintendent has notified the ~~rate service~~ advisory organization that the advisory filing is acceptable or the statutory review period has expired with no action, whichever is sooner.

[7-1-97; 13.8.2.14 NMAC - Rn & A, 13

NMAC 8.2.14, 1-15-02; A, 3-1-06; A, 10-1-07]

13.8.2.15 PERMISSIBLE BASES FOR COMPANY FILINGS:

Company filings shall meet all statutory rate standards and take into consideration all applicable rate factors. Subject to the foregoing sentence, an insurer may base a company rate filing on:

A. the insurer's own experience in the particular line of business, including but not limited to premiums, investment income, loss experience and actual expenses;

B. average pure premium rates and supporting data, such as loss experience, developed and trended as appropriate, from ~~a rate service~~ an advisory organization advisory filing, together with the insurer's own experience in the particular line of business, including but not limited to premiums, investment income and actual expenses, as provided in 13.8.2.20 NMAC;

C. other company ratemaking methods, for limited markets, as provided in 13.8.2.16 NMAC; or

D. any other method meeting statutory standards which has been submitted to and approved by the superintendent prior to the rate filing.

[7-1-97; 13.8.2.15 NMAC - Rn, 13 NMAC 8.2.15, 1-15-02; A, 10-1-07]

13.8.2.17 REQUIRED EXHIBITS:

A. Rate filings that require supporting information shall include the following exhibits for each line of business, showing by individual insurer for the three most recently-completed consecutive calendar or calendar-accident years:

(1) actual direct written premiums;

(2) actual direct earned premiums;

(3) actual direct paid losses;

(4) the change in direct loss reserves during the year, including:

(a) reported reserves, based on actual reserves; and

(b) incurred but not reported reserves, based on separate calculations or equivalent to the change in reported reserves;

(5) incurred losses, derived from the foregoing;

(6) underlying data used to calculate any loss development factors and trend factors included in the filing, including but not limited to a description of the basis for and methods used to establish such factors;

(7) actual expenses for each of the following categories:

(a) commissions;

(b) other acquisition expenses;

(c) general expenses; and

(d) taxes, licenses and fees;

(8) investment income from each of the following sources, including method of calculation, allocated to the specific line of business:

(a) unearned premium reserves;

(b) loss reserves, including but not limited to IBNR;

(c) loss adjustment expense reserves;

(d) any contingency reserves; and

(e) surplus held in conjunction with the line of business; and

(9) average credit or debit written in conjunction with any schedule rating plan or similar plan.

B. If not shown in the transmittal documents, the filing shall contain an exhibit which displays the maximum percentage of rate increase that any policyholder may experience as a result of the filing.

[7-1-97; 13.8.2.17 NMAC - Rn, 13 NMAC 8.2.17, 1-15-02; A, 3-1-06; A, 10-1-07]

13.8.2.20 [RATE SERVICE] ADVISORY ORGANIZATION [ADVISORY] FILINGS:

A. Any licensed ~~rate service~~ advisory organization may make advisory filings within the scope of its license as provided in 13.8.2 NMAC.

B. Advisory filings shall be made for informational purposes and such uses as permitted in ~~this part~~ 13.8.2 NMAC. Advisory rate filings are limited to pure premium rates, supplementary rate information and supporting data, including loss experience, developed and trended as appropriate. Advisory rate filings shall not contain data on premiums, investment income, expenses, profit factor, dividend allowance permissible loss ratio or other factors or supporting data which could be used to develop a full rate, other than loss experience.

C. The superintendent shall review all advisory filings. The superintendent shall determine if the filing is made by a properly licensed ~~rate service~~ advisory organization within the scope of its license, and if the scope of such filing is limited in accordance with 13.8.2 NMAC, and if not, shall reject the filing. The superintendent shall also consider the rate standards contained in Section 59A-17-6 NMSA 1978 in determining whether advisory filings are acceptable.

D. An insurer may seek the superintendent's permission to base its own independent filing, or portions thereof, on information, data, statistics or pure premium rates contained in an advisory filing upon making a showing satisfactory to the superintendent that:

(1) the insurer lacks credible loss data of its own on which to base rates;

(2) the insurer's use of a uniform system of statistics, classifications, rating schedules, rating rules, underwriting rules or other similar information makes use of such supplementary rate information from an advisory filing both necessary and appropriate; provided, that Paragraph (2) of Subsection D of 13.8.2.20 NMAC applies only to statistical supplementary rate information, and does not apply to nor permit adoption of any rate, rate manual, minimum premium or policy fee; and

(3) with regard to Paragraph (1) of Subsection D of 13.8.2.20 NMAC, that such use of the advisory filing or portions thereof is appropriate because the loss experience contained in the advisory filing reasonably and accurately applies to the insurer, and will not result in rates which are excessive, inadequate or unfairly discriminatory.

[7-1-97; 13.8.2.20 NMAC - Rn, 13 NMAC 8.2.20, 1-15-02; A, 3-1-06; A, 10-1-07]

13.8.2.23 [R A T E SERVICE] ADVISORY ORGANIZATION MEMBERS' RIGHT OF NONADHESION TO FILINGS: No [rate service] advisory organization shall require any member or subscriber insurer to adhere to the organization's New Mexico filings, whether made on behalf of the insurer or otherwise. No [rate service] advisory organization shall in any manner limit or refuse to grant any insurer any right or privilege, including but not limited to full membership rights granted other insurers, or otherwise discriminate against any insurer, on the basis that the insurer has not adhered to or does not adhere to the organization's filings. [7-1-97; 13.8.2.23 NMAC - Rn, 13 NMAC 8.2.23, 1-15-02; A, 10-1-07]

13.8.2.24 STATISTICAL SERVICES; INFORMATION: The superintendent may require insurers to provide statistical information in a standard format. The superintendent may designate [a rate service] an advisory organization to receive such information and tabulate it. The superintendent may act pursuant to this section by notifying affected insurers in writing. [7-1-97; 13.8.2.24 NMAC - Rn, 13 NMAC 8.2.24, 1-15-02; A, 10-1-07]

13.8.2.25 [LIMITED EXEMPTION FROM PRIOR APPROVAL:

A. A commercial insurance filing shall become effective and may be used upon filing and shall be exempt from the requirement that the filing shall be made at least sixty days (or 90 days for workers compensation insurance) before its proposed effective date and from the prior approval requirements of Sections 59A-17-

9 and 10 NMSA 1978 if the filing is not:

~~(1) for workers compensation insurance, with the exception of a company filing that does not deviate from an approved workers compensation rate service organization advisory filing;~~

~~(2) for professional liability insurance;~~

~~(3) for credit related insurance, including but not limited to mortgage guaranty insurance, credit property insurance, collateral protection insurance, or guaranteed asset protection insurance;~~

~~(4) an assigned risk filing;~~

~~(5) for title insurance;~~

~~(6) for farm owner's insurance; or~~

~~(7) for ranch owner's insurance.~~

B. Filings that qualify for the limited exemption provided by Subsection A of 13.8.2.25 NMAC shall be subject to all other requirements of 13.8.2 NMAC and Chapter 59A, Article 17 NMSA 1978.

C. The filing and use of rates or rate related rules that do not comply with or that violate provisions of the Insurance Code or administrative rules shall be subject to the administrative penalties stated in the Insurance Code, including Section 59A-1-18 NMSA 1978. **WORKERS COMPENSATION REFERENCE FILINGS:** An insurer that wishes to adopt an approved advisory workers compensation filing that has been filed on its behalf by the workers compensation advisory organization designated by the superintendent, with no deviation other than effective date, shall do so in accordance with Paragraph C of Section 59A-17-9 NMSA 1978.

[7-1-97; 13.8.2.25 NMAC, Rn, 13 NMAC 8.2.25, 1-15-02; Repealed, 3-1-06 - Rn, 13.8.2.26 NMAC & A, 3-1-06; A, 10-1-07]

13.8.2.26 A U T O M A T I C ADOPTION OF ADVISORY LOSS COST FILINGS:

An insurer may satisfy its obligation to make a rate filing by authorizing the superintendent of insurance to have its loss cost multipliers and, if utilized, expense constants be applicable to future revisions of the advisory organization's advisory prospective loss costs. However, an insurer that proposes to revise its loss cost multipliers, or deviate from the effective date or any other component of the advisory organization loss cost filing, or which fails to file with the superintendent of insurance to accept future advisory prospective loss cost filings of the specified advisory organization, must submit a filing in accordance with the provisions of 13.8.2 NMAC.

[13.8.2.26 NMAC - N, 10-1-07]

13.8.2.27 MAINTENANCE OF RATE INFORMATION: Regardless of

whether an insurer is required to file its rates with the superintendent, an insurer shall maintain a copy of its rates and supplementary rate information currently in effect in sufficient detail to produce the premium charged on a policy. This information shall be available for immediate inspection by the superintendent.

[13.8.2.27 NMAC - N, 10-1-07]

13.8.2.28 NONCOMPETITIVE MARKETS:

A. The following markets lack a reasonable degree of competition and are therefore subject to the filing and prior approval requirements of Paragraph B of Section 59A-17-9 NMSA 1978:

(1) farmowners multiple peril, due to the concentration of market share within a relatively small number of competitors as well as the increasing dominance of its largest writer;

(2) medical professional liability, due to its concentration of market share among relatively few competitors as well as the increasing dominance in recent years of its largest writer;

(3) credit, due to its concentration of market share among relatively few competitors; or

(4) mortgage guaranty, due to the dominance of market share maintained by two competitors, the infrequent entry and exit of competitors, and the relatively low number of competitors for the market's premium volume.

B. The determination of noncompetitive markets in Subsection A of 13.8.2.28 NMAC shall expire on October 1, 2010.

[13.8.2.28 NMAC - N, 10-1-07]

13.8.2.29 REVERSE COMPETITIVE MARKETS: The following factors are likely indicators of a reverse competitive market:

A. insurance products sold or solicited in point-of-sale conjunction with purchases of consumer goods;

B. insurance products sold or solicited by individuals other than professional insurance agents;

C. products that insurers market primarily to parties other than prospective policyholders or to the parties that will pay the premium;

D. low loss ratios; or

E. high commission ratios.

[13.8.2.29 NMAC - N, 10-1-07]

**NEW MEXICO PUBLIC
REGULATION
COMMISSION
INSURANCE DIVISION**

This is an amendment to 13.8.3 NMAC, Sections 3, 7, 8, 9, and 13. This action also adds new sections 14 and 15, effective October 1, 2007.

13.8.3.3 STATUTORY AUTHORITY: Sections 59A-2-9, 59A-17-6.1, 59A-17-6.2, 59A-18-12 and 59A-18-14 NMSA 1978. [7-1-97; 13.8.3.3 NMAC - Rn & A, 13 NMAC 8.3.3, 3-1-06; A, 10-1-07]

13.8.3.7 DEFINITIONS:

A. "Commercial insurance" ~~means property or casualty insurance that is within the scope of Chapter 59A, Article 17 NMSA 1978 where the insured is a business, government entity or non-profit organization;~~ has the meaning given in Section 59A-17-4 NMSA 1978; and

B. "Reference filing" means a filing by an insurer to adopt a legally effective filing by an advisory organization to which the insurer is a member, a subscriber or an affiliate. [7-1-97; 13.8.3.7 NMAC - Rn & A, 13 NMAC 8.3.7, 3-1-06; A, 10-1-07]

13.8.3.8 GENERAL FILINGS:

A. Every insurer, ~~[rating]~~ advisory organization, FAIR plan, pool, or joint underwriting and joint reinsurance group, association or other organization of insurers must file with the superintendent of insurance every form of policy, endorsement, rider involving the granting or exclusion of coverage, or application which becomes a part of the policy, of casualty, fire, marine and transportation, wet marine, title and vehicle insurance.

B. An insurer may satisfy its obligation to make a policy form filing by becoming a member of or subscriber to, a licensed ~~[rating]~~ advisory organization which makes policy form, endorsement, rider or application filings and by authorizing the superintendent of insurance to accept these filings on its behalf.

C. Filings not subject to the limited exemption from prior approval in 13.8.3.9 NMAC may contain a request to become effective on any specified date on or after their date of filing.

[6-3-70; 7-1-97; 13.8.3.8 NMAC - Rn, 13 NMAC 8.3.8, 3-1-06; A, 10-1-07]

13.8.3.9 LIMITED EXEMPTION FROM PRIOR APPROVAL:

A. A commercial insur-

ance filing shall become effective and may be used upon filing and shall be exempt from the requirement that the filing shall be made at least sixty days before its proposed effective date and from the prior approval requirements of Section 59A-18-12 NMSA 1978 if the filing is not:

(1) for workers compensation insurance, ~~[with the exception of] an advisory organization filing or a company filing that [does not deviate] deviates, in any manner other than effective date, from an approved workers compensation [rate service] advisory organization [advisory] filing;~~

(2) for medical professional liability insurance;

(3) for ~~[credit related insurance, including but not limited to mortgage guaranty insurance, credit property insurance, collateral protection insurance, or guaranteed asset protection insurance]~~ a market that is noncompetitive pursuant to 13.8.2.28 NMAC;

(4) a market that is reverse competitive;

~~[(4)]~~ (5) an assigned risk filing;

~~[(5)]~~ (6) for title insurance;

~~[(6)]~~ (7) for farm owner's insurance; or

~~[(7)]~~ (8) for ranch owner's insurance.

B. Filings that qualify for the limited exemption provided by Subsection A of 13.8.3.9 NMAC shall be subject to all other requirements of 13.8.3 NMAC and Chapter 59A, Article 18 NMSA 1978.

C. The filing and use of forms that do not comply with or that violate provisions of the Insurance Code or administrative rules shall be subject to the administrative penalties stated in the Insurance Code, including Section 59A-1-18 NMSA 1978.

[7-1-97; 13.8.3.9 NMAC - Rn & A, 13 NMAC 8.3.9, 3-1-06; A, 10-1-07]

13.8.3.13 INSURERS AFFILIATED WITH ~~[RATING]~~ ADVISORY ORGANIZATIONS: All insurers affiliated with ~~[rating]~~ advisory organizations shall adhere to the following procedures.

A. An insurer newly affiliated with ~~[a rating]~~ an advisory organization will be presumed to be using the forms filed by the ~~[rating]~~ advisory organization from the effective date of membership or subscribership or affiliation.

B. An insurer retiring from membership or subscribership or affiliation with ~~[a rating]~~ an advisory organization will immediately upon retirement be presumed to meet the filing requirements of policy forms as provided in 13.8.3.8 NMAC.

[6-3-70; 7-1-97; 13.8.3.13 NMAC - Rn, 13 NMAC 8.3.13, 3-1-06; A, 10-1-07]

13.8.3.14 AMENDING FILINGS: Any pending filing may be amended, provided that the entire filing, including the amendment, shall be deemed made as of the date the amendment was filed, unless waived by the superintendent.

[13.8.3.14 NMAC - N, 10-1-07]

13.8.3.15 AUTOMATIC ADOPTION OF ADVISORY ORGANIZATION FORM FILINGS:

An insurer may satisfy its obligation to make a form filing by authorizing the superintendent of insurance to adopt on its behalf all form filings legally in effect that have been filed by an advisory organization to which the insurer is a member or a subscriber or an affiliate. However, an insurer that proposes to use a form or to deviate from the effective date or any other component of the advisory organization from filing, or which fails to file with the superintendent of insurance to accept future form filings of the specified advisory organization, must submit a filing in accordance with the provisions of 13.8.3 NMAC.

[13.8.3.15 NMAC - N, 10-1-07]

End of Adopted Rules Section

SUBMITTAL DEADLINES AND PUBLICATION DATES**2007**

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Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 30
Issue Number 11	June 2	June 16
Issue Number 12	June 17	June 30
Issue Number 13	July 1	July 16
Issue Number 14	July 17	July 31
Issue Number 15	August 1	August 14
Issue Number 16	August 15	August 29
Issue Number 17	September 2	September 15
Issue Number 18	September 16	September 30
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Issue Number 20	October 16	October 30
Issue Number 21	October 31	November 14
Issue Number 22	November 17	December 1
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