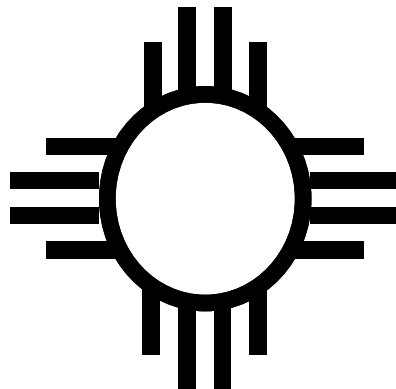


New Mexico Register

**Volume XX, Issue Number 6
March 31, 2009**



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

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Administrative Law Division
Santa Fe, New Mexico
2009

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New Mexico Register

Volume XX, Number 6

March 31, 2009

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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 ANIMAL SHELTERING SERVICES BOARD

Regulation and Licensing Department - Animal Sheltering Services Board LEGAL NOTICE OF PUBLIC HEARING AND REGULAR BOARD MEETING

The Regulation and Licensing Department, Animal Sheltering Services Board ("Board"), hereby gives notice that the Board will convene a **Public Hearing** with respect to the adoption of regulations as follows:

Title 16, Chapter 24, Part 1 A n i m a l Sheltering Services, General Provisions
Title 16, Chapter 24, Part 2 A n i m a l Sheltering Services, Licensure and Certification

Title 16, Chapter 24, Part 3 A n i m a l Sheltering Services, Duties of Licensees and Certificate Holders

Title 16, Chapter 24, Part 4 A n i m a l Sheltering Services, Complaints, Enforcement and Disciplinary Action

Title 16, Chapter 24, Part 5 A n i m a l Sheltering Services, Fees

The Hearing will be held on May 6, 2009 at the Gaming Control Board offices located at 4900 Alameda Boulevard NE, Albuquerque, New Mexico, 87113, beginning at 9:00 a.m.

Copies of the proposed rules are available on the Animal Sheltering Board's website: www.rld.state.nm.us/AnimalSheltering/rule_slaw.html, by sending a request to the Board at P.O. Box 25101, Santa Fe, New Mexico 87504, or by calling (505) 476-4795.

The public is invited to attend and comment on the proposed regulations. The Hearing Officer will receive oral and written recommendations and comments regarding the proposed regulations. Persons wishing to present their comments at the hearing will need to bring fifteen copies of any comments or proposed changes for distribution to the Board and staff.

Written recommendations and comments, including draft language, may be submitted to the Board in advance of the meeting at the address provided below. These recommendations/comments must be provided no later than April 17, 2009, 5:00 p.m., in order to be included in the materials for the public hearings. All other recommendations and/or comments must be presented at the

hearing.

Immediately following the Rule Hearing, the New Mexico Animal Sheltering Services Board will convene a **Regular Board Meeting** to adopt the rules and take care of regular business. The public is welcome to attend. Portions of the regular meeting may be closed to the public while the Board is in Executive Session. A final agenda for the meeting will be available at least 24 hours prior to the meeting and may be obtained by making a written request to the Board at P.O. Box 25101, Santa Fe, New Mexico 87504, by calling (505) 476-4795, or by checking the Board's website at: www.rld.state.nm.us/AnimalSheltering/index.html.

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 meeting, please contact the Board's office at (505) 476-4795, prior to the hearing but not later than April 17, 2009. Public documents can be provided in various accessible formats.

Helga Schimkat, Administrator
Animal Sheltering Services Board
P.O. Box 25101
Santa Fe, New Mexico 87504

NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

New Mexico Board of Examiners for Architects

PO Box 509
Santa Fe, NM
505-982-2869

Public Hearing Meeting

The New Mexico Board of Examiners for Architects will hold a regular open meeting of the Board in Santa Fe, New Mexico, on Friday, May 1, 2009. The meeting will be held in the Conference Room of the Board office, #5 Calle Medico, Suite C, Santa Fe, NM, 87505, beginning at 9 a.m. A public rules hearing will also be held to amend the architectural rules. Content will be amendments to the continuing education requirements for renewal of licensure. Proposed rules are available by contacting the Board office at (505) 982-2869.

If you are an individual with a disability who is in need of a reader, ampli-

fier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the meeting, please contact the Board Office at 982-2869 at least one week prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Board Office if a summary or other type of accessible format is needed.

NEW MEXICO BOARD OF DENTAL HEALTH CARE

Legal Notice of Public Rules Hearing and Meeting

Notice is hereby given that the New Mexico Board of Dental Health Care will convene a Rule Hearing on May 8, 2009 to amend, replace and repeal:

Title 16, Chapter 5, 16.5.5 Dentists Fees; 16.5.18 Dental Hygienist Fees; 16.5.32 Dental Assistants Fees

This Hearing will be held at the Toney Anaya Building in the Rio Grande Conference Room located at 2550 Cerrillos Road, Santa Fe, NM starting at 9:30 a.m.

Immediately following the Rule Hearing, the Dental Hygienists Committee will convene a regular meeting. The New Mexico Board of Dental Health Care will convene a regular meeting following the Dental Hygienists Committee Meeting on May 8, 2009.

Copies of the proposed rules are available on the Dental Board's Website: www.rld.state.nm.us/b&c/dental or by sending a request to the Board office, P. O. Box 25101, Santa Fe, New Mexico, 87504-5101, or by phone (505) 476-4680.

Anyone wishing to present their views on the proposed rules may appear in person at the Hearing, or may send written comments to the Board office. Written comments must be received by February 20, 2009 to allow time for distribution to the Board and Committee members. Individuals planning on testifying at the hearing must provide 14 copies of their testimony.

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

the meeting from the Board office.

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

**NEW MEXICO DNA
IDENTIFICATION SYSTEM
OVERSIGHT COMMITTEE
AND ADMINISTRATIVE
CENTER**

NEW MEXICO DNA IDENTIFICATION SYSTEM OVERSIGHT COMMITTEE & ADMINISTRATIVE CENTER

NOTICE OF MEETING AND PUBLIC HEARING ON AMENDMENT OF RULES

Tuesday April 21, 2009, 11:00 AM, Criminalistics Conference Room, Metropolitan Forensic Science Center, 5350 2nd Street NW, Albuquerque, NM 87107

To comment on, or for additional information including a copy of the agenda and proposed amendments, or if you have a disability and you require special assistance to participate in this meeting contact John Krebsbach, Chairperson at (505) 823-4630 by Monday April 13, 2009.

**NEW MEXICO ECONOMIC
DEVELOPMENT
DEPARTMENT**

Notice of Proposed Rulemaking

The Economic Development Department ("EDD or Department") hereby gives notice that the Department will conduct a public hearing as indicated to obtain input amending the following rules:

5.5.51 Development Employment Funding for Film and Multimedia Production Companies

5.5.52 Development Pre-Employment Training for Film and Multimedia Production Companies

A public hearing regarding the rules will be held on Thursday, April 9, 2009 in the lobby of the Jean Cocteau Theater, 418 Montezuma Ave., Santa Fe, NM 87501. The time for the hearing on the proposed rules is 9:00 AM MDT to 11:00 AM MDT.

Interested individuals may testify at the

public hearing or submit written comments regarding the proposed rulemaking relating to the Job Training Incentive Program for Film & Multimedia to Tobi Ives, Program Manager, New Mexico Economic Development Department, 418 Montezuma Ave, Santa Fe, NM 87501 or email tobi@nmfilm.com or fax 505.476.5601. Written comments must be received no later than 5:00 pm on April 6, 2009. The proposed rulemaking actions specific to the Job Training Incentive Program for Film & Multimedia may be accessed on the Department's website (www.gonm.biz) or obtained from Tobi Ives at the contact above.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this hearing are asked to contact Tobi Ives as soon as possible. The Department requests at least ten days advanced notice to provide requested special accommodations.

**NEW MEXICO HUMAN
SERVICES DEPARTMENT
INCOME SUPPORT DIVISION**

NOTICE OF PUBLIC HEARING

The General Assistance program is reaching maximum enrollment due to budgetary constraints. The Department proposes amendments as allowed at chapter 27, article 2, section 7, of the Public Assistance Act, NMSA 1978. Proposed amendments would allow a reduction of the current standard of need; or to suspend payments for a temporary period. Additional amendments propose to suspend receipt of new applications for a temporary period.

A public hearing to receive testimony on these proposed regulations will be held on April 30, 2009 at 9:00 am.

The hearing will be held at the State Personnel Office (Willie Ortiz Building) at 2600 Cerrillos Road, Santa Fe, NM in the Leo Griego Auditorium. Individuals wishing to testify may contact the Income Support Division, P.O. Box 2348, Santa Fe, NM 87504-2348, or by calling toll free 1-800-432-6217.

The proposed regulations are available on the Human Services Department website at <http://www.hsd.state.nm.us/isd/ISDRegister.s.html>. Individuals wishing to testify or requesting a copy of the proposed regulation should contact the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, NM 87505-2348, or by calling

505-827-7250.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 P.M. on the date of the hearing. Please send comments to:

Pamela S. Hyde, J.D., Secretary
Human Services Department
P.O. Box 2348 Pollon Plaza
Santa Fe, NM 87504-2348

You may send comments electronically to: vida.tapia-sanchez@state.nm.us

**NEW MEXICO HUMAN
SERVICES DEPARTMENT
INCOME SUPPORT DIVISION**

NOTICE OF PUBLIC HEARING

New Mexico proposes to increase access to the buying power of food stamps by instituting the New Mexico Combined Application Project (NMCAP). The combined application project for food stamp benefit assistance, among elderly and disabled populations receiving Supplemental Security Income (SSI) populations is authorized by a state demonstration project via a joint partnership with Food and Nutrition Services (FNS) and Social Security Administration (SSA).

A public hearing to receive testimony on this regulation will be held on May 1, 2009 at 10:00 am.

The hearing will be held at the Income Support Division Conference Room at Pollon Plaza, 2009 S. Pacheco St., Santa Fe, NM 87505. The Conference room is located in room 120 on the lower level. Individuals wishing to testify may contact the Income Support Division, P.O. Box 2348, Santa Fe, NM 87504-2348, or by calling toll free 1-800-432-6217.

The proposed regulation is available on the Human Services Department website at <http://www.hsd.state.nm.us/isd/ISDRegister.s.html>. Individuals wishing to testify or requesting a copy of the proposed regulation should contact the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, NM 87505-2348, or by calling 505-827-7250.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 P.M. on the date of the hearing. Please send comments to:

Pamela S. Hyde, J.D., Secretary
 Human Services Department
 P.O. Box 2348 Pollon Plaza
 Santa Fe, NM 87504-2348

You may send comments electronically to:
vida.tapia-sanchez@state.nm.us

**NEW MEXICO HUMAN SERVICES DEPARTMENT
 INCOME SUPPORT DIVISION**

NOTICE OF PUBLIC HEARING

The Human Services Department will hold a public hearing receive testimony on emergency amendments to regulation. Because the Department has received less than sixty days notice of federal legislation and has insufficient time to follow the regular rule-making process, the Human Services Department will implement an interim emergency rule in order to comply with the federal mandate effective date of April 1, 2009.

The hearing will be held at 11:00 am on April 30, 2009. The hearing will be held at the Income Support Division Conference Room at Pollon Plaza, 2009 S. Pacheco St., Santa Fe, NM 87505. The Conference room is located in room 120 on the lower level. Individuals wishing to testify may contact the Income Support Division, P.O. Box 2348, Santa Fe, NM 87504-2348, or by calling toll free 1-800-432-6217.

The U.S. Department of Agriculture (USDA) Food and Nutrition Services (FNS) has adopted provisions outlined in the ARRA, allowing Income Support Division to implement changes that will occur April 1st, 2009. This register includes a 13.6% increase to the Thrifty Food Plan, and an increase in the minimum payment from \$14 to \$16.

The emergency regulation is available on the Human Services Department website at <http://www.hsd.state.nm.us/isd/ISDRegister.s.html>. Individuals wishing to testify or requesting a copy of the proposed regulation should contact the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, NM 87505-2348, or by calling 505-827-7250.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 P.M. on the date of the hearing. Please send comments to:

Pamela S. Hyde, J.D., Secretary
 Human Services Department
 P.O. Box 2348 Pollon Plaza

Santa Fe, NM 87504-2348

You may send comments electronically to: vida.tapia-sanchez@state.nm.us

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

The Public Education Department (“Department”) hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786, on Wednesday May 1, 2009, from 10:00 a.m. to 12:00 p.m. The purpose of the public hearing will be to obtain input on the following rule:

Rule Number	Rule Name	Proposed Action
6.29.5 NMAC	New Mexico English Language Development Standards	Replace

Interested individuals may testify either at the public hearing or submit written comments regarding the proposed rulemaking to Dr. Gladys Herrera-Gurulé, State Director, Bilingual Multicultural Education Bureau, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 (gladys.herrera-gurule@state.nm.us) (505)-827-6667 fax (505) 827-6563. The proposed rules will be made available at least thirty days prior to the hearing. Written comments must be received no later than 5:00 p.m. on May 1, 2009. However, submission of written comments as soon as possible is encouraged.

Copies of the proposed rule may be accessed on the Department’s website (<http://ped.state.nm.us>) or obtained from Dr. Gladys Herrera-Gurulé, State Director, Bilingual Multicultural Education Bureau, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 (gladys.herrera-gurule@state.nm.us) (505)-827-6667 fax (505) 827-6563.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Dr. Gladys Herrera-Gurulé as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

NEW MEXICO PUBLIC REGULATION COMMISSION

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE INVESTIGATION)
AND REVISION OF LOW INCOME) Case No. 05-00313-UT
ASSISTANCE PROGRAMS FOR)
TELECOMMUNICATIONS SERVICES)
IN THE STATE OF NEW MEXICO)

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Public Regulation Commission (“NMPRC” or “Commission”) proposes to promulgate a new rule regarding low income assistance programs for telecommunications services, and in particular, Low Income Telecommunications Assistance Programs (“LITAP”). This matter comes before the Commission upon the Workshop Report that was filed in this proceeding on May 18, 2008 by the Commission’s Utility Division Staff (“Staff”); whereupon, having review the record and being duly advised,

THE COMMISSION FINDS AND CONCLUDES:

1. The Commission has jurisdiction over telecommunications companies in the State of New Mexico. N.M. Const., art. XI, Section 2, NMSA 1978 Section 63-1-1,

et seq. The proposed new rule would be adopted under the authority granted the Commission by the New Mexico Constitution, art. XI, Section 2, the Public Regulation Commission Act (*see* NMSA 1978, Sections 8-8-4 and 8-8-15), the State Rules Act, NMSA 1978, Section 14-4-2(C), and the Low Income Telephone Service Assistance Act, NMSA 1978, Section 63-9C-1, *et seq.*

2. In 1987, the New Mexico Legislature enacted the Low Income Telephone Service Assistance Act; *see* NMSA 1978, Section 63-9C-1, *et seq.* That Act authorizes carriers to reduce rates to persons that meet eligibility criteria for one or more programs administered by the New Mexico Human Services Department (HSD) and directs the Commission to promulgate rules for implementing the Act. The Act also requires HSD to cooperate with the Commission in identifying eligible persons. Although the Commission's predecessor agency, the State Corporation Commission, never promulgated rules, low-income programs known as Low Income Telecommunications Assistance Programs ("LITAP") were developed and implemented by all local exchange carriers. *See, e.g.,* Workshop Report, cited herein at ¶ 5.

3. On July 27, 2005, the Commission's Utility Division Staff ("Staff") filed its *Petition to Open Proceeding*, asking the Commission "to review and potentially revise and enhance existing low-income and tribal assistance telecommunications programs provided by telecommunications companies in New Mexico." *Id.* at 1.

4. On December 6, 2005, the Commission granted Staff's Petition, thereby commencing this proceeding. *Order Docketing Case.*

5. On May 13, 2008, Staff filed the Workshop Report, which details the results of fifteen Workshop sessions that took place over the course of a year and lays out the issues dealt with in those Workshops. The Workshop Report cites the Federal Communications Commission's ("FCC's") *Report and Order and Further Notice Of Proposed Rulemaking, In The Matter Of Lifeline And Linkup*, WC Docket No. 03-109 (April 29, 2004) as a primary catalyst for this proceeding. Workshop Report at 3.

6. According to the Workshop Report, most workshop participants agreed that as a threshold issue, cost reimbursement should be resolved. Some took the position that LITAP should not be expanded until an appropriate cost recovery

mechanism is in place. Others were in favor of program expansion, even if a funding source could not be identified. Staff and certain other participants recommended that the issue be addressed in a separate proceeding.

7. Attached to the Workshop Report as Exhibit B is a proposed rule that should be adopted as the Commission's Proposed Rule.

8. At Section 17.11.XX.11, the Proposed Rule sets out alternative approaches for addressing cost recovery. Participants in the rulemaking should provide comment on the alternative approaches and may suggest other alternative approaches.

9. The Workshop Report lays out a series of issues that the participants request that the Commission to consider in a rulemaking. The issues include the following and are set out in greater detail in the Workshop Report, at pages 23-24:

(a) Centralized administration of certification;

(b) Whether to expand eligibility requirements;

(c) Whether and how to compensate ETCs for foregone revenues associated with providing state discounts that exceed federally mandated discounts;

(d) Whether to establish a uniform statewide discount; and

(e) Whether to establish automatic enrollment in connection with centralized administration.

10. A new rule should be promulgated in order to effectuate fully the Low Income Telephone Service Assistance Act, NMSA 1978, Section 63-9C-1, *et seq.*, and a rulemaking process should be instituted.

11. The proposed rule would apply to all New Mexico designated Eligible Telecommunications Carriers (ETCs). ETCs are carriers that have been designated by this Commission to be eligible to apply for funding from either the State Rural Universal Service Fund (SRUSF) or the federal Universal Service Fund (USF), or both.

12. This Notice of Proposed Rulemaking should constitute due and lawful notice to all potentially interested parties.

13. All interested persons should be afforded the opportunity to

receive notice of, and to comment upon, the attached Proposed Rule, including the alternatives set out therein as well as the issues set out at ¶ 8 (a)-(e) of this Order, together with any other issues of relevance to this proceeding.

14. Remarks made during the Workshops, and any items of information that have been submitted heretofore, are not evidence and are not part of the record of the rulemaking. Any person having submitted such information who desires it to be considered hence as part of the rulemaking process should file it as a formal comment.

15. A copy of the proposed rule to be considered for promulgation is attached hereto as "Exhibit 1." Additional copies of the proposed rule can be obtained from:

Mr. Ron X. Montoya
Records Management Bureau
Marian Hall
224 East Palace Avenue
Santa Fe, New Mexico 87501
Telephone: (505) 827-6940.

IT IS THEREFORE ORDERED:

A. A rulemaking proceeding should be, and hereby is, instituted in this proceeding.

B. The Commission seeks comment from all interested persons concerning whether the proposed rule, attached as an Exhibit to this Order, should be adopted.

C. This *Notice of Proposed Rulemaking* shall constitute due and lawful notice to all potentially interested persons.

D. The New Mexico Human Services Department (HSD), and all persons whose names appear on the list of workshop participants provided as Appendix A to the Workshop Report, shall be included on the official Certificate of Service for this rulemaking. (The Certificate of Service may be modified as required in order to reflect current representation of the entities listed in Appendix A to the Workshop Report.)

E. Any person wishing to comment on the proposed rule may do so by submitting written comments no later than **April 8, 2009**. Any person wishing to respond to comments may do so by submitting written response comments no later than **April 22, 2009**. Comments suggesting

changes to the proposed rule shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the proposed rule shall be provided in a format consistent with that of the New Mexico Administrative Code ("NMAC").

F. All pleadings, including comments, shall bear the caption and case number set out on the first page of this Notice. Comments on the Proposed Rule shall be filed with the Commission's Records Division, at the address set out herein at ¶ 15.

G. A public hearing on the proposed rule amendments, to be presided over by Commission Chairman Sandy Jones or his designee, shall be held beginning at **9:00 A.M. on April 29, 2009** at the offices of the Commission, at the following location:

**4th Floor Hearing Room
PERA Building
1120 Paseo de Peralta
Santa Fe, New Mexico 87501
Tel. (800) 827-4500.**

H. All persons attending the hearing should be prepared to address the issues set forth herein. Interested persons should contact the Commission to confirm the date, time and place of any public hearing, because hearings are occasionally rescheduled. Any person with a disability requiring special assistance in order to participate in the Hearing should contact Ms. Cecilia Rios at 827-6947 at least 48 hours prior to the commencement of the Hearing.

I. Pursuant to NMSA 1978, Section 8-8-15(B), this *Notice of Proposed Rulemaking*, including Exhibit 1, shall be mailed **at least thirty days prior to the hearing date** to all persons who have made a written request for advance notice and to all telecommunications companies subject to the jurisdiction of the Commission, including Eligible Telecommunications Carriers ("ETCs"). Copies of this *Notice of Proposed Rulemaking* shall be provided promptly by e-mail or by facsimile transmission to any persons who have so requested.

J. This *Notice of Proposed Rulemaking*, without Exhibit 1, shall be published in at least two newspapers of regular circulation in the State of New Mexico, and in the NEW MEXICO REGISTER. Affidavits attesting to the publication of this *Notice of Proposed Rulemaking* as described above shall be filed in this docket.

K. In addition, this Notice shall be posted on the Commission's official Web site.

L. Copies of any forthcoming final order adopting a new rule shall be mailed, along with copies of the particular rules amended, to all affected telecommunications companies, all commenters in this case, and all individuals requesting such copies.

M. This *Notice of Proposed Rulemaking* is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico this 5th day of March, 2009.

NEW MEXICO PUBLIC REGULATION COMMISSION

SANDY JONES, CHAIRMAN

DAVID W. KING, VICE CHAIRMAN

JASON MARKS, COMMISSIONER

JEROME D. BLOCK, COMMISSIONER

CAROL K. SLOAN, COMMISSIONER

NEW MEXICO PUBLIC REGULATION COMMISSION

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF A RULEMAKING TO)
REVISE NMPRC RULE 17.7.2 NMAC) Case No. 08-00024-UT
TO IMPLEMENT THE)
EFFICIENT USE OF ENERGY ACT)**

AMENDED NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Public Regulation Commission ("NMPRC" or "Commission") proposes to amend its existing Energy Efficiency Rule, which is contained in the New Mexico Administrative Code ("NMAC") at 17.7.2 NMAC. This matter comes before the Commission upon its own Motion; whereupon, being duly advised,

THE COMMISSION FINDS AND CONCLUDES:

1. The Commission is required to adopt energy efficiency rules in order to implement the Efficient Use of Energy Act, NMSA 1978, Section 62-17-1, et seq. (the "EUEA" or "Act"), and, further, is considering amendments to its existing Energy Efficiency Rule, currently codified at 17.7.2 of the New Mexico Administrative Code ("NMAC") in order to implement the EUEA (originally enacted in 2005 as New Mexico Senate Bill 644 and modified by New Mexico Senate Bill 418 in 2007), as well as further substantive changes effected by New Mexico House Bill 305 ("H.B. 305"), which was enacted by the New Mexico Legislature during the 48th Legislature (Second Session, 2008) and was signed into law by the Governor of New Mexico on February 27, 2008.

2. The Commission has jurisdiction over public utilities in the State of New Mexico. N.M. Const., Art. XI, Section 2, NMSA 1978 Section 62-1-1, et seq. The proposed rule amendments would be adopted under the authority granted the Commission by the New Mexico Constitution, art. XI, Section 2, the Public Regulation Commission Act (see NMSA 1978, Sections 8-8-4 and 8-8-15), the State Rules Act, at NMSA 1978, Section 14-4-2(C), and applicable portions of the EUEA (as amended by H.B. 305).

3. On January 28, 2008, the Commission issued a Notice of Inquiry ("NOI"), thereby commencing an inquiry and investigation regarding the implementation of the Efficient Use Of Energy Act ("EUEA"), NMSA 1978, Section 62-17-1, et seq. In that NOI, the Commission required detailed written comment to be submitted by each electric,

natural gas, or combination utility operating within the State of New Mexico on a number of specific issues.

4. On February 28, 2008, the Commission's Utility Division Staff ("Staff") filed the Petition To Amend Proceeding To Initiate A Rulemaking To Revise 17.7.2 NMAC. In that Petition, Staff pointed out that, subsequent to the inception of this case, the 48th New Mexico Legislature (Second Session, 2008), had amended the EUEA through its enactment of H.B. 305, and that the issues set out in the Commission's NOI would require, at a minimum, a different analysis. Staff also asked that the Commission add to the list of issues set out for consideration and comment while retaining any relevant questions set out in the NOI. Staff's Petition included a number of issues pertaining particularly to H.B. 305 on which Staff urged the Commission to seek comment.

5. Subsequently, Public Service Company of New Mexico ("PNM"), El Paso Electric Company ("EPE"), and Southwestern Public Service Company ("SPS") all conveyed their support for refining or eliminating some of the issues set out in the NOI (as appropriate pursuant to H.B. 305), and for expanding the proceeding into a rulemaking. Motion to Vacate Requirements To Submit Written Comments Or, In The Alternative, For Extension Of Time, filed March 17, 2008, and PNM's Addendum to the same Motion, filed March 19, 2008; EPE's Response To Staff's Petition and PNM's Motion To Vacate Or Extend Deadline, filed March 17, 2008.

6. On April 1, 2008, the Commission issued in this and other cases a Procedural Order. Procedural Order, at 5-6, ¶ E. Through the cited procedural order as issued in this case, Case Nos. 07-00424-UT and 08-00013-UT were closed. Among other things, that Order provided that this case would be conducted as a rulemaking proceeding and would take into appropriate consideration the issues set out in the Notice Of Inquiry as well as those proposed for consideration in Staff's Petition and any other suggested issues that might be relevant. Id. at 5, ¶ A.

7. William J. Herrmann was appointed as Hearing Examiner for the purpose of conducting any necessary workshops and hearings, and to take any other action consistent with Commission procedure. Procedural Order at 5, ¶ C. On May 14, 2008, Hearing Examiner Herrmann Issued the Order Setting Pre-Workshop Conference. Workshops were held in this case in 2008.

8. On January 29, 2009, one year after the issuance of the NOI, the Commission issued a Notice of Proposed Rulemaking ("NOPR") in this proceeding. Attached to that NOPR and incorporated therein by reference was a proposed rule that was intended to reflect the consensus of the Workshop Participants.

9. After the issuance of that NOPR and proposed rule, it came to the attention of the Commission that the proposed rule as issued was not an accurate reflection of the Workshop Participants' consensus. On February 26th, 2009, the Commission vacated the procedural schedule and stated that the proposed rule that was attached to the January 29, 2009 NOPR should be replaced with a proposed rule that accurately reflects the workshop consensus. Order Vacating Procedural Schedule, ¶ 4. In addition, the Commission wishes to obtain comment on an alternative proposed rule regarding revenue decoupling. The replacement workshop consensus proposed rule is set out herewith as Alternative A. The alternative revenue decoupling proposed rule is set out herewith as Alternative B. Together, Alternatives A and B are referred to in this Order as the Alternative Proposed Rules.

10. The NOPR that was issued on January 29, 2009 omitted any distinction between the process that the Commission intended with regard to electric utilities and the process that was intended with regard to natural gas or combination electric and natural gas utilities within our jurisdiction. The rulemaking that we establish pursuant to this Amended NOPR is intended only to address issues that pertain to electric utilities and to the electric functions and operations of combination electric and natural gas utilities.

11. In contrast, issues that pertain to natural gas are not intended to be included within the scope of this Amended NOPR; those issues remain at this time within the scope of the process that we established through the April 1, 2008 Procedural Order. Consistent with that Order, the designation of Hearing Examiner William J. Herrmann should remain unchanged for that part of this proceeding that pertains to natural gas and to the natural gas functions and operations of combination electric and natural gas utilities.

12. In the Procedural Order that we issued on April 1, 2008, we concluded

that the Energy Efficiency Rule should be amended in order to effectuate fully the EUEA, NMSA 1978, Section 62-17-1, et seq., as amended by H.B. 305, and that a rulemaking process should be instituted. Consistent with that Procedural Order, this proceeding, as it affects issues pertaining to electric utilities and to the electric functions and operations of combination electric and natural gas utilities, should go forward as a formal rulemaking.

13. This Amended Notice of Proposed Rulemaking should constitute due and lawful notice to all potentially interested parties.

14. All interested persons should be afforded the opportunity to receive notice of, and to comment upon, the two Alternative Proposed Rules, Alternative A and Alternative B.

15. Remarks made during the Workshops, and any items of information that have been submitted heretofore, are not evidence and are not part of the record of the rulemaking. Any person having submitted such information who desires it to be considered hence as part of the rulemaking process should file it as a formal comment.

16. A copy of the Alternative Proposed Rules to be considered for promulgation as amendments to 17.7.2 NMAC is attached hereto as "Exhibit 1" consisting of both an Alternative A and an Alternative B. Additional copies of these proposed amendments to 17.7.2 NMAC can be obtained from:

Mr. Ron X. Montoya
Records Management Bureau
Marian Hall
224 East Palace Avenue
Santa Fe, New Mexico 87501
Telephone: (505) 827-6940.

IT IS THEREFORE ORDERED:

A. The Notice Of Proposed Rulemaking ("NOPR") that was issued in this case on January 29, 2009 is withdrawn, and this Amended Notice Of Proposed Rulemaking ("Amended NOPR") is substituted therefor.

B. Through this Amended NOPR, the Commission seeks comment from all interested persons concerning the manner in which the Commission's Energy Efficiency Rule, as it is currently set forth in the New Mexico Administrative Code ("NMAC") at 17.7.2 NMAC, should be amended.

C. The Alternative Proposed Rules, attached hereto as Exhibit 1, consist of Alternative A and Alternative B, both of which are hereby issued for consideration and comment in this case.

D. This Amended NOPR and the attached Alternative Proposed Rules pertain only to electric utilities and to the electric functions and operations of combination electric and natural gas utilities.

E. The designation of Hearing Examiner William J. Herrmann pursuant to our April 1, 2008 Procedural Order remains unchanged for that part of this proceeding that pertains to natural gas and to the natural gas functions and operations of combination electric and natural gas utilities.

F. This Amended Notice of Proposed Rulemaking shall constitute due and lawful notice to all potentially interested persons.

G. Any person wishing to comment on the proposed amendments to 17.7.2 NMAC may do so by submitting written comments no later than April 13, 2009. Any person wishing to respond to comments may do so by submitting written response comments no later than April 27, 2009. Commenters suggesting changes to the rule amendments as proposed (i.e., the Alternative Proposed Rules) shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the Alternative Proposed Rules shall be provided in a format consistent with that of the existing rule.

H. All pleadings, including comments, shall bear the caption and case number displayed on the first page of this Amended NOPR. Comments on the Alternative Proposed Rules shall be filed with the Commission's Records Division, at the address set out herein at ¶ 16.

I. A public hearing on the proposed rule amendments, to be presided over by Commission Chairman Sandy Jones or his designee, shall be held beginning at **9:30 A.M. on Monday, May 4, 2009** at the offices of the Commission, at the following location:

**4th Floor Hearing Room
PERA Building
1120 Paseo de Peralta
Santa Fe, New Mexico 87501**

Tel. (800) 827-4500.

J. All persons attending the hearing should be prepared to address the issues set forth herein. Interested persons should contact the Commission to confirm the date, time and place of any public hearing, because hearings are occasionally rescheduled. Any person with a disability requiring special assistance in order to participate in the Hearing should contact Ms. Cecilia Rios at 827-4501 at least 48 hours prior to the commencement of the Hearing.

K. Pursuant to NMSA 1978, Section 8-8-15(B), this Amended Notice of Proposed Rulemaking, including Exhibit 1, shall be mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice and to all electric utilities subject to the jurisdiction of the Commission, including rural electric cooperatives. Copies of this Amended Notice of Proposed Rulemaking shall be provided promptly by e-mail or by facsimile transmission to any persons who have so requested.

L. This Amended Notice of Proposed Rulemaking, without Exhibit 1, shall be published in at least two newspapers of regular circulation in the State of New Mexico, and in the New Mexico Register. Affidavits attesting to the publication of this Amended Notice of Proposed Rulemaking as described above shall be filed in this docket.

M. In addition, this Amended Notice of Proposed Rulemaking, including Exhibit 1, shall be posted on the Commission's official Web site.

N. Copies of any forthcoming final order adopting proposed rule amendments shall be mailed, along with copies of the particular rules amended, to all affected utilities, all commenters in this case, and all individuals requesting such copies.

O. This Amended Notice of Proposed Rulemaking is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico this 12th day of March, 2009.

NEW MEXICO PUBLIC REGULATION COMMISSION

SANDY JONES, CHAIRMAN

DAVID W. KING, VICE-CHAIRMAN

JASON MARKS, COMMISSIONER

JEROME D. BLOCK, COMMISSIONER

CAROL K. SLOAN, COMMISSIONER

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

**STATE OF NEW MEXICO
CONSTRUCTION INDUSTRIES
DIVISION
of the**

Regulation and Licensing Department

NOTICE OF PUBLIC HEARING

A Public Hearing on NMAC 14.6.7 - Consumer Protection, and proposed amendments to NMAC 14.6.6 - Classifications and Scopes, 14.5.2 - Permits, 14.6.3 - Contractor's Licensing Requirements, and 14.5.5 - Fees will be held **FROM 9:00 A.M. TO 12:00 NOON**, on the following dates at the corresponding locations:

* **MAY 5, 2009 A L B U - QUERQUE, NM** - CID Conference Room: 5200 Oakland Avenue, NE

* **MAY 6, 2009 L A S CRUCES, NM** - CID Conference Room, 505 S. Main St, Ste. 150 (Loretto Towne Center)

* **MAY 7, 2009 SANTA FE, NM** - CID Conference Room, 2550 Cerrillos Road, 3rd Floor, Santa Fe

Copies of the proposed and draft rule will be available at the Construction Industries Division's Santa Fe office and on the website, www.rld.state.nm.us/cid beginning April 20, 2009.

You are invited to attend and express your opinion on these proposed rules addition and changes. If you cannot attend the meeting, you may send your written comments to the Construction Industries Division, 2550 Cerrillos Road, P.O. Box 25101, Santa Fe, New Mexico 87504, Attention: Public Comments. FAX (505) 476-4685. All comments must be received no later than 5:00 p.m., May 5, 2009.

If you require special accommodations to attend the hearing, please notify the Division by phone, email or fax, of such needs no later than April 20, 2009. Telephone: 505-476-4686. Email: www.rld@state.nm.us/cid Fax No. 505-476-4685.

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

STATE OF NEW MEXICO
CONSTRUCTION INDUSTRIES
DIVISION
of the
Regulation and Licensing Department

NOTICE OF PUBLIC HEARING

A Public Hearing on the proposed adoption of the National Fire Protection Association 58, Liquefied Petroleum Gas Code, 2008 Edition will be held on **MONDAY, MAY 4, 2009, FROM 9:00 A.M. TO 12:00 P.M.**, at the following location:

ALBUQUERQUE, NM – CID Conference Room: 5200 Oakland Avenue, NE

Copies of NFPA 58, Liquefied Petroleum Gas Code will be available for review at the Construction Industries Division Albuquerque office beginning April 3, 2009.

You are invited to attend and express your opinion on these proposed rules changes. If you cannot attend the meeting, you may send your written comments to the Construction Industries Division, 2550 Cerrillos Road, P.O. Box 25101, Santa Fe, New Mexico 87504, Attention: Public Comments. FAX (505) 476-4685. All comments must be received no later than 5:00 p.m., May 4, 2009.

If you require special accommodations to attend the hearing, please notify the Division by phone, email or fax, of such needs no later than April 21, 2009. Telephone: 505-476-4700. Email: www.rld@state.nm.us/cid Fax No. 505-476-4685.

**End of Notices and
Proposed Rules Section**

Adopted Rules

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 11 BEAR AND COUGAR

19.31.11.1 ISSUING AGENCY:
New Mexico Department of Game and Fish.
[19.31.11.1 NMAC – Rp, 19.31.11.1 NMAC, 4-1-09]

19.31.11.2 S C O P E :
Sportspersons interested in bear and cougar management and hunting. Additional requirements may be found in Chapter 17, NMSA 1978, and Chapters 30, 31, 32 and 33 of Title 19.
[19.31.11.2 NMAC – Rp, 19.31.11.2 NMAC, 4-1-09]

**19.31.11.3 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.
[19.31.11.3 NMAC – Rp, 19.31.11.3 NMAC, 4-1-09]

19.31.11.4 DURATION: April 1,
2009 through March 31, 2011.
[19.31.11.4 NMAC – Rp, 19.31.11.4 NMAC, 4-1-09]

19.31.11.5 EFFECTIVE DATE:
April 1, 2009, unless a later date is cited at the end of individual sections.
[19.31.11.5 NMAC – Rp, 19.31.11.5 NMAC, 4-1-09]

19.31.11.6 O B J E C T I V E :
Establishing open hunting seasons and regulation, rules and procedures governing the distribution and issuance of bear and cougar licenses by the department.
[19.31.11.6 NMAC – Rp, 19.31.11.6 NMAC, 4-1-09]

19.31.11.7 DEFINITIONS:

A. “Arrows” shall mean only those arrows or bolts having broadheads with steel cutting edges.

B. “Baiting” shall mean the placing, exposing, depositing, distribut-

ing, or scattering of any salt, grain, scent or other feed on or over areas where hunters are attempting to take bear or cougar.

C. “Bear entry hunt” shall mean the valid official document containing a carcass tag and harvest reporting instructions awarded through a public drawing for hunting bear. This valid official permit shall entitle the holder of a bear license to hunt where hunter numbers are limited by rule.

D. “Bear license” shall mean a valid official document that is issued or approved by the director that each person that is hunting bear in New Mexico must have or obtain prior to hunting.

E. “Bear zones” as used herein, shall define hunt areas consisting of one or more game management units as documented in the state game commission’s rule 19.30.4 NMAC Boundary Descriptions for Wildlife Management Areas.

F. “Bow” shall mean compound, recurve, or long bow. Sights on bows shall not project light nor magnify.

G. “Cougar license” shall mean a valid official document that is issued or approved by the director that each person that is hunting cougar in New Mexico must have or obtain prior to hunting.

H. “Cougar zones” as used herein, shall define hunt areas consisting of one or more game management units as documented in the state game commission’s rule 19.30.4 NMAC Boundary Descriptions for Wildlife Management Areas.

I. “Crossbow” shall mean a device with a bow limb or band of flexible material that is attached horizontally to a stock and has a mechanism to hold the string in a cocked position. Sights on crossbows shall not project light nor magnify.

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

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

L. “Game management unit” or “GMU” shall mean those areas as described in the state game commission’s rule 19.30.4 NMAC Boundary Descriptions for Wildlife Management Areas.

M. “Hunter designee” shall mean a person given a written statement by the properly licensed hunter who lawfully killed and possessed the bear or cougar. A written statement consists of: the kind and number of bear and cougar, the date and game management unit of where the bear or cougar was lawfully taken, the

hunter’s name, address, and license number under which the bear or cougar was lawfully killed, and the date and place where written statement was given.

N. “License year” shall mean the period from April 1 through March 31.

O. “Modern firearms” shall mean center-fire firearms, not to include any fully automatic firearms. Legal shotguns shall be only those shotguns capable of being fired from the shoulder.

P. “Muzzle-loader or muzzle-loading firearms” shall mean those rifles and shotguns in which the charge and projectile are loaded through the muzzle. Only blackpowder, Pyrodex or equivalent blackpowder substitute may be used. Use of smokeless powder is prohibited. Legal muzzle-loader shotguns shall be only those shotguns capable of being fired from the shoulder.

Q. “Unlimited” shall mean there is no set limit on the number of permits or licenses established for the described hunt areas.

R. “Web site” shall refer to accessing the department’s internet address.

S. “Wildlife management areas” or “WMAs” shall mean those areas as described in the state game commission’s rule 19.30.4 NMAC Boundary Descriptions for Wildlife Management Areas.

[19.31.11.7 NMAC – Rp, 19.31.11.7 NMAC, 4-1-09]

19.31.11.8 ADJUSTMENT OF LICENSES, PERMITS, AUTHORIZATIONS, AND HARVEST LIMITS:

The director, with the verbal concurrence of the chairman or his designee, may adjust the number of licenses, permits or harvest limits, up or down by no more than 20% within the GMU or zone, to address significant changes in population levels or habitat availability. This adjustment may be applied to any or all of the specific hunt codes, harvest limits, or sustainable total mortality for bear and cougar. The director, with the verbal concurrence of the chairman or his designee, may also modify the season dates and manner and method of take to facilitate target removals or embedded quotas for cougars and bears in specific areas or zones for ungulate protection or conflict minimization in densely populated residential areas.

[19.31.11.8 NMAC – Rp, 19.31.11.8 NMAC, 4-1-09]

19.31.11.9 BEAR AND COUGAR LICENSE APPLICATION

REQUIREMENTS AND RESTRICTIONS:

A. One license per year: It shall be unlawful for anyone to hold more than one permit or license for any bear or cougar during the current license year unless otherwise allowed by rule.

B. Validity of license or permit: All bear entry permits or licenses shall be valid only for the specified dates, eligibility requirements or restrictions, legal sporting arms, bag limit and area specified by the hunt code printed on the permit, license, or carcass tag. Over-the-counter licenses shall be valid only for the specified dates, eligibility requirements or restrictions, legal sporting arms, bag limit and area specified by rule or regulation.

C. Valle Vidal (as described in 19.30.4.11 NMAC): It shall be unlawful to hunt bear on the Valle Vidal except for properly licensed bear hunters that possess a Valle Vidal elk hunting muzzleloader, bow, or rifle license and only during the dates of the elk hunt specified. Use of dogs shall not be allowed for bear hunting on the Valle Vidal.

D. Bear entry hunt: It shall be unlawful to hunt bear in designated wildlife management areas or other specifically designated special entry hunt areas without having a valid bear entry permit and a valid bear license in the hunter's possession. Bear entry hunters shall be allowed to hunt in any other open bear hunt provided they have a valid bear license and tag. No more than one (1) person may apply under each application number for bear entry permits.

E. License purchase: Cougar hunters must purchase a cougar license at least two days prior to hunting cougar. Bear hunters must purchase a bear license at least two days prior to hunting bear.

F. Youth only (YO) hunts: It shall be unlawful for anyone to participate in youth only (YO) hunts except as allowed by 19.31.3.11 NMAC.

G. Special restrictions for GMUs 15, 16, 17, 34, and 45: It shall be unlawful to hunt bears during any September bow only elk or deer season and during the first elk or deer season that follows the bow season (rifle or muzzleloader) in GMUs 15, 16, 17, 34, and 45 except elk or deer hunters who possess a valid and proper elk or deer license for the specified elk or deer hunt in addition to a valid and proper bear license. All bear hunters under this provision must adhere to the hunt area and weapon type restrictions specified by their elk or deer license.

H. Private land cougar permit: a private land cougar permit shall be required prior to taking any cougar on private land using traps or snares. This per-

mit will authorize the take of cougar on private land or deeded land only. [19.31.11.9 NMAC – Rp, 19.31.11.9 NMAC, 4-1-09]

19.31.11.10 BEAR AND COUGAR MANNER AND METHOD REQUIREMENTS AND RESTRICTIONS:

A. Season and hours: Bear or cougar may be hunted or taken only during open seasons and only during the period from one-half hour before sunrise to sunset and only in zones or areas designated as open on the department hotline or web-site. Twenty-four (24) hours prior to hunting bear or cougar, every hunter or hunter's designee must call the toll free number designated by the department or access the department's web site, www.wildlife.state.nm.us to determine if their desired hunt zone is open. Failure to call or check prior to hunting is unlawful. Cougar season in each zone will close within 72 hours of when the number of cougars harvested, in addition to all other known mortalities or removals, is within 10% of the female sub-limit, or 10% of the sustainable total mortality limit for that zone, whichever occurs first. Bear season in each zone will close within 72 hours of when the number of bears harvested, in addition to all other known mortalities or removals, is within 10% of the female sub-limit, or 10% of the sustainable total mortality limit for that zone, whichever occurs first. In cougar and bear zones where the female mortality sub-limit is 5 or less, the zone will close within 72 hours after reported harvest, in addition to all other known mortalities is within 20% of the female mortality sub-limit.

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

C. Tagging:
(1) Any license that permits the taking of any bear or cougar shall be issued with a bear or cougar tag bearing the name of the species.

(2) It shall be unlawful to possess more than one tag per bear or cougar except as permitted by regulation.

(3) It shall be unlawful for any licensee to fail to appropriately tag the bear or cougar as prescribed below:

(a) Immediately after killing any bear or cougar, the licensee killing the bear or cougar shall notch the proper day and month of kill from the bear or cougar tag.

(b) The tag shall be attached to the carcass or the pelt, which ever portion the hunter possesses of the bear or cougar and the tag shall remain attached to the carcass or pelt while the carcass or pelt is in

any vehicle, left unattended in the field, or while it is in camp or at a residence or other place of storage. When the bear or cougar is skinned, the tag must immediately be attached and remained attached to the pelt until a department official places a pelt tag on the pelt as described below. The notched tag may be removed from the carcass while the carcass is being removed from the field to a camp or vehicle. In situations where numerous trips are required to remove the carcass from the field, the tag shall remain attached to that portion of the carcass or pelt left in a camp or vehicle.

(4) A bear or cougar tag, when attached to the carcass or pelt of legally killed bear or cougar, shall authorize possession of the carcass or pelt for five (5) days. The hunter harvesting the bear or cougar must make arrangements with a department official to pelt tag the pelt before the five days (5) expires.

D. Proof of sex of bear or cougar: It shall be unlawful for anyone to transport or possess the pelt (even if the pelt is attached to the carcass) of bear or cougar without proof of sex. The external genitalia of any bear or cougar killed shall remain attached to the pelt and be readily visible until pelt has been inspected and tagged by a department official.

E. Bear and cougar pelt tagging requirements:

(1) Any bear or cougar killed shall be tagged with pelt tag furnished free of charge by the department.

(2) The hunter who kills the bear or cougar or his hunter designee must present the skull and pelt to a department official for tooth removal and pelt tagging within five days of killing the animal or before the pelt can be processed by a taxidermist or before taking the pelt out of New Mexico, whichever comes first. Exception: only skulls of female cougars will have a tooth removed by a department official.

(3) The pelt tag shall remain attached until the pelt is tanned.

(4) The skull of the bear or female cougar must remain unfrozen with the mouth fixed open for removal of a premolar tooth until the skull has been inspected by a department official.

F. Seizure: Any conservation officer or other officer authorized to enforce game laws and regulations shall seize the carcasses or pelts of bear or cougar that are improperly tagged, presented for pelt tagging without proof of sex attached or without presenting the skull along with the pelt.

G. Use of dogs in hunting: Dogs may be used only to hunt bear and cougar during specific open seasons unless otherwise restricted. Dogs shall not be used to pursue bear in any wildlife management area (WMA) as described in

19.30.4 NMAC. No dogs shall be used to pursue bear during bow seasons. Dogs may be used to pursue bears during hunts for any legal weapon and zones listed below. Dogs are required in zone 4. When dogs are used in pursuit of bear or cougar, the licensed hunter intending to harvest the bear or cougar must be present continuously once any dog is released.

H. Use of baits or scents: It shall be unlawful for anyone to take or attempt to take any bear or cougar by use of baits or scents as defined in 19.31.10.7 NMAC. Scent masking agents on one’s person are allowed.

I. Live animals: It shall be unlawful to use live animals as a blind or decoy in taking or attempting to take any bear or cougar.

J. Use of calling devices: It shall be unlawful to use any electrically or mechanically recorded calling device in taking or attempting to take any bear, such calling devices are allowed for taking cougar.

K. Killing out-of-season: It shall be unlawful to kill any bear or cougar out of their respective hunting seasons.

L. Bullets: It shall be unlawful to take or attempt to take bear or cougar by the use of tracer ammunition or any ammunition loaded with full metal jacketed bullets that does not expand or mushroom. Soft-nosed or hollow-pointed bullets may be used in hunting or taking bear or cougar.

M. Drugs and explosives: It shall be unlawful to use any form of drug on an arrow or use arrows driven by explosives.

N. Legal sporting arms or weapon types for bear and cougar are as follows: any center-fire rifle; any center-fire handgun; shotguns not smaller than 28 gauge, firing a single slug; muzzle-loading rifles; bows and arrows; and crossbows and bolts, (as designated by the director for certified mobility impaired hunters or as otherwise allowed in rule).

O. Areas closed to bear and cougar hunting: The following areas shall remain closed to bear and cougar hunting, except as permitted by regulation: Sugarite canyon state park; Rio Grande wild and scenic river area, including the Taos valley overlook; all wildlife management areas; the Valle Vidal area; and sub-unit 6B (Valles Caldera national preserve). Cougar hunting is closed in the Florida mountains hunt area during any open Persian ibex season.

P. The size and type of traps or snares or other reasonable methods that assist the take of cougars on private land will be allowed as designated by the director and chairman of the state game commission.

Q. Any take of cougar on public land by the use of traps or snares shall be unlawful and violators may be subject to enhanced civil assessment penalties pursuant to prospective future amendments to 19.30.11 NMAC.

[19.31.11.10 NMAC – Rp, 19.31.11.10 NMAC, 4-1-09]

19.31.11.11 BEAR HUNTING SEASONS:

A. Over-the-counter bear hunts for the 2009-2010 and 2010-2011 hunt seasons listing bear zones, open GMUs or areas within zones, eligibility requirements or restrictions, weapon type restrictions, season dates, sustainable total mortality limits, and female mortality sub-limits sport harvest limits as established by the ‘bear population assessment and harvest management matrix, October 2, 2008 version, are as follows:

(1) Bear hunts for the 2009-2010 hunting seasons: The Sandia ranger district portion of the Cibola national forest in zone 4 shall be open for hunting with bow only.

zone	open GMUs or areas	weapon type	season start date	season end date	sustainable total mortality	female mortality sub-limit
1	4, 5, 6, 7, 51, 52	bow only	09/01/2009	09/22/2009	87	35
1	4, 5, 6, 7, 51, 52	any legal weapon	09/23/2009	11/15/2009		
2	41, 42, 43, 45, 46, 47, 48, 49, 50, 53, 54, 55, 56, 57, 58 and 59 (special licensing requirements apply in GMU 45)	any legal weapon	08/16/2009 and 09/23/2009	08/31/2009 and 11/15/2009	166	66
2	41, 42, 43, 45, 46, 47, 48, 49, 50, 53, 54, 55, 56, 57, 58 and 59 (special licensing requirements apply in GMU 45)	bow only	09/01/2009	09/22/2009		
3	9 (except the Marquez WMA) and 10	any legal weapon	08/16/2009 and 09/23/2009	08/31/2009 and 11/15/2009	18	7
3	9 (except the Marquez WMA) and 10	bow only	09/01/2009	09/22/2009		
4	8 and 14	bow only	09/01/2009	09/22/2009	12	5
4	8 and 14 (bag limit 1 male bear)	any legal weapon	10/15/2009	11/15/2009		

5	12, 13, 15, 16, 17, 18, 20, 21, 22, 23, 24, 26, and 27 (special licensing requirements apply in GMUs 15, 16, and 17)	bow only	09/01/2009	09/24/2009		
5	12, 13, 15, 16, 17, 18, 20, 21, 22, 23, 24, 26, and 27 (special licensing requirements apply in GMUs 15, 16, and 17)	any legal weapon	08/16/2009 and 09/25/2009	08/31/2009 and 11/30/2009	77	31
6	34 sub-limits:				22	9
6	34, 36, 37 and 38 (special licensing requirements apply in GMU 34)	bow only	09/01/2009	09/22/2009		
6	34, 36, 37 and 38 (special licensing requirements apply in GMU 34)	any legal weapon	08/16/2009 and 09/23/2009	08/31/2009 and 11/30/2009	46	18

(2) **Bear hunts for the 2010-2011 hunting seasons:** The Sandia ranger district portion of the Cibola national forest in zone 4 shall be open for hunting with bow only.

zone	open GMUs or areas	weapon type	season start date	season end date	sustainable total mortality	female mortality sub-limit
1	4, 5, 6, 7, 51, 52	bow only	09/01/2010	09/22/2010		
1	4, 5, 6, 7, 51, 52	any legal weapon	09/23/2010	11/15/2010	87	35
2	41, 42, 43, 45, 46, 47, 48, 49, 50, 53, 54, 55, 56, 57, 58 and 59 (special licensing requirements apply in GMU 45)	any legal weapon	08/16/2010 and 09/23/2010	08/31/2010 and 11/15/2010		
2	41, 42, 43, 45, 46, 47, 48, 49, 50, 53, 54, 55, 56, 57, 58 and 59 (special licensing requirements apply in GMU 45)	bow only	09/01/2010	09/22/2010	166	66
3	9 (except the Marquez WMA) and 10	any legal weapon	08/16/2010 and 09/23/2010	08/31/2010 and 11/15/2010		
3	9 (except the Marquez WMA) and 10	bow only	09/01/2010	09/22/2010	18	7
4	8 and 14	bow only	09/01/2010	09/22/2010		
4	8 and 14 (bag limit 1 male bear)	any legal weapon	10/15/2010	11/15/2010	12	5
5	12, 13, 15, 16, 17, 18, 20, 21, 22, 23, 24, 26, and 27 (special licensing requirements apply in GMUs 15, 16, and 17)	bow only	09/01/2010	09/24/2010		
5	12, 13, 15, 16, 17, 18, 20, 21, 22, 23, 24, 26, and 27 (special licensing requirements apply in GMUs 15, 16, and 17)	any legal weapon	08/16/2010 and 09/25/2010	08/31/2010 and 11/30/2010	77	31
6	34 sub-limits:				22	9
6	34, 36, 37 and 38 (special licensing requirements apply in GMU 34)	bow only	09/01/2010	09/22/2010		

6	34, 36, 37 and 38 (special licensing requirements apply in GMU 34)	any legal weapon	08/16/2010 and 09/23/2010	08/31/2010 and 11/30/2010	46	18
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B. Entry hunts for the 2009-2010 and 2010-2011 hunting seasons shall be as indicated below, listing the open areas, hunt dates, hunt codes, number of permits, and bag limit. Dogs shall not be used to pursue bears during bear entry hunts except in GMU 2.

C. Valle Vidal area is closed to bear hunting except for any licensed bear hunter who legally possesses a license for an elk hunt on the Valle Vidal area may harvest a bear during their assigned elk hunt period, provided that zone 2 is open for bear hunting. Legal sporting arms for taking bear in the Valle Vidal area shall be the legal sporting arms for the concurrent elk hunt. Dogs shall not be allowed to pursue bear in the Valle Vidal area.

open areas	2009-2010 hunt start and end dates		2010-2011 hunt start and end dates		hunt code	permits	bag limit
Sargent WMA	08/01/2009	08/31/2009	08/01/2010	08/31/2010	BER-1-100	10	1 bear
Humphries WMA	08/01/2009	08/31/2009	08/01/2010	08/31/2010	BER-1-101	5	1 bear
Marquez WMA	08/01/2009	08/31/2009	08/01/2010	08/31/2010	BER-1-102	5	1 bear
E.S. Barker/Colin Neblett WMAs	08/01/2009	08/31/2009	08/01/2010	08/31/2010	BER-1-103	12	1 bear
GMU 2, YO	08/01/2009	08/31/2009	08/01/2010	08/31/2010	BER-1-104	5	1 bear

D. Bears taken from the Sargent and William A. Humphries WMAs in zone 1, Elliot Barker/Colin Neblett WMAs in zone 2, or Marquez WMA in zone 3 shall count towards the harvest limit in those zones. Bears removed by department management action will count against that zone's harvest limit. Bears relocated to other zones and harvested in the zone of release during that fall's hunt season will count against the zone of origin and not the zone where released. If a relocated bear is harvested in a subsequent year, the harvest counts as a normal kill in the zone of harvest.

E. Bag limit shall be one bear except any female accompanied by cub(s), or except any cub less than a year old, unless otherwise indicated.

[19.31.11.11 NMAC – Rp, 19.31.11.11 NMAC, 4-1-09]

19.31.11.12 COUGAR HUNTING SEASONS:

A. Private landowners or their designees who hunt on private land must obtain a private land cougar permit prior to trapping or snaring a cougar on private land. It shall be unlawful for any private land cougar hunter to take a cougar contrary to the allowable manner and method including traps and snares.

B. Cougar zones, open GMUs or areas within zones, eligibility requirements or restrictions, sustainable total mortality limits, and female mortality sub-limit established by the 'cougar population assessment and harvest management matrix, October 2, 2008 version, are as follows:

zone	open GMUs or areas	sustainable total mortality (relative to management objective.)	female mortality sub-limit
A	2 and 7	27	7
B	5, 50, and 51	15	4
C	43, 45, 46, 48, 49, 53, 54, and 55	53	13
D	41, 42, 47 and 59	13	3
E	9 (except the Marquez and Water canyon WMAs) and 10	30	8
F	6 and 8	19	5
G	13, 14 and 17	46	12
H	19 and 20	22	6
I	18, 36, 37, and 38	34	9
J	15, 16, 21, and 25	69	17
K	22, 23, and 24	38	10
L	26 and 27	13	3
M	31, 32, 33, 39, and 40	35	9
N	4 and 52	10	3
O	12	6	2
P	56, 57, and 58	11	3
Q	28, 29, 30, and 34	46	12

C. Bag limits shall be one cougar, except any female accompanied by a spotted kitten(s), and except any spotted kitten.

[19.31.11.12 NMAC – Rp, 19.31.11.12 NMAC, 4-1-09]

19.31.11.13 - 19.31.11.14 [RESERVED]

19.31.11.15 PROCEDURES FOR CONDUCTING COUGAR DEPREDATION CONTROL IN OCCUPIED BIGHORN SHEEP RANGES:

A. The department shall investigate all bighorn sheep deaths to determine if cougar depredation has occurred. To determine cougar depredation, a field examination and a standardized necropsy of the dead bighorn sheep shall be completed by a department employee or contractor.

B. Should it be determined that a depredation has occurred, the following procedures will be used.

(1) The department will make a written evaluation of the following: viability of the statewide bighorn population, review of long-term and recent data on the local population (or meta-population) review of data on recent predation, alternative management options such as habitat manipulation or transplants, feasibility of taking the offending animal(s), effects on the predator population, and feasibility of having a positive effect on the local bighorn population.

(2) The wildlife management division and the appropriate area operations office will be contacted.

(3) A permit for the taking of each depredating cougar(s) will be issued to the local district wildlife officer. Physical possession of the permit is not required to initiate action.

(4) A decision to hound hunt or snare will be based on evidence at the kill site.

(5) If the bighorn sheep kill is fresh enough that the cougar may return or is likely to still be in the immediate area, the department will attempt to get a hound-hunter or trapper to begin hunting the cougar(s) the same day the bighorn carcass is discovered.

(6) The size of the hunted area will be determined from the sex and in some cases number of cougars (i.e. female with kittens) involved in the bighorn kill.

(7) Where possible, cougar feces shall be taken at the scene of the depredation and tissue samples from the cougar killed by the hunter(s) will be collected. Deoxyribonucleic acid (DNA) testing will be performed to determine if the scat and tissue samples are from the same cougar.
[19.31.11.15 NMAC – Rp, 19.31.11.15 NMAC, 4-1-09]

19.31.11.16 DURATION OF DEPREDATION CONTROL PROGRAMS: The duration of the special permit to take depredating cougars shall be for no more than six weeks from the onset to the end of the measures taken. An evaluation and justification for extension of the permit shall be written before measures will

continue beyond 6 weeks.

[19.31.11.16 NMAC – Rp, 19.31.11.16 NMAC, 4-1-09]

19.31.11.17 PROCEDURES FOR CONDUCTING PREVENTIVE COUGAR CONTROL IN BIGHORN SHEEP RANGES:

A. The New Mexico department of game and fish may conduct preventive cougar control within bighorn sheep ranges identified as: that portion of GMU 13 including Mesa Sarca, the entire Ladron mountain range, including the area along the Rio Salado west of the Sevilleta national wildlife refuge (SNWR) border to Riley road to include the area 3 miles north of the Rio Salado and 1 mile south of the Rio Salado; a 2 mile wide area from the west boundary of the SNWR from the Rio Salado to the southwest corner of the SNWR; and an area south of the SNWR to include Polvadera mountain and Socorro mountain in a line directly south of the southwest corner of the SNWR to NM highway 60 and east on NM highway 60 to interstate 25 and north on interstate 25 to the southeast corner of the SNWR and then west along the south border of the SNWR to the southwest corner of the SNWR. SNWR and New Mexico tech property are closed to all cougar hunting; that portion of the Manzano mountains in GMU 14 from Comanche canyon south to US 60 and from the western base of the mountains east to the ridge comprised of Capilla, Osha and Manzano peaks and all of Sand, Priest and Abo canyons; that portion of GMU 19 beginning at the intersection of US 70 and interstate 25 (I-25) running south along I-25 to its intersection with I-10, thence south along I-10 to its intersection with the Texas/New Mexico state line, thence east along the state line to its intersection with NM 213, thence north along NM 213, which in turn becomes White Sands missile range (WSMR) range road 1 to its intersections with US 70, thence east along US 70 to its intersection with WSMR range road 7, thence north along WSMR range road 7 to its intersection with WSMR range road 8, thence northeast along WSMR range road 8 to the intersection with WSMR range road 12, thence east along WSMR range road 12 to its intersection with WSMR range road 11, thence north along WSMR range road 11 to its intersection with the northern boundary of WSMR, thence west along the WSMR boundary to its intersection with WSMR range road 13, thence south along WSMR range road 13 to its intersection with WSMR range road 16, thence south on WSMR range road 16 to its intersection with WSMR range road 5, thence continue west to the western boundary of WSMR thence south along the WSMR boundary to its intersection with US 70, then west along

US 70 to its intersection with I-25; that portion of GMU subunit 16B west of the west fork of the Gila river and south of the Catron/Grant county line; all of GMU 22; that portion of GMU 23 that is south of the Apache and Gila national forest boundary and north of NM 78; that portion of GMU 24 that is west of NM 15; that portion of GMU 20 including all of the Caballo mountain range south of highway 51, east and north of I-25, and west of the BNSF railroad tracks; that portion of GMU 58 including all of the Dry Cimarron drainage from the Colorado border to 6 miles south of highway 456, east to the Oklahoma border and west to highway 551, and all of GMU's 26 and 27.

B. The total number of cougars removed per license year from any zone containing bighorn ranges will not exceed the sustainable mortality limit for that zone unless approved by the director pursuant to 19.31.11.8 NMAC.

C. The department will obtain the services of houndsmen or trappers either from the department's depredation list or through private contract.

D. A decision to hunt with hounds or to use snares will be made by the department.

E. All cougars taken for preventive control will be reported to the department.

F. The department will provide a program evaluation update to the commission no later than December biennially beginning in December 2010.

[19.31.11.17 NMAC – Rp, 19.31.11.17 NMAC, 4-1-09]

**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 12 BARBARY SHEEP,
ORYX, AND PERSIAN IBEX**

19.31.12.1 ISSUING AGENCY:
New Mexico Department of Game and Fish.

[19.31.12.1 NMAC – Rp, 19.31.12.1 NMAC, 4-1-09]

19.31.12.2 S C O P E :
Sportspersons interested in Barbary sheep, oryx, and Persian ibex management and hunting. Additional requirements may be found in Chapter 17, NMSA 1978, and Chapters 30, 31, 32 and 33 of Title 19.

[19.31.12.2 NMAC – Rp, 19.31.12.2 NMAC, 4-1-09]

19.31.12.3 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.

[19.31.12.3 NMAC – Rp, 19.31.12.3 NMAC, 4-1-09]

19.31.12.4 DURATION: April 1, 2009 through March 31, 2011.

[19.31.12.4 NMAC – Rp, 19.31.12.4 NMAC, 4-1-09]

19.31.12.5 EFFECTIVE DATE: April 1, 2009, unless a later date is cited at the end of individual sections.

[19.31.12.5 NMAC – Rp, 19.31.12.5 NMAC, 4-1-09]

19.31.12.6 OBJECTIVE: Establishing open hunting seasons and regulation, rules, and procedures governing the distribution and issuance of Barbary sheep, oryx, and Persian ibex permits and licenses by the department.

[19.31.12.6 NMAC – Rp, 19.31.12.6 NMAC, 4-1-09]

19.31.12.7 DEFINITIONS:

A. “Arrows” shall mean only those arrows or bolts having broad-heads with steel cutting edges.

B. “Baiting” shall mean the placing, exposing, depositing, distributing, or scattering of any salt, grain, scent or other feed on or over areas where hunters are attempting to take Barbary sheep, oryx, or Persian ibex.

C. “Bow” shall mean compound, recurve, or long bow. Sights on bows shall not project light nor magnify.

D. “Broken-horned oryx” or “BHO” shall mean an oryx of either sex that possesses at least one horn missing at least 25% of its normal growth. This may be determined by comparing the broken horn’s length to the remaining horn or where it is readily apparent the terminal end would not taper to a point for another 25% of growth.

E. “Crossbow” shall mean a device with a bow limb or band of flexible material that is attached horizontally to a stock and has a mechanism to hold the string in a cocked position. Sights on crossbows shall not project light nor magnify.

F. “Department” shall mean the New Mexico department of game

and fish.

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

H. “ES or either sex” shall mean any one animal of the species.

I. “F-IM or female or immature Persian ibex” shall mean a Persian ibex with horns less than 15 inches long.

J. “Game management unit” or “GMU” shall mean those areas as described in the state game commission’s rule 19.30.4 NMAC Boundary Descriptions for Wildlife Management Areas.

K. “License” shall mean a valid official document that is issued or approved by the director that each person hunting Barbary sheep, oryx, or Persian ibex in New Mexico must have or obtain prior to hunting.

L. “License year” shall mean the period from April 1 through March 31.

M. “Male Persian ibex” shall mean any Persian ibex of the male gender.

N. “Modern firearms” shall mean center-fire firearms, not to include any fully automatic firearms. Legal shotguns shall be only those shotguns capable of being fired from the shoulder.

O. “Muzzle-loader or muzzle-loading firearms” shall mean those rifles and shotguns in which the charge and projectile are loaded through the muzzle. Only blackpowder, Pyrodex or equivalent blackpowder substitute may be used. Use of smokeless powder is prohibited. Legal muzzle-loader shotguns shall be only those shotguns capable of being fired from the shoulder.

P. “Premier” or “once-in-a-lifetime oryx” shall mean those special hunts, or licenses, that are restricted by rule or regulation to those persons that never held a license for an “once-in-a-lifetime” oryx hunt.

Q. “TBD” or “to be determined” shall mean the details of hunt dates or hunt areas will be provided by the department, or military agency where the hunt will occur, to the hunter when the designated hunt is initiated.

R. “Unlimited” shall mean there is no set limit on the number of permits or licenses established for the described hunt areas.

S. “Web sale” or “Web site” shall refer to accessing the department’s Internet address.

T. “Wildlife management areas” or “WMAs” shall mean those areas as described in the state game commission’s rule 19.30.4 NMAC Boundary Descriptions for Wildlife Management

Areas.

U. “Iraq/Afghanistan veterans” or “I/A vets” shall refer to only New Mexico residents returning from military service in Iraq or Afghanistan as eligible to apply for designated oryx hunts.

V. “TBA” or “to be assigned” shall mean the details of hunt dates or hunt areas will be assigned or restricted by the military agency where the hunt will occur.

[19.31.12.7 NMAC – Rp, 19.31.12.7 NMAC, 4-1-09]

19.31.12.8 ADJUSTMENT OF LICENSES, PERMITS, AUTHORIZATIONS, AND HARVEST LIMITS: The

director, with the verbal concurrence of the chairman or his designee, may adjust the number of licenses, permits, or authorizations, up or down by no more than 20% to address significant changes in population levels or habitat availability. This adjustment may be applied to any or all of the specific hunt codes for Persian ibex. The director, at his discretion, may adjust the number of oryx licenses and hunt dates on White Sands missile range pending negotiations with White Sands missile range officials. Hunt dates may extend into future hunting seasons. The director may change or cancel all hunts on military lands to accommodate closures on those lands; provided the season length and bag limit shall remain the same as assigned on original hunt code.

[19.31.12.8 NMAC – Rp, 19.31.12.8 NMAC, 4-1-09]

19.31.12.9 BARBARY SHEEP, ORYX, AND PERSIAN IBEX LICENSE APPLICATION REQUIREMENTS AND RESTRICTIONS:

A. One license per Barbary sheep, oryx, or Persian ibex per year: It shall be unlawful for anyone to hold more than one permit or license for any Barbary sheep, oryx, or Persian ibex during a current license year unless otherwise allowed by rule. Multiple Persian ibex carcass tags are allowed to persons holding an official, valid license for the off-mountain Persian ibex hunt (IBX-1-528).

B. Validity of license or permit: All oryx and Persian ibex entry permits or licenses shall be valid only for the specified dates, eligibility requirements or restrictions, legal sporting arms, bag limit and area specified by the hunt code printed on the permit, license, or carcass tag. Over-the-counter licenses shall be valid only for the specified dates, eligibility requirements or restrictions, legal sporting arms, bag limit and area specified by rule or regulation.

C. Ibx once-in-a-lifetime: It shall be unlawful for anyone to apply for an once-in-a-lifetime ibex license

if he/she ever held a once in a lifetime license to hunt ibex. Persian ibex hunts for youth, muzzle-loading rifles, bows, year-round off-mountain hunts, and hunts for female or immature (F-IM) ibex, are not restricted to those persons that never held an once-in-a-lifetime Persian ibex hunting license.

D. Oryx once-in-a lifetime: It shall be unlawful, beginning April 1, 1993, for anyone to apply for a premier, or, once-in-a-lifetime, oryx license if he/she ever held an "once-in-a-lifetime" license to hunt oryx. Once-in-a-lifetime oryx hunts include all premier or trophy on-range, mobility impaired, and Iraq/Afghanistan veteran hunts. Hunts not once-in-a-lifetime include population management, WSMR security badged, broken-horned, youth, and incentive hunts. Anyone may apply for population management, youth, and incentive hunts regardless if they held a license for an once-in-a-lifetime hunt, if they have met the other applicable requirements or restrictions. Those who have held a once-in-a-lifetime oryx hunting license, may apply for broken-horned hunts.

E. Mobility impaired (MI) oryx hunts: It shall be unlawful for anyone to apply for a mobility impaired (MI) oryx license, except as allowed by 19.31.3.11 NMAC.

F. Youth only (YO) oryx and Persian ibex hunts: It shall be unlawful for anyone to apply for youth only (YO) oryx or Persian ibex license except as allowed by 19.31.3.11 NMAC.

G. Military only Barbary sheep and oryx hunts: It shall be unlawful for anyone to apply for a military only Barbary sheep or oryx license, except as allowed by 19.31.3.11 NMAC.

H. Iraq/Afghanistan veterans hunts: It shall be unlawful for anyone to apply for an Iraq/Afghanistan veteran oryx license, except as allowed by 19.31.3.11 NMAC. [19.31.12.9 NMAC – Rp, 19.31.12.9 NMAC, 4-1-09]

19.31.12.10 BARBARY SHEEP, ORYX, AND PERSIAN IBEX MANNER AND METHOD REQUIREMENTS AND RESTRICTIONS:

A. Season and hours: Barbary sheep, oryx or Persian ibex may be hunted or taken only during open seasons and only during the period from one-half hour before sunrise to sunset.

B. Bag limit: It is unlawful for any person to hunt for or take more than one Barbary sheep, oryx or Persian ibex during a current license year unless otherwise provided by regulation.

C. Tagging:

(1) Any license that permits the tagging of Barbary sheep, oryx, or Persian

ibex shall be issued with a carcass tag bearing the name of the species.

(2) It shall be unlawful to possess more than one carcass tag per Barbary sheep, oryx or Persian ibex except as permitted by regulation. Multiple Persian ibex carcass tags are allowed to persons holding an official, valid license for the off-mountain Persian ibex hunt (IBX-1-528).

(3) It shall be unlawful for any licensee to fail to tag the Barbary sheep, oryx, or Persian ibex as prescribed below:

(a) Immediately after killing any Barbary sheep, oryx or Persian ibex the licensee killing the game shall notch the proper day and month of kill from the Barbary sheep, oryx or Persian ibex tag.

(b) The tag shall be attached to the carcass of Barbary sheep, oryx or Persian ibex and the tag shall remain attached to the carcass while the carcass is in any vehicle, left unattended in the field, or while it is in camp or at a residence or other place of storage. The notched tag may be removed from the carcass while the carcass is being removed from the field to a camp or vehicle. In situations where numerous trips are required to remove the carcass from the field, the tag shall remain attached to that portion of the carcass left in a camp or vehicle.

(4) A Barbary sheep, oryx or Persian ibex tag, when attached to the carcass of legally taken game, shall authorize possession and storage for the period designated on the tag.

D. Seizure: Any conservation officer or other officer authorized to enforce game laws and regulations shall seize the carcasses of Barbary sheep, oryx or Persian ibex that are improperly tagged.

E. Proof of sex: It shall be unlawful for anyone to transport or possess the carcass of any Persian ibex without proof of sex. The horns of any Persian ibex shall remain attached to the skull until arriving at a residence, taxidermist, meat processing facility, or place of final storage. The scalp and both ears of females or immature males of Persian ibex shall accompany the carcass in the same manner.

F. Proof of bag limit: It shall be unlawful for anyone to transport or possess the carcass of any oryx without proof of bag limit. The horns of any oryx taken shall remain attached to the skull until arriving at a residence, taxidermist, meat processing facility, or place of final storage.

G. Use of dogs in hunting: It shall be unlawful to use dogs to hunt any Barbary sheep, oryx or Persian ibex.

H. Use of baits or scents: It shall be unlawful for anyone to take or attempt to take any Barbary sheep, oryx or Persian ibex by use of baits or scents as defined in 19.31.10.7 NMAC. Scent masking agents on one's person are allowed.

I. Live animals: It shall be unlawful to use live animals as a blind or decoy in taking or attempting to take any Barbary sheep, oryx or Persian ibex.

J. Use of calling devices: It shall be unlawful to use any electrically or mechanically recorded calling device in taking or attempting to take any Barbary sheep, oryx or Persian ibex.

K. Killing out-of-season: It shall be unlawful to kill any Barbary sheep, oryx or Persian ibex out of their respective hunting seasons.

L. Legal sporting arms or weapon types for oryx are as follows: any center-fire rifle of .24 caliber or larger; any center-fire handgun of .24 caliber or larger; shotguns not smaller than 28 gauge, firing a single slug; muzzle-loading rifles not smaller than .45 caliber; bows and arrows; and crossbows and bolts (as designated by the director for certified mobility impaired hunters or as otherwise allowed in rule).

M. Legal sporting arms or weapon types for Barbary sheep and Persian ibex are as follows: any center-fire rifle; any center-fire handgun; shotguns not smaller than 28 gauge, firing a single slug; muzzle-loading rifles; bows and arrows; and crossbows and bolts (as designated by the director for certified mobility impaired hunters or as otherwise allowed in rule).

N. Areas closed to hunting: The following areas shall remain closed to hunting Barbary sheep, oryx, and Persian ibex, except as permitted by regulation: Sugarite canyon state park; Rio Grande wild and scenic river area, including the Taos valley overlook; all wildlife management areas; the Valle Vidal area; and sub-unit 6B (Valles Caldera national preserve).

O. Restricted areas on White Sands missile range: It shall be unlawful:

(1) to drive or ride in a motor vehicle into an area signed *no hunting* or otherwise restricting hunting or as documented on a map or as presented during the hunt's briefing, except if the hunter or driver is escorted by official personnel;

(2) for a licensed hunter to enter an area signed *no hunting* or otherwise restricting hunting except if the hunter is escorted by official personnel;

(3) for a licensed security badged hunter to hunt or take any oryx in an area other than their TBA area.

[19.31.12.10 NMAC – Rp, 19.31.12.10 NMAC, 4-1-09]

19.31.12.11 BARBARY SHEEP HUNTING SEASONS: Barbary sheep hunts shall be as indicated below, listing the open GMUs or areas, eligibility requirements or restrictions, hunt dates, hunt

codes, number of licenses, and bag limit. Public land Barbary sheep licenses for GMUs 29-34 and 36-37 are available only through application in the special entry draw. Private land only licenses for GMUs 29-34 and 36-37 shall not be issued through the public draw and will only be available from department offices or through the department’s web site and shall only be valid on deeded private lands. The department shall issue military only Barbary sheep hunting licenses for McGregor range to full time military personnel providing a valid access authorization issued by Fort Bliss.

A. Southeast area public lands special entry hunts for the 2009–2010 and 2010-2011 seasons:

open GMUs or areas	2009-2010 hunt start and end dates		2010-2011 hunt start and end dates		hunt code	licenses	bag limit
29, 31, 32, 33, 34, 36, 37	02/01/2010	03/15/2010	02/01/2011	03/15/2011	BBY-1-100	600	ES
30	02/01/2010	02/28/2010	02/01/2011	02/28/2011	BBY-1-101	600	ES
28 McGregor range, military only	12/26/2009	12/27/2009	01/01/2011	01/02/2011	BBY-1-102	5	ES

B. Southeast area private land-only hunts for the 2009-2010 and 2010-2011 seasons: Private land-only licenses shall only be available through department offices or department’s web site.

open GMUs or areas	2009-2010 hunt start and end dates		2010-2011 hunt start and end dates		hunt code	licenses	bag limit
29, 31, 32, 33, 34, 36, 37.	02/01/2009	03/15/2009	02/01/2011	3/15/2011	BBY-1-200	unlimited	ES
30.	02/01/2009	02/28/2009	02/01/2011	02/28/2011	BBY-1-201	unlimited	ES

C. Over-the-counter hunts for the 2009–2010 and 2010-2011 seasons: The hunt area shall be statewide (including Water canyon WMA in GMU 9) except those GMUs with bighorn sheep (8, 13, 14, 16, 22, 23, 24, 26, and 27), WSMR and Fort Bliss portions of GMU 19, and those GMUs in the southeast area (28, 29, 30 31, 32, 33, 34, 36, and 37).

open GMUs or areas	2009-2010 hunt start and end dates		2010-2011 hunt start and end dates		hunt code	licenses	bag limit
statewide, including water canyon WMA in GMU 9 and except GMUs 8, 13, 14, 16, 19 (WSMR and Fort Bliss portions), 22, 23, 24, 26, 27, 28, 29, 30 31, 32, 33, 34, 36, 37.	04/01/2009	03/31/2010	04/01/2010	03/31/2011	BBY-1-300	unlimited	ES

D. Barbary sheep population management hunts:

(1) The respective area chief may authorize population management hunts for Barbary sheep when justified in writing by department personnel.

(2) The respective area chief shall designate the sporting arms, season dates, season lengths, bag limits, hunt boundaries, and number of licenses. No qualifying license holder shall take more than one Barbary sheep per license year.

(3) The specific hunt dates, hunt area, the name of the department representative providing the information and the date and time of notification shall be written on the license after notification by telephone.

(4) Application may be made either on-line or through the special hunt application form provided by the department. On-line applications must be submitted by the deadline date set by the department. Application forms postmarked by the deadline date will be accepted up to five working days after the deadline date.

(5) Applications for licenses may be rejected, and fees returned to an applicant, if such applications are not on the proper form or do not supply adequate information.

(6) In the event that an applicant is not able to hunt on the dates specified, the applicant’s name shall be moved to the bottom of the list and another applicant may be contacted for the hunt.

(7) No more than one person may apply under each application.

(8) Population management hunts for Barbary sheep may be anywhere in the state with dates, number of licenses, bag limit, and specific hunt areas to be determined by the department. The hunt code to apply for Barbary sheep population management hunts shall be BBY-5-100.

(9) In those instances where a population management hunt is warranted on deeded private lands, the landowner may suggest eligible hunters of their choice by submitting a list of prospective hunter’s names to the department for licensing consideration. No more than ½ of the total number of licenses authorized shall be available to landowner identified hunters. The balance of prospective hunters shall be identified by the department.

[19.31.12.11 NMAC – Rp, 19.31.12.11 NMAC, 4-1-09]

19.31.12.12 ORYX HUNTING SEASONS:

A. Oryx premier hunts for any legal weapon and shall be as indicated below, listing the open areas, eligibility require-

ments or restrictions, hunt dates, hunt code, number of licenses and bag limit. Two persons may apply on one application. These hunts are restricted; only those who have never held an oryx once-in-lifetime license may apply. Only New Mexico residents returning from military service in Iraq or Afghanistan are eligible to apply for oryx hunts designated as "Iraq/Afghanistan vets" or "I/A vets". Proof of military service in Iraq or Afghanistan must accompany application or, if applying online, forwarded to the department by the application deadline date, pursuant to 19.31.3.11 NMAC.

open areas	2009-2010 hunt season		2010-2011 hunt season		hunt code	lic.	bag limit
	hunt start	hunt end	hunt start	hunt end			
Rhodes canyon	08/22/2009	08/23/2009	08/21/2010	08/22/2010	ORX-1-100	90	ES
Rhodes canyon I/A vets	08/22/2009	08/23/2009	08/21/2010	08/22/2010	ORX-1-101	5	ES
Rhodes canyon	10/10/2009	10/11/2009	10/09/2010	10/10/2010	ORX-1-102	90	ES
Rhodes canyon I/A vets	10/10/2009	10/11/2009	10/09/2010	10/10/2010	ORX-1-103	5	ES
Rhodes canyon	12/12/2009	12/13/2009	12/11/2010	12/12/2010	ORX-1-104	90	ES
Rhodes canyon I/A vets	12/12/2009	12/13/2009	12/11/2010	12/12/2010	ORX-1-105	5	ES
Rhodes canyon	01/30/2010	01/31/2010	01/29/2011	01/29/2011	ORX-1-106	90	ES
Rhodes canyon I/A vet s	01/30/2010	01/31/2010	01/29/2011	01/29/2011	ORX-1-107	5	ES
Rhodes canyon	02/27/2010	02/28/2010	02/26/2011	02/27/2011	ORX-1-108	90	ES
Rhodes canyon I/A vets	02/27/2010	02/28/2010	02/26/2011	02/27/2011	ORX-1-109	5	ES
small missile range	09/26/2009	09/27/2009	09/25/2010	09/26/2010	ORX-1-110	40	ES
small missile range I/A vets	09/26/2009	09/27/2009	09/25/2010	09/26/2010	ORX-1-111	5	ES
small missile range	01/02/2010	01/03/2010	01/01/2011	01/02/2011	ORX-1-112	40	ES
small missile range I/A vets	01/02/2010	01/03/2010	01/01/2011	01/02/2011	ORX-1-113	5	ES
stallion range	08/15/2009	08/16/2009	08/14/2010	08/15/2010	ORX-1-114	90	ES
stallion range I/A vets	08/15/2009	08/16/2009	08/14/2010	08/15/2010	ORX-1-115	5	ES
stallion range	11/14/2009	11/15/2009	11/13/2010	11/14/2010	ORX-1-116	90	ES
stallion range I/A vets	11/14/2009	11/15/2009	11/13/2010	11/14/2010	ORX-1-117	5	ES
stallion range	01/16/2010	01/17/2010	01/15/2011	01/16/2011	ORX-1-118	90	ES
stallion range I/A vets	01/16/2010	01/17/2010	01/15/2011	01/16/2011	ORX-1-119	5	ES
stallion range	02/13/2010	02/14/2010	02/12/2011	02/13/2011	ORX-1-120	90	ES
stallion range I/A vets	02/13/2010	02/14/2010	02/12/2011	02/13/2011	ORX-1-121	5	ES
stallion range	03/20/2010	03/21/2010	03/19/2011	03/20/2011	ORX-1-122	90	ES
stallion range I/A vets	03/20/2010	03/21/2010	03/19/2011	03/20/2011	ORX-1-123	5	ES
mobility impaired	TBA	TBA	TBA	TBA	ORX-1-124	15	ES

B. Oryx restricted on-range hunts, shall be as indicated below or as specific dates and hunt areas are determined by the department. The following hunts have restrictions that must be met prior to application. These hunts are not once-in-a-lifetime oryx hunts. Oryx WSMR security-badged hunts are available only to personnel with official valid security badges, or their guests, in accordance with White Sands missile range provisions and pursuant to 19.31.3.11 NMAC. Youth hunters must provide hunter education certificate number on application.

open areas	2009-2010 hunt start and end dates		2010-2011 hunt start and end dates		hunt code	lic.	bag limit
WSMR security badged: TBA	05/01/2009	05/31/2009	05/01/2010	05/31/2010	ORX-1-130	40	ES
WSMR security badged: TBA	08/01/2009	08/31/2009	08/01/2010	08/31/2010	ORX-1-131	40	ES
WSMR security badged: TBA	09/01/2009	09/30/2009	09/01/2010	09/30/2010	ORX-1-132	40	ES
WSMR security badged: TBA	10/01/2009	10/31/2009	10/01/2010	10/31/2010	ORX-1-133	40	ES
WSMR security badged: TBA	11/01/2009	11/30/2009	11/01/2010	11/30/2010	ORX-1-134	40	ES
WSMR security badged: TBA	01/01/2010	01/31/2010	01/01/2011	01/31/2011	ORX-1-135	40	ES
WSMR security badged: TBA	02/01/2010	02/28/2010	02/01/2011	02/28/2011	ORX-1-136	40	ES
WSMR security badged: TBA	03/01/2010	03/31/2010	03/01/2011	03/31/2011	ORX-1-137	40	ES

stallion range, YO	09/12/2009	09/13/2009	09/11/2010	09/12/2010	ORX-1-138	20	ES
Rhodes canyon	08/22/2009	08/23/2009	08/21/2010	08/22/2010	ORX-1-139	15	BHO
Rhodes canyon	10/10/2009	10/11/2009	10/09/2010	10/10/2010	ORX-1-140	15	BHO
Rhodes canyon	12/12/2009	12/13/2009	12/11/2010	12/12/2010	ORX-1-141	15	BHO
Rhodes canyon	01/30/2010	01/31/2010	01/29/2011	01/30/2011	ORX-1-142	15	BHO
Rhodes canyon	02/27/2010	02/28/2010	02/26/2011	02/27/2011	ORX-1-143	15	BHO
small missile range	09/26/2009	09/27/2009	09/25/2010	09/26/2010	ORX-1-144	5	BHO
small missile range	01/02/2010	01/03/2010	01/01/2011	01/02/2011	ORX-1-145	5	BHO
stallion range	08/15/2009	08/16/2009	08/14/2010	08/15/2010	ORX-1-146	15	BHO
stallion range	11/14/2009	11/15/2009	11/13/2010	11/14/2010	ORX-1-147	15	BHO
stallion range	01/16/2010	01/17/2010	01/15/2011	01/16/2011	ORX-1-148	15	BHO
stallion range	02/13/2010	02/14/2010	02/12/2011	02/13/2011	ORX-1-149	15	BHO
stallion range	03/20/2010	03/21/2010	03/19/2011	03/20/2011	ORX-1-150	15	BHO

C. Oryx hunts off of White Sands missile range shall be as indicated below, listing the open areas, eligibility requirements or restrictions, hunt dates, hunt code, number of licenses and bag limit.

open areas	2009-2010 hunt start and end dates		2010-2011 hunt start and end dates		hunt code	lic.	bag limit
statewide, off-range	04/01/2009	04/30/2009	04/01/2010	04/30/2010	ORX-1-200	50	ES
statewide, off-range; YO	04/01/2009	04/30/2009	04/01/2010	04/30/2010	ORX-1-201	15	ES
statewide, off-range	05/01/2009	05/31/2009	05/01/2010	05/31/2010	ORX-1-202	50	ES
statewide, off-range; YO	05/01/2009	05/31/2009	05/01/2010	05/31/2010	ORX-1-203	15	ES
statewide, off-range	06/01/2009	06/30/2009	06/01/2010	06/30/2010	ORX-1-204	50	ES
statewide, off-range; YO	06/01/2009	06/30/2009	06/01/2010	06/30/2010	ORX-1-205	15	ES
statewide, off-range	07/01/2009	07/31/2009	07/01/2010	07/31/2010	ORX-1-206	50	ES
statewide, off-range; YO	07/01/2009	07/31/2009	07/01/2010	07/31/2010	ORX-1-207	15	ES
statewide, off-range	08/01/2009	08/31/2009	08/01/2010	08/31/2010	ORX-1-208	50	ES
statewide, off-range; YO	08/01/2009	08/31/2009	08/01/2010	08/31/2010	ORX-1-209	15	ES
statewide, off-range	09/01/2009	09/30/2009	09/01/2010	09/30/2010	ORX-1-210	50	ES
statewide, off-range; YO	09/01/2009	09/30/2009	09/01/2010	09/30/2010	ORX-1-211	15	ES
statewide, off-range	10/01/2009	10/31/2009	10/01/2010	10/31/2010	ORX-1-212	50	ES
statewide, off-range; YO	10/01/2009	10/31/2009	10/01/2010	10/31/2010	ORX-1-213	15	ES
statewide, off-range	11/01/2009	11/30/2009	11/01/2010	11/30/2010	ORX-1-214	50	ES
statewide, off-range; YO	11/01/2009	11/30/2009	11/01/2010	11/30/2010	ORX-1-215	15	ES
statewide, off-range	12/01/2009	12/31/2009	12/01/2010	12/31/2010	ORX-1-216	50	ES
statewide, off-range; YO	12/01/2009	12/31/2009	12/01/2010	12/31/2010	ORX-1-217	15	ES
statewide, off-range	01/01/2010	01/31/2010	01/01/2011	01/31/2011	ORX-1-218	50	ES
statewide, off-range; YO	01/01/2010	01/31/2010	01/01/2011	01/31/2011	ORX-1-219	15	ES
statewide, off-range	02/01/2010	02/28/2010	02/01/2011	02/28/2011	ORX-1-220	50	ES
statewide, off-range; YO	02/01/2010	02/28/2010	02/01/2011	02/28/2011	ORX-1-221	15	ES
statewide, off-range	03/01/2010	03/31/2010	03/01/2011	03/31/2011	ORX-1-222	50	ES
statewide, off-range; YO	03/01/2010	03/31/2010	03/01/2011	03/31/2011	ORX-1-223	15	ES
McGregor range	01/09/2010	01/10/2010	01/08/2011	01/09/2011	ORX-1-224	25	ES
McGregor range, military only	01/09/2010	01/10/2010	01/08/2011	01/09/2011	ORX-1-225	25	ES
McGregor range	02/06/2010	02/07/2010	02/05/2011	02/06/2011	ORX-1-226	25	ES
McGregor range, military only	02/06/2010	02/07/2010	02/05/2011	02/06/2011	ORX-1-227	25	ES

D. Private land-only oryx hunts: Private land-only oryx licenses shall be valid only on deeded private land and restricted to the season dates, eligibility requirements or restrictions, sporting arms type, and bag limit that corresponds to the public land hunt codes listed 19.31.12.12 NMAC above. The number of private land-only oryx licenses shall be unlimited and available only through department offices or department's web site.

E. Oryx population management hunts:

(1) The respective area chief may authorize population management hunts for oryx when justified in writing by department personnel.

(2) The respective area chief shall designate the sporting arms, season dates, season lengths, bag limits, hunt boundaries, and number of licenses. No qualifying license holder shall take more than one oryx per license year.

(3) The specific hunt dates, hunt area, the name of the department representative providing the information and the date and time of notification shall be written on the license after notification by telephone.

(4) Application may be made either on-line or through the special hunt application form provided by the department. On-line applications must be submitted by the deadline date set by the department. Application forms postmarked by the deadline date will be accepted up to five working days after the deadline date.

(5) Applications for licenses may be rejected, and fees returned to an applicant, if such applications are not on the proper form or do not supply adequate information.

(6) In the event that an applicant is not able to hunt on the dates specified, the applicant’s name shall be moved to the bottom of the list and another applicant may be contacted for the hunt.

(7) No more than one person may apply under each application.

(8) Population management hunts for oryx may be anywhere in the state with dates, number of licenses, bag limit, and specific hunt areas to be determined by the department. The hunt codes to apply for oryx population management hunts shall be as indicated in the table below.

open areas	2009-2010 hunt start and end dates		2010-2011 hunt start and end dates		hunt code	licenses	bag limit
standard management hunt, TBA	TBA	TBA	TBA	TBA	ORX-5-510	250	ES
Fort Bliss (west of US highway 54) management hunt, TBA	TBA	TBA	TBA	TBA	ORX-5-511	30	ES

(9) 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.

(10) The oryx population management hunt ORX-5-511 is restricted to Fort Bliss military personnel only. Proof of assignment to Fort Bliss must accompany application or, if applying online, forwarded to the department by the application deadline.

(11) In those instances where a population management hunt is warranted on deeded private lands, the landowner may suggest eligible hunters of their choice by submitting a list of prospective hunter’s names to the department for licensing consideration. No more than ½ of the total number of licenses authorized shall be available to landowner identified hunters. The balance of prospective hunters shall be identified by the department.

F. Oryx incentive authorizations: The director may annually allow up to two (2) oryx authorizations to be issued by drawing to elk and deer hunters reporting their prior year’s harvest information as well as trappers reporting their trapping activities by the published deadline using the department’s established website. These incentives may also be available for deer and elk hunters submitting their legally harvested animal for CWD testing. Authorization certificates to purchase the license may be used either by the applicant or any individual of the selected applicant’s choice and may be transferred through sale, barter, or gift. Oryx incentive hunts shall be any one (1) premier oryx season (excluding population management hunts) of the hunter’s choice. Bag limit shall be either sex with the legal sporting arms and hunt area of the selected hunt.

[19.31.12.12 NMAC – Rp, 19.31.12.12 NMAC, 4-1-09]

19.31.12.13 PERSIAN IBEX HUNTING SEASONS: Persian ibex hunts shall be as indicated below, listing the open GMUs or areas, eligibility requirements or restrictions, hunt dates, hunt code, number of available licenses and bag limit. The IBX-1-525 hunt is restricted to only those who have never held an ibex once-in-lifetime license. Youth, muzzle-loading rifle, bow, year-long off-mountain, and female/immature (F-IM) ibex hunts are not restricted; anyone may apply, regardless if they have ever held an ibex once-in-a-lifetime license. Holders of the off-mountain license (IBX-1-528) may apply for any Florida mountain ibex hunt (IBX-1-500, IBX-1-520, IBX-1-525, IBX-2-535, or IBX-3-540) unless otherwise restricted by rule. The off-mountain (IBX-1-528) license holders need only submit the \$6.00 application fee and their license number along with their application. Any valid Persian ibex license shall be valid during the off-mountain (IBX-1-528) hunts. Holders of an off-mountain (IBX-1-528) license have an unlimited number of tags available upon request at any department office. Hunt codes for Persian ibex hunts allowing “any legal sporting arm” shall be designated IBX-1. Hunt codes for Persian ibex hunts allowing the “bow only” weapon type shall be designated as IBX-2. Hunt codes for Persian ibex hunts allowing the “muzzle loading rifles or bow” weapon type shall be designated as IBX-3. The Florida mountain hunt is that portion of GMU 25 bounded by interstate 10 on the north, U.S.-Mexico border on the south, NM 11 on the west and the Dona Ana-Luna county line on the east. The year-long off-mountain hunt area is any public land open for hunting and private lands with written permission outside the Florida mountain hunt area, including Big Hatchet WMA. Youth hunters must provide hunter education certificate number on application.

open GMUs or areas	hunt start	hunt end	hunt start	hunt end	hunt code	licenses/bag limit
Florida mountains, YO	09/26/2009	10/04/2009	09/25/2010	10/03/2010	IBX-1-500	15/ES
Florida mountains	10/10/2009	10/18/2009	10/09/2010	10/17/2010	IBX-1-520	50/F-IM
Florida mountains	11/28/2009	12/13/2009	11/27/2010	12/12/2010	IBX-1-525	15/ES
off-mountain hunt area	04/01/2009	03/31/2010	04/01/2010	03/31/2011	IBX-1-528	unlimited/ES
Florida mountains	01/01/2010	01/15/2010	01/01/2011	01/15/2011	IBX-2-535	100/ES
Florida mountains	02/13/2010	02/21/2010	02/12/2011	02/20/2011	IBX-3-540	20/ES

[19.31.12.13 NMAC – Rp, 19.31.12.13 NMAC, 4-1-09]

**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 13 DEER**

19.31.13.1 ISSUING AGENCY:
New Mexico Department of Game and Fish.

[19.31.13.1 NMAC – Rp, 19.31.13.1 NMAC, 4-1-09]

19.31.13.2 S C O P E :
Sportspersons interested in deer management and deer hunting. Additional requirements may be found in Chapter 17, NMSA 1978, and Chapters 30, 31, 32 and 33 of Title 19.

[19.31.13.2 NMAC – Rp, 19.31.13.2 NMAC, 4-1-09]

**19.31.13.3 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.

[19.31.13.3 NMAC – Rp, 19.31.13.3 NMAC, 4-1-09]

19.31.13.4 DURATION: April 1, 2009 through March 31, 2011.

[19.31.13.4 NMAC – Rp, 19.31.13.4 NMAC, 4-1-09]

19.31.13.5 EFFECTIVE DATE:
April 1, 2009, unless a later date is cited at the end of individual sections.

[19.31.13.5 NMAC – Rp, 19.31.13.5 NMAC, 4-1-09]

19.31.13.6 O B J E C T I V E :
Establishing open hunting seasons and regulation, rules, and procedures governing the distribution and issuance of deer permits and licenses by the department.

[19.31.13.6 NMAC – Rp, 19.31.13.6 NMAC, 4-1-09]

19.31.13.7 DEFINITIONS:

A. “Arrows” shall mean only those arrows or bolts having broadheads with steel cutting edges.

B. “Baiting” shall mean the placing, exposing, depositing, distributing, or scattering of any salt, grain, scent or other feed on or over areas where hunters are attempting to take deer.

C. “Bow” shall mean compound, recurve, or long bow. Sights on bows shall not project light nor magnify.

D. “Crossbows” shall mean a device with a bow limb or band of flexible material that is attached horizontally to a stock and has a mechanism to hold the string in a cocked position. Sights on crossbows shall not project light nor magnify.

E. “Deer” shall mean all or any deer species found in New Mexico.

F. “Deer license” shall mean a valid official document that is issued or approved by the director that each person hunting deer in New Mexico must have or obtain prior to hunting.

G. “Deer enhancement program” as used herein, shall mean the department activity that allows the issuance of not more than two permits for the taking of one buck deer per permit with the purpose of raising funds for programs and projects to benefit deer.

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

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

J. “ES or either sex” shall mean any one animal of the species.

K. “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.

L. “FAMD or forked antlered mule deer” shall mean a mule deer possessing antlers, one of which shall have a definite fork showing two or more distinct points. A burr at the base does not constitute a point or fork.

M. “FAWTD or forked antlered white-tailed deer” shall mean a white-tailed 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.

N. “Game management unit” or “GMU” shall mean those areas as described in the state game commission’s rule 19.30.4 NMAC Boundary Descriptions for Wildlife Management Areas.

O. “High demand hunt” is hereby defined as a special draw hunt where the total number of non-resident applicants for a deer hunt in each unit exceeds twenty-two percent of the total applicants based on data for the two immediately preceding years.

P. “License year” shall mean the period from April 1 through March 31.

Q. “Modern firearms”

shall mean center-fire firearms, not to include any fully automatic firearms. Legal shotguns shall be only those shotguns capable of being fired from the shoulder.

R. “Muzzle-loader or muzzle-loading firearms” shall mean those rifles and shotguns in which the charge and projectile are loaded through the muzzle. Only black powder, Pyrodex or equivalent black powder substitute may be used. Use of smokeless powder is prohibited. Legal muzzle-loader shotguns shall be only those shotguns capable of being fired from the shoulder.

S. “Private land-only deer permit” shall mean the valid official document containing a carcass tag and harvest reporting instructions for hunting deer on private deeded land during designated private land-only hunts. This permit shall entitle the holder of a deer license to hunt deer only on private deeded land and only for the sporting arms type, hunt period, and GMU for which it is validated.

T. “Public draw permit” shall mean the valid official document containing a carcass tag and harvest reporting instructions awarded through a public drawing for hunting deer. This valid official permit shall entitle the holder of a deer license to hunt where hunter numbers are limited by rule.

U. “Quality hunt” is hereby defined as a hunt designed to provide a hunter with an opportunity to achieve one or more of the following: a potential harvest from a wider selection of buck deer, a pleasurable experience based on timing and length of hunt season, lower hunter density, and an increased opportunity for success.

V. “Restricted muzzle-loading rifle” shall mean any muzzle-loading rifle using open sights, black powder or equivalent and firing a traditional lead bullet. The use of in-line ignition, scopes, pelleted powder, smokeless powder and sabots, including powerbelt-type projectiles, are prohibited.

W. “TBD or to be determined” shall mean the details of hunt dates or hunt areas will be provided by the department to the hunter when the designated population reduction hunt is initiated.

X. “Unlimited” shall mean there is no set limit on the number of permits or licenses established for the described hunt areas.

Y. “Web sale” or “web site” shall refer to accessing the department’s internet address.

Z. “Wildlife management areas” or “WMAs” shall mean those areas as described in the state game commission’s rule 19.30.4 NMAC Boundary Descriptions for Wildlife Management

Areas.

AA. "ESWTD or either sex white-tailed deer" shall mean any one white-tailed deer.

[19.31.13.7 NMAC – Rp, 19.31.13.7 NMAC, 4-1-09]

19.31.13.8 ADJUSTMENT OF LICENSES, PERMITS, AUTHORIZATIONS, AND HARVEST LIMITS:

The director, with the verbal concurrence of the chairman or his designee, may adjust the number of licenses, permits, or authorization certificates up or down by no more than 20 percent of the total permits available in the GMU to address significant changes in population levels or habitat availability. This adjustment may be applied to any or all of the specific hunt codes for deer.

[19.31.13.8 NMAC – Rp, 19.31.13.8 NMAC, 4-1-09]

19.31.13.9 DEER LICENSE APPLICATION REQUIREMENTS AND RESTRICTIONS:

A. Hunt code validations: Whenever a license vendor issues a private land-only deer permit, the vendor shall record the hunter's selected DER hunt code on the permit. Valid DER hunt codes are listed in 19.31.13.15 NMAC. Vendors shall not validate private land-only deer permits with hunt codes for deer hunts on wildlife management areas or for private land hunts in Units 2A, 2B, 2C, 4 or 5A. For GMUs that are private land-only, valid hunt codes are listed in 19.31.13.15 NMAC.

B. Change of validation: No one other than a department representative may change the hunt code validation marked on any deer permit. Such changes must be made on the face of the permit using the director's approved procedures. No changes in the hunt code may be made after the start of the first deer season for which the permit is validated. Permits issued through the draw system are not eligible for validation changes.

C. One deer permit or license per year: It shall be unlawful for anyone to hold more than one permit or license to hunt deer during the current license year unless otherwise specifically allowed by rule.

D. Validity of license or permit: All deer entry permits or licenses shall be valid only for the specified dates, eligibility requirements or restrictions, legal sporting arms, bag limit, and area specified by the hunt code printed on the permit, license, or carcass tag. Over-the-counter licenses shall be valid only for the specified dates, eligibility requirements or restrictions, legal sporting arms, bag limit, and area specified by rule or regulation. Except that a permit or license will be valid on the contiguous deeded land of private property

that extends into an adjacent GMU that is open to hunting for deer. This exception shall only apply when the adjacent unit has the same restrictions as to weapon type, bag limit, season dates and license availability.

E. Deer hunts: It shall be unlawful for any person:

(1) to hunt with any sporting arms type other than that for which his/her deer permit is validated;

(2) to hunt during any season other than that for which his/her deer permit is validated;

(3) to hunt in any GMU other than that for which his/her deer permit is validated;

(4) to hunt deer on public land in any GMU with a private land-only deer permit, except in conjunction with this subsection, if it is on state land where there is a valid agreement for unitizing state leased and privately owned or leased lands;

(5) to hunt private property without possessing a valid deer permit and the proper deer license; or

(6) to hunt with any license or permit issued originally to another person, except as specifically allowed by rule or law.

F. Mobility impaired (MI) deer hunts: It shall be unlawful for anyone to apply for a mobility impaired (MI) deer permit, except as allowed by 19.31.3.11 NMAC.

G. Youth only (YO) deer hunts: It shall be unlawful for anyone to apply for youth only (YO) deer permit except as allowed by 19.31.3.11 NMAC.

H. Military only deer hunts: It shall be unlawful for anyone to apply for a military only deer permit, except as allowed by 19.31.3.11 NMAC.

I. GMUs 2A, 2B, 2C, 4 and 5A private land-only hunts:

(1) Persons applying for private land-only deer permits in GMUs 2A, 2B, 2C, 4 and 5A must do so on a special application form that may only be obtained from landowners in these GMUs.

(2) GMU 2A, 2B, 2C, 4 and 5A landowners may be required to provide proof of land ownership to obtain special application forms from the department's northwest area office in Albuquerque.

(3) For GMU 5A, the department may use input from landowners to develop a process to distribute special application forms to private landowners that provides reasonable and equitable participation opportunities for landowners.

(4) When applying for private land hunts in GMU 5A, no more than one (1) person may apply on each application form.

[19.31.13.9 NMAC – Rp, 19.31.13.9 NMAC, 4-1-09]

19.31.13.10 DEER MANNER AND METHOD REQUIREMENTS AND RESTRICTIONS:

A. Season and hours: Deer may be hunted or taken only during open seasons and only during the period from one-half hour before sunrise to sunset.

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

C. Tagging: (1) Any permit that permits the taking of deer shall be issued with a deer carcass tag.

(2) It shall be unlawful to possess more than one deer carcass tag per year, except as specifically permitted by rule.

(3) It shall be unlawful for any licensee to fail to tag the deer as prescribed below:

(a) Immediately after killing any deer; the licensee killing the deer shall notch the proper day and month of kill from the deer tag.

(b) The tag shall be attached to the deer carcass and remain attached while the carcass is in any vehicle, left unattended in the field, or while it is in camp or at a residence or other place of storage. The notched tag may be removed from the carcass while the carcass is being removed from the field to a camp or vehicle. In situations where numerous trips are required to remove the carcass from the field, the tag shall remain attached to that portion of the carcass left in a camp or vehicle.

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

D. Seizure: Any conservation officer or other officer authorized to enforce game laws and regulations shall seize any deer carcasses that are improperly tagged.

E. Proof of sex: It shall be unlawful for anyone to transport or possess the carcass of a deer without proof of sex. The antlers of any buck deer taken shall remain attached to the skull plate until arriving at a residence, taxidermist, meat processing place, or place of final storage. The scalp and both ears of female or immature male shall accompany the carcass in the same manner.

F. Use of dogs in hunting: It shall be unlawful to use dogs to hunt deer, except leashed dogs may be used to locate wounded or dead deer. Hunters must register with the appropriate department area office for the GMU they will be hunting before their hunt begins to use a dog in this manner.

G. Use of baits or scents: It shall be unlawful for anyone to take or attempt to take any deer by use of baits or

scents as defined in 19.31.10.7 NMAC. Scent masking agents on one's person are allowed.

H. Live animals: It shall be unlawful to use live animals as a blind or decoy in taking or attempting to take any deer.

I. Use of calling devices: It shall be unlawful to use any electrically or mechanically recorded calling device in taking or attempting to take any deer.

J. Killing out-of-season: It shall be unlawful to kill any deer out of deer hunting season.

K. Bullets: It shall be unlawful to take or attempt to take deer by the use of tracer ammunition or any ammunition loaded with a full metal jacketed bullet. Only soft-nosed or hollow-pointed bullets may be used in hunting or taking deer.

L. Drugs and explosives: It shall be unlawful to use any form of drug on an arrow or use arrows driven by explosives.

M. Legal sporting arms or weapon types for deer are as follows: any center-fire rifle; any center-fire handgun; shotguns not smaller than 28 gauge, firing a single slug; muzzle-loading rifles; bows and arrows; and crossbows and bolts (as designated by the director for certified mobility impaired hunters or as otherwise allowed in rule).

N. Areas closed to deer hunting: The following areas shall remain closed to deer hunting, except as permitted by regulation: Sugarite canyon state park; Rio Grande wild and scenic river area, including the Taos valley overlook; all wildlife management areas; the Valle Vidal area; and sub-unit 6B (Valles Caldera national preserve).
[19.31.13.10 NMAC – Rp, 19.31.13.10 NMAC, 4-1-09]

19.31.13.11 DEER CHRONIC WASTING DISEASE CONTROL: The director has the authority to designate possession criteria to any deer hunter where chronic wasting disease is a concern. It shall be unlawful to transport dead deer, or their parts, taken from any game management unit or area identified by the director in which the presence of, or possibility of, exposure to chronic wasting disease has been identified, to any location outside that game management unit except for the following parts of deer:

A. meat that is cut and wrapped (either commercially or privately);

B. quarters or other portions of meat with no part of the spinal column or head attached;

C. meat that has been boned out;

D. hides with no heads attached;

E. clean skull plates with antlers attached; clean is defined as having been immersed in a bath of at least one (1) part chlorine bleach and two (2) parts water with no meat or tissue attached;

F. antlers with no meat or tissue attached;

G. upper canine teeth, also known as "buglers," "whistlers," or "ivories;"

H. finished taxidermied heads.

[19.31.13.11 NMAC – Rp, 19.31.13.11 NMAC, 4-1-09]

19.31.13.12 DEER QUALITY HUNTS: Quality hunts for deer are as follows:

A. all hunts in game management sub-unit 2C;

B. the third center fire rifle hunt in sub-unit 2B;

C. all hunts in game management unit 17;

D. all hunts in game management sub-unit 5B;

E. all hunts in the Burro mountains hunt area of the Gila national forest in game management unit 23;

F. all hunts in game management unit 27;

G. all hunts in game management unit 33;

H. all January bow hunts;

I. all December and January private land deer conservation incentive hunts.

[19.31.13.12 NMAC – Rp, 19.31.13.12 NMAC, 4-1-09]

19.31.13.13 SPECIAL DEER HUNTING OPPORTUNITIES:

A. Deer habitat enhancement program:

(1) Program description: The director of the department shall collect all proceeds generated through the auction and lottery of special deer permits, and such monies shall be deposited in the game protection fund. These monies shall be made available for expenditure by the department solely for programs and projects to benefit deer and for direct costs appropriated from existing funds available to the department for the preservation, restoration, utilization, and management of deer. Deer enhancement licenses or permits shall be valid from September 1 through January 31, for any legal sporting arms, for each license year. These licenses or permits shall be valid statewide where hunting is allowed. Bag limit shall be one buck deer. The hunt code shall be DER-1-400. Licenses or permits may be used either by the applicant or any individual of the selected applicant's choice through sale, barter, or gift.

(2) Requirements for issuance of special deer permits:

(a) The state game commission shall authorize the director of the department to issue not more than two special deer permits in any one license year to take one buck deer per permit. The director shall allow the sale of one permit through auction to the highest bidder and one permit to a person selected through a random drawing for the holder of a lottery ticket by the department or by an incorporated, non-profit organization dedicated to the conservation of deer.

(b) Proposals for auctioning one special deer permit and the sale of lottery tickets to obtain one special deer permit through a random drawing shall be submitted to the director of the department prior to January 31, preceding the license year when the permit may be legally use.

(c) The proposals for auctioning special deer permit and the sale of lottery tickets and subsequent selection of a recipient for a second permit through a random draw shall each contain and identify: (i) the name of the organization making the request as well as the names, addresses and telephone numbers of those members of the organization who are coordinating the proposal; (ii) the estimated amount of money to be raised and the rationale for that estimate; and (iii) a copy of the organization's articles of incorporation with a letter attesting that the organization has tax-exempt status. The letter must also affirm that the proponent agrees to the conditions set forth by the director of the department. The letter must be signed and dated by the president and secretary-treasurer, or their equivalents.

(d) The director of the department shall examine all proposals following the close of the application period. The director may reject any application which does not conform with the requirements of this section. In selecting a marketing organization, the director shall consider the qualifications of the organization as a fund raiser; the proposed fund raising plan; the fee charged by the marketing organization for promotional and administrative costs, relative to the funds obtained from auctioning the permit; and the organization's previous involvement with deer management and its conservation objectives. The director may accept any proposals when it is in the best interest of deer to do so.

(e) After a proposal has been approved, the state game commission shall establish open season dates, open areas, and license requirements.

(f) The marketing organization must agree in writing to the following: (a) to transfer all proceeds on or before the tenth day of the month following the auction and drawing for the lottery, and (b) to

provide the department with the names, addresses, and the physical descriptions of the individuals to whom the special deer permits are issued.

(g) The department and the marketing organization must agree to the arrangements for the deposit of the proceeds, payment for services rendered, the accounting procedures, and final audit.

(h) Unless his/her hunting privileges have been revoked pursuant to law, any resident of New Mexico, nonresident, or alien is eligible to submit a bid for the special deer lottery permit.

(i) The special deer permits issued through auction and lottery may be transferred through sale, barter or gift by the successful individuals to only other individuals qualified to hunt.

(j) Special deer permits granted through auction or lottery, as described above, shall not be considered a 'once-in-a-lifetime' permits.

B. Deer incentive programs:

(1) **Internet harvest reporting incentive:** The director may annually allow up to two (2) deer authorizations to be issued by drawing to elk and deer hunters reporting their prior year's harvest information as well as trappers reporting their trapping activities by the published deadline using the department's established website. These incentives may also be available for deer and elk hunters submitting their legally harvested animal for CWD testing. Authorization certificates awarded pursuant to this rule may be transferred through sale, barter, or gift. Deer incentive hunts shall be valid only for the dates, legal sporting arms, bag limit, and area specified by the director.

(2) **Private land deer conservation incentive program:** Private landowners who are conducting significant habitat and management improvements on their deeded lands that significantly benefit deer may submit a deer conservation and management report, subject to review and approval by the department. Upon department approval of the report, the department may offer the landowner various incentives based on the degree of benefit to deer. The incentives may include extended or alternative season dates, or alternate bag limits as approved by the department. The hunt code for any unique hunt season approved pursuant to this program shall be DER-1-600.

[19.31.13.13 NMAC – Rp, 19.31.13.13 NMAC, 4-1-09]

19.31.13.14 DEER POPULATION MANAGEMENT HUNTS:

A. The respective area chief may authorize population management hunts for deer when justified in writing by department personnel.

B. The respective area chief shall designate the sporting arms, season dates, season lengths, bag limits, hunt boundaries, and number of licenses or permits. No qualifying permit holder shall take more than one deer per license year.

C. The specific hunt dates, hunt area, the name of the department representative providing the information and the date and time of notification shall be written on the license or permit after notification by telephone.

D. Application may be made either on-line or through the special hunt application form provided by the department. On-line applications must be submitted by the deadline date set by the department. Application forms postmarked by the deadline date will be accepted up to five working days after the deadline date.

E. Applications for permits may be rejected, and fees returned to an applicant, if such applications are not on the proper form or do not supply adequate information.

F. In the event that an applicant is not able to hunt on the dates specified, the applicant's name shall be moved to the bottom of the list and another applicant may be contacted for the hunt.

G. No more than one person may apply under each application.

H. Population management hunts for deer may be anywhere in the state with dates, number of permits, bag limit, and specific hunt areas to be determined by the department. The hunt code to apply for deer population management hunts shall be DER-5-100.

I. In those instances where a population management hunt is warranted on deeded private lands, the landowner may suggest eligible hunters of their choice by submitting a list of prospective hunter's names to the department for licensing consideration. No more than ½ of the total number of licenses authorized shall be available to landowner identified hunters. The balance of prospective hunters shall be identified by the department.

[19.31.13.14 NMAC – Rp, 19.31.13.14 NMAC, 4-1-09]

19.31.13.15 DEER HUNTS:

A. Public land (and private lands in GMUs 2A, 2B, 2C, 4 and 5A) deer hunts, listing the open GMUs or areas, eligibility requirements or restrictions, hunt dates, hunt code, weapon type, 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. The Sandia ranger district of the Cibola national forest in GMU 14 is restricted to bows only. Youth hunters must provide hunter education certificate number on application.

open GMUs or areas	2009-2010 hunt seasons		2010-2011 hunt seasons		hunt code	permits	bag limit
	hunt start	hunt end	hunt start	hunt end			
2A	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-1-100	200	FAD
2A: YO	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-1-101	50	FAD
2A: private land only	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-1-102	55	FAD
2A	09/01/2009	09/22/2009	09/01/2010	09/22/2010	DER-2-103	40	FAD
2A	01/01/2010	01/15/2010	01/01/2011	01/15/2011	DER-2-104	80	FAD
2A: private land only	09/01/2009	09/22/2009	09/01/2010	09/22/2010	DER-2-105	20	FAD
2A: private land only	01/01/2010	01/15/2010	01/01/2011	01/15/2011	DER-2-106	20	FAD
2A	09/24/2009	09/30/2009	09/24/2010	09/30/2010	DER-3-107	60	FAD
2A: private land only	09/24/2009	09/30/2009	09/24/2010	09/30/2010	DER-3-108	10	FAD
2B	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-1-109	300	FAD
2B	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-1-110	390	FAD
2B	11/07/2009	11/11/2009	11/06/2010	11/10/2010	DER-1-111	465	FAD
2B: YO	10/17/2009	10/21/2009	10/16/2010	10/20/2010	DER-1-112	150	FAD
2B: private land only	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-1-113	25	FAD
2B: private land only	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-1-114	25	FAD
2B: private land only	11/07/2009	11/11/2009	11/06/2010	11/10/2010	DER-1-115	75	FAD
2B	09/01/2009	09/22/2009	09/01/2010	09/22/2010	DER-2-116	130	FAD
2B	01/01/2010	01/15/2010	01/01/2011	01/15/2011	DER-2-117	180	FAD
2B: YO	09/01/2009	09/22/2009	09/01/2010	09/22/2010	DER-2-118	20	FAD
2B: YO	01/01/2010	01/15/2010	01/01/2011	01/15/2011	DER-2-119	50	FAD
2B: private land only	09/01/2009	09/22/2009	09/01/2010	09/22/2010	DER-2-120	10	FAD
2B: private land only	01/01/2010	01/15/2010	01/01/2011	01/15/2011	DER-2-121	30	FAD
2B	09/24/2009	09/30/2009	09/24/2010	09/30/2010	DER-3-122	175	FAD
2B: YO	09/24/2009	09/30/2009	09/24/2010	09/30/2010	DER-3-123	20	FAD
2B: private land only	09/24/2009	09/30/2009	09/24/2010	09/30/2010	DER-3-124	10	FAD
2C	11/14/2009	11/18/2009	11/13/2010	11/17/2010	DER-1-125	24	FAD
2C: private land only	11/14/2009	11/18/2009	11/13/2010	11/17/2010	DER-1-126	8	FAD
2C	01/01/2010	01/15/2010	01/01/2011	01/15/2011	DER-2-127	66	FAD
2C: private land only	01/01/2010	01/15/2010	01/01/2011	01/15/2011	DER-2-128	15	FAD
2C	09/24/2009	09/30/2009	09/24/2010	09/30/2010	DER-3-129	27	FAD
2C: private land only	09/24/2009	09/30/2009	09/24/2010	09/30/2010	DER-3-130	9	FAD
4: Humphries/Rio Chama WMAs	10/17/2009	10/21/2009	10/16/2010	10/20/2010	DER-1-131	20	FAD
4: Humphries/Rio Chama WMAs	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-1-132	20	FAD
4: Humphries/Rio Chama WMAs, YO	10/17/2009	10/21/2009	10/16/2010	10/20/2010	DER-1-133	10	FAD

4: Humphries/Rio Chama WMAs, YO	11/25/2009	11/29/2009	11/24/2010	11/28/2010	DER-1-134	5	FAD
4: private land only	10/17/2009	10/21/2009	10/16/2010	10/20/2010	DER-1-135	175	FAD
4: private land only	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-1-136	175	FAD
4: private land only	09/01/2009	09/22/2009	09/01/2010	09/22/2010	DER-2-137	150	FAD
4: private land only	09/24/2009	09/30/2009	09/24/2010	09/30/2010	DER-3-138	100	FAD
5A: public land only	11/10/2009	11/16/2009	11/09/2010	11/15/2010	DER-1-139	30	FAD
5A: private land only	11/10/2009	11/16/2009	11/09/2010	11/15/2010	DER-1-140	220	FAD
5A: public land only	09/01/2009	09/22/2009	09/01/2010	09/22/2010	DER-2-141	30	FAD
5A: private land only	09/01/2009	09/22/2009	09/01/2010	09/22/2010	DER-2-142	220	FAD
5B	11/07/2009	11/11/2009	11/06/2010	11/10/2010	DER-1-143	15	FAD
5B: YO	11/25/2009	11/29/2009	11/24/2010	11/28/2010	DER-1-144	10	FAD
6A and 6C	11/07/2009	11/11/2009	11/06/2010	11/10/2010	DER-1-145	100	FAD
6A and 6C: MI	10/17/2009	10/21/2009	10/16/2010	10/20/2010	DER-1-146	20	FAD
6A and 6C	09/01/2009	09/22/2009	09/01/2010	09/22/2010	DER-2-147	100	FAD
6A and 6C	10/10/2009	10/14/2009	10/09/2010	10/13/2010	DER-3-148	100	FAD
7	11/07/2009	11/11/2009	11/06/2010	11/10/2010	DER-1-149	25	FAD
7	09/01/2009	09/22/2009	09/01/2010	09/22/2010	DER-2-150	10	FAD
7	09/24/2009	09/30/2009	09/24/2010	09/30/2010	DER-3-151	10	FAD
8	01/01/2010	01/15/2010	01/01/2011	01/15/2011	DER-2-152	50	FAD
8: YO	11/21/2009	11/29/2009	11/20/2010	11/28/2010	DER-2-153	50	FAD
9: including Water canyon and Marquez WMAs	11/07/2009	11/11/2009	11/06/2010	11/10/2010	DER-1-154	10	FAD
9: including Water canyon and Marquez WMAs, YO	11/07/2009	11/11/2009	11/06/2010	11/10/2010	DER-1-155	10	FAD
9: including Water canyon and Marquez WMAs	09/01/2009	09/22/2009	09/01/2010	09/22/2010	DER-2-156	10	FAD
9: including Water canyon and Marquez WMAs, restricted muzzleloader only	09/24/2009	09/30/2009	09/24/2010	09/30/2010	DER-3-157	10	FAD
10	10/17/2009	10/21/2009	10/16/2010	10/20/2010	DER-1-158	70	FAD
10	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-1-159	65	FAD
10	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-1-160	90	FAD
10: YO	11/26/2009 12/05/2009 12/12/2009	11/29/2009 12/06/2009 12/13/2009	11/25/2010 12/04/2010 12/11/2010	11/28/2010 12/05/2010 12/12/2010	DER-1-161	25	FAD
10: MI	10/17/2009	10/21/2009	10/16/2010	10/20/2010	DER-1-162	20	FAD

10	09/01/2009	09/22/2009	09/01/2010	09/22/2010	DER-2-163	120	FAD
10	09/24/2009	09/30/2009	09/24/2010	09/30/2010	DER-3-164	90	FAD
12	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-1-165	200	FAD
12	09/01/2009	09/22/2009	09/01/2010	09/22/2010	DER-2-166	75	FAD
12	09/24/2009	09/30/2009	09/24/2010	09/30/2010	DER-3-167	75	FAD
13	11/07/2009	11/11/2009	11/06/2010	11/10/2010	DER-1-168	500	FAD
13	11/14/2009	11/18/2009	11/13/2010	11/17/2010	DER-1-169	500	FAD
13: YO	09/26/2009	10/04/2009	09/25/2010	10/03/2010	DER-1-170	100	FAD
13	09/01/2009	09/24/2009	09/01/2010	09/24/2010	DER-2-171	150	FAD
13	01/01/2010	01/15/2010	01/01/2011	01/15/2011	DER-2-172	150	FAD
13	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-3-173	500	FAD
14	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-1-174	25	FAD
14	09/01/2009	09/22/2009	09/01/2010	09/22/2010	DER-2-175	25	FAD
14	09/24/2009	09/30/2009	09/24/2010	09/30/2010	DER-3-176	50	FAD
15	09/01/2009	09/24/2009	09/01/2010	09/24/2010	DER-2-177	100	FAD
15	01/01/2010	01/15/2010	01/01/2011	01/15/2011	DER-2-178	100	FAD
15	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-3-179	250	FAD
15: YO	09/26/2009	10/04/2009	09/25/2010	10/03/2010	DER-3-180	100	FAD
16	11/07/2009	11/11/2009	11/06/2010	11/10/2010	DER-1-181	300	FAD
16	11/14/2009	11/18/2009	11/13/2010	11/17/2010	DER-1-182	300	FAD
16: YO	09/26/2009	10/04/2009	09/25/2010	10/03/2010	DER-1-183	100	FAD
16: MI	11/07/2009	11/11/2009	11/06/2010	11/10/2010	DER-1-184	25	FAD
16	09/01/2009	09/24/2009	09/01/2010	09/24/2010	DER-2-185	200	FAD
16	01/01/2010	01/15/2010	01/01/2011	01/15/2011	DER-2-186	200	FAD
16	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-3-187	300	FAD
17	11/07/2009	11/11/2009	11/06/2010	11/10/2010	DER-1-188	175	FAD
17	11/14/2009	11/18/2009	11/13/2010	11/17/2010	DER-1-189	175	FAD
17: YO	11/26/2009 12/05/2009 12/12/2009	11/29/2009 12/06/2009 12/13/2009	11/25/2010 12/04/2010 12/11/2010	11/28/2010 12/05/2010 12/12/2010	DER-1-190	100	FAD
17	09/01/2009	09/24/2009	09/01/2010	09/24/2010	DER-2-191	200	FAD
17	01/01/2010	01/15/2010	01/01/2011	01/15/2011	DER-2-192	200	FAD
17	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-3-193	200	FAD
18	11/07/2009	11/11/2009	11/06/2010	11/10/2010	DER-1-194	100	FAD
18	11/14/2009	11/18/2009	11/13/2010	11/17/2010	DER-1-195	100	FAD
18	09/01/2009	09/24/2009	09/01/2010	09/24/2010	DER-2-196	50	FAD
18	01/01/2010	01/15/2010	01/01/2011	01/15/2011	DER-2-197	50	FAD
18	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-3-198	100	FAD
19: except the White Sands missile range portion, mandatory check-in and check-out	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-3-199	10	FAD
20	11/07/2009	11/11/2009	11/06/2010	11/10/2010	DER-1-200	100	FAD
20	11/14/2009	11/18/2009	11/13/2010	11/17/2010	DER-1-201	100	FAD
20	09/01/2009	09/24/2009	09/01/2010	09/24/2010	DER-2-202	25	FAD
20	01/01/2010	01/15/2010	01/01/2011	01/15/2011	DER-2-203	25	FAD
20	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-3-204	100	FAD
21	11/07/2009	11/11/2009	11/06/2010	11/10/2010	DER-1-205	500	FAD
21	11/14/2009	11/18/2009	11/13/2010	11/17/2010	DER-1-206	500	FAD
21: YO	09/26/2009	10/04/2009	09/25/2010	10/03/2010	DER-1-207	100	FAD

21	09/01/2009	09/24/2009	09/01/2010	09/24/2010	DER-2-208	150	FAD
21	01/01/2010	01/15/2010	01/01/2011	01/15/2011	DER-2-209	150	FAD
21	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-3-210	500	FAD
22	11/07/2009	11/11/2009	11/06/2010	11/10/2010	DER-1-211	100	FAD
22	11/14/2009	11/18/2009	11/13/2010	11/17/2010	DER-1-212	100	FAD
22	09/01/2009	09/24/2009	09/01/2010	09/24/2010	DER-2-213	25	FAD
22	01/01/2010	01/15/2010	01/01/2011	01/15/2011	DER-2-214	25	FAD
22	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-3-215	100	FAD
23: except the Burro mountains hunt area	11/07/2009	11/11/2009	11/06/2010	11/10/2010	DER-1-216	450	FAMD
23: except the Burro mountains hunt area	11/07/2009	11/11/2009	11/06/2010	11/10/2010	DER-1-217	50	FAWTD
23: except the Burro mountains hunt area	11/14/2009	11/18/2009	11/13/2010	11/17/2010	DER-1-218	450	FAMD
23: except the Burro mountains hunt area	11/14/2009	11/18/2009	11/13/2010	11/17/2010	DER-1-219	50	FAWTD
23: Burro mountains hunt area	10/10/2009	10/14/2009	10/09/2010	10/13/2010	DER-1-220	50	FAMD
23: Burro mountains hunt area	10/10/2009	10/14/2009	10/09/2010	10/13/2010	DER-1-221	50	FAWTD
23: Burro mountains hunt area, YO	11/26/2009 12/05/2009 12/12/2009	11/29/2009 12/06/2009 12/13/2009	11/25/2010 12/04/2010 12/11/2010	11/28/2010 12/05/2010 12/12/2010	DER-1-222	25	FAD
23: except the Burro mountains hunt area	09/01/2009	09/24/2009	09/01/2010	09/24/2010	DER-2-223	100	FAMD
23: except the Burro mountains hunt area	09/01/2009	09/24/2009	09/01/2010	09/24/2010	DER-2-224	75	FAWTD
23: except the Burro mountains hunt area	01/01/2010	01/15/2010	01/01/2011	01/15/2011	DER-2-225	100	FAMD
23: except the Burro mountains hunt area	01/01/2010	01/15/2010	01/01/2011	01/15/2011	DER-2-226	75	FAWTD
23: Burro mountains hunt area	01/01/2010	01/15/2010	01/01/2011	01/15/2011	DER-2-227	50	FAMD
23: Burro mountains hunt area	01/01/2010	01/15/2010	01/01/2011	01/15/2011	DER-2-228	50	FAWTD
23: except the Burro mountains hunt area	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-3-229	450	FAMD

23: except the Burro mountains hunt area	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-3-230	50	FAWTD
23: Burro mountains hunt area	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-3-231	50	FAMD
23: Burro mountains hunt area	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-3-232	50	FAWTD
24	11/07/2009	11/11/2009	11/06/2010	11/10/2010	DER-1-233	300	FAMD
24	11/07/2009	11/11/2009	11/06/2010	11/10/2010	DER-1-234	50	FAWTD
24	11/14/2009	11/18/2009	11/13/2010	11/17/2010	DER-1-235	300	FAMD
24	11/14/2009	11/18/2009	11/13/2010	11/17/2010	DER-1-236	50	FAWTD
24: including Fort Bayard management area, YO	09/26/2009	10/04/2009	09/25/2010	10/03/2010	DER-1-237	100	FAD
24	09/01/2009	09/24/2009	09/01/2010	09/24/2010	DER-2-238	100	FAMD
24	09/01/2009	09/24/2009	09/01/2010	09/24/2010	DER-2-239	50	FAWTD
24	01/01/2010	01/15/2010	01/01/2011	01/15/2011	DER-2-240	100	FAMD
24	01/01/2010	01/15/2010	01/01/2011	01/15/2011	DER-2-241	50	FAWTD
24	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-3-242	300	FAMD
24	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-3-243	50	FAWTD
25	11/07/2009	11/11/2009	11/06/2010	11/10/2010	DER-1-244	75	FAD
25	11/14/2009	11/18/2009	11/13/2010	11/17/2010	DER-1-245	75	FAD
25	09/01/2009	09/24/2009	09/01/2010	09/24/2010	DER-2-246	50	FAD
25	01/01/2010	01/15/2010	01/01/2011	01/15/2011	DER-2-247	50	FAD
25	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-3-248	50	FAD
26: excluding the Big Hatchets management area	11/07/2009	11/11/2009	11/06/2010	11/10/2010	DER-1-249	75	FAD
26: excluding the Big Hatchets management area	11/14/2009	11/18/2009	11/13/2010	11/17/2010	DER-1-250	75	FAD
26: excluding the Big Hatchets management area	09/01/2009	09/24/2009	09/01/2010	09/24/2010	DER-2-251	25	FAD
26: excluding the Big Hatchets management area	01/01/2010	01/15/2010	01/01/2011	01/15/2011	DER-2-252	25	FAD
26: excluding the Big Hatchets management area	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-3-253	75	FAD
27	11/07/2009	11/11/2009	11/06/2010	11/10/2010	DER-1-254	25	FAMD
27	11/07/2009	11/11/2009	11/06/2010	11/10/2010	DER-1-255	25	FAWTD
27	11/14/2009	11/18/2009	11/13/2010	11/17/2010	DER-1-256	25	FAMD
27	11/14/2009	11/18/2009	11/13/2010	11/17/2010	DER-1-257	25	FAWTD
27	01/01/2010	01/15/2010	01/01/2011	01/15/2011	DER-2-258	25	FAMD
27	01/01/2010	01/15/2010	01/01/2011	01/15/2011	DER-2-259	30	FAWTD
27	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-3-260	25	FAMD
27	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-3-261	25	FAWTD
28: McGregor range	10/10/2009	10/11/2009	10/09/2010	10/10/2010	DER-1-262	10	FAD

28: McGregor range, military only	10/10/2009	10/11/2009	10/09/2010	10/10/2010	DER-1-263	10	FAD
29	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-1-264	150	FAD
29	11/14/2009	11/18/2009	11/13/2010	11/17/2010	DER-1-265	150	FAD
29	09/01/2009 01/01/2010	09/22/2009 01/15/2010	09/01/2010 01/01/2011	09/22/2010 01/15/2011	DER-2-266	200	FAD
29	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-3-267	50	FAD
30	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-1-268	1,000	FAD
30	11/14/2009	11/18/2009	11/13/2010	11/17/2010	DER-1-269	1,500	FAD
30: YO	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-1-270	250	FAD
30: YO	11/14/2009	11/18/2009	11/13/2010	11/17/2010	DER-1-271	250	FAD
30	09/01/2009 01/01/2010	09/22/2009 01/15/2010	09/01/2010 01/01/2011	09/22/2010 01/15/2011	DER-2-272	300	FAD
30: restricted muzzleloader only	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-3-273	500	FAD
31: including Brantley WMA	11/07/2009	11/11/2009	11/06/2010	11/10/2010	DER-1-274	400	FAD
31: including Brantley WMA	11/21/2009	11/25/2009	11/20/2010	11/24/2010	DER-1-275	400	FAD
31: including Brantley WMA	09/01/2009 01/01/2010	09/22/2009 01/15/2010	09/01/2010 01/01/2011	09/22/2010 01/15/2011	DER-2-276	200	FAD
31: including Brantley WMA	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-3-277	120	FAD
32	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-1-278	600	FAD
32	11/14/2009	11/18/2009	11/13/2010	11/17/2010	DER-1-279	600	FAD
32	09/01/2009 01/01/2010	09/22/2009 01/15/2010	09/01/2010 01/01/2011	09/22/2010 01/15/2011	DER-2-280	200	FAD
32	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-3-281	125	FAD
33	11/07/2009	11/11/2009	11/06/2010	11/10/2010	DER-1-282	150	FAD
33	11/21/2009	11/25/2009	11/20/2010	11/24/2010	DER-1-283	150	FAD
33	09/01/2009 01/01/2010	09/22/2009 01/15/2010	09/01/2010 01/01/2011	09/22/2010 01/15/2011	DER-2-284	100	FAD
33: restricted muzzleloader only	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-3-285	50	FAD
31/33 Brantley WMA and Huey waterfowl management areas only, YO	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-1-286	15	ES
31/33 Brantley WMA, Seven Rivers and Huey waterfowl management areas only, YO	11/26/2009	11/29/2009	11/25/2010	11/28/2010	DER-3-287	30	ES
31/33 Brantley WMA, Seven Rivers and Huey waterfowl management areas only, YO	12/26/2009	01/01/2010	12/26/2010	01/01/2011	DER-3-288	10	ES

34	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-1-289	1,200	FAD
34	11/14/2009	11/18/2009	11/13/2010	11/17/2010	DER-1-290	1,200	FAD
34: YO	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-1-291	50	FAD
34: MI	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-1-292	50	FAD
34	09/01/2009 01/01/2010	09/22/2009 01/15/2010	09/01/2010 01/01/2011	09/22/2010 01/15/2011	DER-2-293	800	FAD
34	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-3-294	350	FAD
36: except Fort Stanton	11/07/2009	11/11/2009	11/06/2010	11/10/2010	DER-1-295	300	FAD
36: except Fort Stanton	11/21/2009	11/25/2009	11/20/2010	11/24/2010	DER-1-296	300	FAD
36: including Fort Stanton, YO	11/26/2009 12/05/2009 12/12/2009	11/29/2009 12/06/2009 12/13/2009	11/25/2010 12/04/2010 12/11/2010	11/28/2010 12/05/2010 12/12/2010	DER-1-297	25	FAD
36: including Fort Stanton	09/01/2009 01/01/2010	09/22/2009 01/15/2010	09/01/2010 01/01/2011	09/22/2010 01/15/2011	DER-2-298	250	FAD
36: except Fort Stanton	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-3-299	75	FAD
36: including Fort Stanton, YO	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-3-300	25	FAD
37	11/07/2009	11/11/2009	11/06/2010	11/10/2010	DER-1-301	600	FAD
37	11/21/2009	11/25/2009	11/20/2010	11/24/2010	DER-1-302	600	FAD
37	09/01/2009 01/01/2010	09/22/2009 01/15/2010	09/01/2010 01/01/2011	09/22/2010 01/15/2011	DER-2-303	200	FAD
37: restricted muzzleloader only	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-3-304	225	FAD
38	11/07/2009	11/11/2009	11/06/2010	11/10/2010	DER-1-305	350	FAD
38	11/21/2009	11/25/2009	11/20/2010	11/24/2010	DER-1-306	350	FAD
38	09/01/2009 01/01/2010	09/22/2009 01/15/2010	09/01/2010 01/01/2011	09/22/2010 01/15/2011	DER-2-307	200	FAD
38	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-3-308	200	FAD
39	11/07/2009	11/11/2009	11/06/2010	11/10/2010	DER-1-309	50	FAD
39	11/21/2009	11/25/2009	11/20/2010	11/24/2010	DER-1-310	50	FAD
39	09/01/2009 01/01/2010	09/22/2009 01/15/2010	09/01/2010 01/01/2011	09/22/2010 01/15/2011	DER-2-311	50	FAD
39	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-3-312	50	FAD
40	11/07/2009	11/11/2009	11/06/2010	11/10/2010	DER-1-313	50	FAD
40	11/21/2009	11/25/2009	11/20/2010	11/24/2010	DER-1-314	50	FAD
40	09/01/2009 01/01/2010	09/22/2009 01/15/2010	09/01/2010 01/01/2011	09/22/2010 01/15/2011	DER-2-315	50	FAD
40	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-3-316	25	FAD
41	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-1-317	35	FAD
41	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-1-318	35	FAD
41	12/12/2009	12/16/2009	12/11/2010	12/15/2010	DER-1-319	10	FAWTD
41: YO	11/26/2009	11/29/2009	11/25/2010	11/28/2010	DER-1-320	5	FAD
41: YO	12/05/2009	12/09/2009	12/04/2010	12/08/2010	DER-1-321	15	ESWTD
41	09/01/2009	09/22/2009	09/01/2010	09/22/2010	DER-2-322	10	FAD
41	09/24/2009	09/30/2009	09/24/2010	09/30/2010	DER-3-323	25	FAD
42	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-1-324	60	FAD
42	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-1-325	60	FAD
42	11/26/2009	11/29/2009	11/25/2010	11/28/2010	DER-1-326	10	FAWTD
42	09/01/2009	09/22/2009	09/01/2010	09/22/2010	DER-2-327	10	FAD

42	09/24/2009	09/30/2009	09/24/2010	09/30/2010	DER-3-328	10	FAD
43	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-1-329	50	FAD
43	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-1-330	50	FAD
43	09/01/2009	09/22/2009	09/01/2010	09/22/2010	DER-2-331	25	FAD
43	09/24/2009	09/30/2009	09/24/2010	09/30/2010	DER-3-332	10	FAD
45	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-1-333	275	FAD
45	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-1-334	275	FAD
45: YO	11/26/2009 12/05/2009	11/29/2009 12/06/2009	11/25/2010 12/04/2010	11/28/2010 12/05/2010	DER-1-335	25	FAD
45: MI	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-1-336	25	FAD
45	09/01/2009	09/22/2009	09/01/2010	09/22/2010	DER-2-337	120	FAD
45	09/24/2009	09/30/2009	09/24/2010	09/30/2010	DER-3-338	110	FAD
45	10/03/2009	10/07/2009	10/02/2010	10/06/2010	DER-3-339	40	FAD
47	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-1-340	20	FAD
47	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-1-341	20	FAD
47	09/01/2009	09/22/2009	09/01/2010	09/22/2010	DER-2-342	10	FAD
47	09/24/2009	09/30/2009	09/24/2010	09/30/2010	DER-3-343	20	FAD
48	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-1-344	50	FAD
48	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-1-345	50	FAD
48	09/01/2009	09/22/2009	09/01/2010	09/22/2010	DER-2-346	50	FAD
49	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-1-347	100	FAD
49	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-1-348	100	FAD
49	09/01/2009	09/22/2009	09/01/2010	09/22/2010	DER-2-349	100	FAD
50	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-1-350	50	FAD
50	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-1-351	50	FAD
50	09/01/2009	09/22/2009	09/01/2010	09/22/2010	DER-2-352	10	FAD
51	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-1-353	100	FAD
51	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-1-354	100	FAD
51	09/01/2009	09/22/2009	09/01/2010	09/22/2010	DER-2-355	80	FAD
52	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-1-356	100	FAD
52	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-1-357	100	FAD
52	09/01/2009	09/22/2009	09/01/2010	09/22/2010	DER-2-358	100	FAD
52: restricted muzzleloader only	09/24/2009	09/30/2009	09/24/2010	09/30/2010	DER-3-359	30	FAD
53	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-1-360	100	FAD
53	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-1-361	100	FAD
53	09/01/2009	09/22/2009	09/01/2010	09/22/2010	DER-2-362	90	FAD
54/55: Colin Neblet WMA	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-1-363	15	FAD
54/55: Colin Neblet WMA	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-1-364	15	FAD
55: ES Barker WMA	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-1-365	5	FAD
55: ES Barker WMA, YO	11/26/2009	11/29/2009	11/25/2010	11/28/2010	DER-1-366	5	FAD
55: Urraca WMA	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-1-367	10	FAD
55: Urraca WMA	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-1-368	10	FAD
56	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-1-369	15	FAD
56	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-1-370	15	FAD
56: YO	11/26/2009	11/29/2009	11/25/2010	11/28/2010	DER-1-371	10	FAD
56	09/01/2009	09/22/2009	09/01/2010	09/22/2010	DER-2-372	10	FAD
56	09/24/2009	09/30/2009	09/24/2010	09/30/2010	DER-3-373	10	FAD

57	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-1-374	25	FAD
57	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-1-375	25	FAD
57	11/26/2009	11/29/2009	11/25/2010	11/28/2010	DER-1-376	10	FAWTD
57: YO	11/26/2009	11/29/2009	11/25/2010	11/28/2010	DER-1-377	10	FAD
57	09/01/2009	09/22/2009	09/01/2010	09/22/2010	DER-2-378	15	FAD
57: Sugarite canyon state park	11/01/2009	11/30/2009	11/01/2010	11/30/2010	DER-2-379	40	FAD
57	09/24/2009	09/30/2009	09/24/2010	09/30/2010	DER-3-380	15	FAD
58	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-1-381	30	FAD
58	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-1-382	30	FAD
58	12/12/2009	12/16/2009	12/11/2010	12/15/2010	DER-1-383	10	FAWTD
58: YO	11/26/2009	11/29/2009	11/25/2010	11/28/2010	DER-1-384	10	FAD
58: YO	12/05/2009	12/09/2009	12/04/2010	12/08/2010	DER-1-385	15	ESWTD
58	09/01/2009	09/22/2009	09/01/2010	09/22/2010	DER-2-386	15	FAD
58	09/24/2009	09/30/2009	09/24/2010	09/30/2010	DER-3-387	15	FAD
59	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-1-388	35	FAD
59	10/31/2009	11/04/2009	10/30/2010	11/03/2010	DER-1-389	35	FAD
59	12/12/2009	12/16/2009	12/11/2010	12/15/2010	DER-1-390	10	FAWTD
59: YO	11/26/2009	11/29/2009	11/25/2010	11/28/2010	DER-1-391	5	FAD
59: YO	12/05/2009	12/09/2009	12/04/2010	12/08/2010	DER-1-392	15	ESWTD
59	09/01/2009	09/22/2009	09/01/2010	09/22/2010	DER-2-393	10	FAD
59	09/24/2009	09/30/2009	09/24/2010	09/30/2010	DER-3-394	25	FAD

B. Private land-only deer hunts: Private land-only deer permits shall be restricted to the season dates, eligibility requirements or restrictions, sporting arms type, and bag limit that corresponds to the public land hunt code listed in 19.31.13.15 NMAC for the GMU where the private landowner's property lies. Private land-only deer permits shall be unlimited and available from any license vendor and the department's web site; 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. Private land-only hunts in GMUs 8, 46, 54, and 55 shall be as indicated below:

open GMUs or areas	2009-2010 hunt seasons		2010-2011 hunt seasons		hunt code	permits	bag limit
	hunt start	hunt end	hunt start	hunt end			
8 for any legal sporting arm	10/17/2009	10/21/2009	10/16/2010	10/20/2010	DER-1-450	unlimited	FAD
8 for legal muzzle loading rifles or bows	09/24/2009	09/30/2009	09/24/2010	09/30/2010	DER-3-451	unlimited	FAD
46 for any legal sporting arm	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-1-452	unlimited	FAD
46 for any legal sporting arm	10/31/2009	11/04/2009	10/30/2009	11/03/2010	DER-1-453	unlimited	FAD
46 for bows only	09/01/2009	09/22/2009	09/01/2010	09/22/2010	DER-2-454	unlimited	FAD
46 for legal muzzle loading rifles or bows	09/24/2009	09/30/2009	09/24/2010	09/30/2010	DER-3-455	unlimited	FAD
54 for any legal sporting arm	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-1-456	unlimited	FAD
54 for any legal sporting arm	10/31/2009	11/04/2009	10/30/2009	11/03/2010	DER-1-457	unlimited	FAD
54 for any legal sporting arm	11/26/2009	11/29/2009	11/25/2010	11/28/2010	DER-1-458	unlimited	FAWTD
54 for bows only	09/01/2009	09/22/2009	09/01/2010	09/22/2010	DER-2-459	unlimited	FAD
54 for legal muzzle loading rifles or bows	09/24/2009	09/30/2009	09/24/2010	09/30/2010	DER-3-460	unlimited	FAD

55 for any legal sporting arm	10/24/2009	10/28/2009	10/23/2010	10/27/2010	DER-1-461	unlimited	FAD
55 for any legal sporting arm	10/31/2009	11/04/2009	10/30/2009	11/03/2010	DER-1-462	unlimited	FAD
55 for bows only	09/01/2009	09/22/2009	09/01/2010	09/22/2010	DER-2-463	unlimited	FAD
55 for legal muzzle loading rifles or bows	09/24/2009	09/30/2009	09/24/2010	09/30/2010	DER-3-464	unlimited	FAD
55B for any legal sporting arm	11/26/2009	11/29/2009	11/25/2010	11/28/2010	DER-1-465	unlimited	FAWTD

[19.31.13.15 NMAC – Rp, 19.31.13.15 NMAC, 4-1-09]

**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 14 ELK**

19.31.14.1 ISSUING AGENCY:
New Mexico Department of Game and Fish.

[19.31.14.1 NMAC – Rp, 19.31.14.1 NMAC, 4-1-09]

19.31.14.2 S C O P E :
Sportspersons interested in elk management and elk hunting. Additional requirements may be found in Chapter 17, NMSA 1978, and Chapters 30, 31, 32 and 33 of Title 19.
[19.31.14.2 NMAC – Rp, 19.31.14.2 NMAC, 4-1-09]

**19.31.14.3 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.

[19.31.14.3 NMAC – Rp, 19.31.14.3 NMAC, 4-1-09]

19.31.14.4 DURATION: April 1, 2009 through March 31, 2011.

[19.31.14.4 NMAC – Rp, 19.31.14.4 NMAC, 4-1-09]

19.31.14.5 EFFECTIVE DATE:
April 1, 2009, unless a later date is cited at the end of individual sections.

[19.31.14.5 NMAC – Rp, 19.31.14.5 NMAC, 4-1-09]

19.31.14.6 O B J E C T I V E :
Establishing open hunting seasons and basic regulation, rules, and procedures governing the issuance of special elk permits

and licenses by the department.
[19.31.14.6 NMAC – Rp, 19.31.14.6 NMAC, 4-1-09]

19.31.14.7 DEFINITIONS:

A. “A” or “antlerless elk” shall mean any one elk without antlers.

B. “APRE/6” shall mean any antler point restricted bull elk with a minimum of 6 visible antler points on one side, a brow tine or eye guard constitutes a point, a burr at the base does not.

C. “Arrows” shall mean only those arrows or bolts having broadheads with steel cutting edges.

D. “Baiting” shall mean the placing, exposing, depositing, distributing, or scattering of any salt, grain, scent or other feed on or over areas where hunters are attempting to take elk.

E. “Bow” shall mean compound, recurve or long bow. Sights on bows shall not project light nor magnify.

F. “Core occupied elk range” or “COER” shall mean the portion of land within the boundaries of a game management unit (GMU) that is designated by the department as containing the majority of routine and substantial elk use. This shall be the area on which elk management goals and subsequent harvest objectives are based.

G. “Crossbow” shall mean a device with a bow limb or band of flexible material that is attached horizontally to a stock and has a mechanism to hold the string in a cocked position. Sights on crossbows shall not project light nor magnify.

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

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

J. “Elk” as used herein, shall mean any wild cervid of the genus Cervus.

K. “Elk enhancement program” and “special elk permits” as used herein, shall mean the department activity that allows the issuance of not more

than two permits for the taking of one bull elk per permit with the purpose of raising funds for programs and projects to benefit elk.

L. “Elk harvest success rate” will mean the success rate of elk hunters who hunted pursuant to licenses issued through the conversion of private land authorizations and public draw licenses in each game management unit as determined by hunter harvest surveys.

M. “Elk region” shall mean a portion of the state designated by the department to administer elk management activities. An elk region describes an assemblage of one or more herd units and encompasses one or more GMUs.

N. “Entry permit” shall entitle the holder of a valid official license to hunt where hunter numbers are limited by rule.

O. “ES” or “either sex” shall mean any one elk.

P. “Game management unit” or “GMU” shall mean those areas as described in the state game commission’s rule 19.30.4 NMAC Boundary Descriptions for Wildlife Management Areas.

Q. “High demand hunt” is hereby defined as a special draw hunt where the total number of non-resident applicants for an elk hunt in each unit exceeds twenty-two percent of the total applicants based on data for the two immediately preceding years.

R. “License” shall mean a valid official document that is issued or approved by the director that each person hunting elk in New Mexico must have or obtain prior to hunting.

S. “License year” shall mean the period from April 1 through March 31.

T. “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.

U. “Modern firearms” shall mean center-fire firearms, not to include any fully automatic firearms. Legal shotguns shall be only those shotguns capa-

ble of being fired from the shoulder.

V. "Muzzle-loader or muzzle-loading firearms" shall mean those rifles and shotguns in which the charge and projectile are loaded through the muzzle. Only blackpowder, Pyrodex or equivalent blackpowder substitute may be used. Use of smokeless powder is prohibited. Legal muzzle-loader shotguns shall be only those shotguns capable of being fired from the shoulder.

W. "Private land authorization certificate" shall mean the document generated by the department and issued to a private landowner that authorizes the holder to purchase a specified license to hunt elk.

X. "Quality hunt" is hereby defined as a hunt designed to provide a hunter with an opportunity to achieve one or more of the following: a pleasurable experience based on timing and length of hunt season, lower hunter density, and an increased opportunity for success.

Y. "TBD" or "to be determined" shall mean the details of a hunt will be provided to the hunter as designated by the director.

Z. "Unlimited" shall mean there is no set limit on the number of permits or licenses established for the described hunt areas.

AA. "Valles Caldera national preserve (VCNP)" shall mean the hunt area within game management subunit 6B known as the Valles Caldera national preserve.

BB. "Web sale" shall refer to accessing the department's internet address to initiate the process to purchase specific elk hunting licenses as designated by the director annually.

CC. "Wildlife management area" or "WMA" shall mean those areas as described in the state game commission's rule 19.30.4 NMAC Boundary Descriptions for Wildlife Management Areas.

DD. "Mentor/youth only hunts" shall mean be limited to one adult (18 years and older) and up to 3 youth (under 18 years as of opening day of the hunt) hunters. Youth applicants for any mentor/youth only firearm hunts must provide hunter education certificate number on application.
[19.31.14.7 NMAC – Rp, 19.31.14.7 NMAC, 4-1-09]

19.31.14.8 ADJUSTMENT OF LICENSES, PERMITS, AUTHORIZATIONS, AND HARVEST LIMITS: The director, with the verbal concurrence of the chairman or his designee, may adjust the number of licenses, permits, or authorization certificates, up or down by no more

than 20% to address significant changes in population levels or habitat availability (exception: GMU 34, elk licenses and authorizations may be adjusted beyond this amount as necessary to meet management objectives). This adjustment may be applied to any or all permits, authorizations, licenses for elk in a specific GMU or designated area.

[19.31.14.8 NMAC – Rp, 19.31.14.8 NMAC, 4-1-09]

19.31.14.9 ELK LICENSE APPLICATION REQUIREMENTS AND RESTRICTIONS.

A. One elk permit or license per year: It shall be unlawful for anyone to hold more than one permit or license to hunt elk during the current license year unless otherwise specifically allowed by rule.

B. Validity of license or permit: All elk permits or licenses shall be valid only for the specified dates, eligibility requirements or restrictions, legal sporting arms, bag limit and area specified by the hunt information printed on the permit, license or carcass tag. In GMUs 4, 5A, 46, 54, 55A, 57 and 58 private land "ranch only" elk licenses shall be valid on other private lands within the GMU only if accompanied by written permission from the landowner or designee.

C. Valle Vidal elk once-in-a-lifetime hunts:

(1) It shall be unlawful for anyone to apply for a license to hunt bull elk on the Valle Vidal (as described in 19.30.4.11 NMAC) if he/she has ever held a license allowing them to take a bull elk on the Valle Vidal since 1983 except persons that have held a youth-only license may apply for other than youth only licenses as long as they are eligible. This restriction applies to all licenses valid for a bag limit that allows the harvest of an antlered bull elk. It shall be unlawful for anyone to apply for a license to hunt antlerless elk on the Valle Vidal if he/she has ever held a Valle Vidal elk license valid for a bag limit of antlerless since 1983 except persons that have held a youth-only antlerless license may apply for other than youth only antlerless licenses as long as they are eligible. Either sex (ES) or mature bull/antlerless (MB/A) shall not be considered as an "antlerless" license for this restriction. Persons who have held a Valle Vidal elk license through any incentive program are exempt from this restriction.

(2) It shall be unlawful to hunt bear on the Valle Vidal except for properly licensed bear hunters that possess a Valle Vidal elk hunting muzzleloader, bow, or rifle license and only during the dates of the elk hunt specified. Use of dogs shall not

be allowed for bear hunting on the Valle Vidal.

D. Mobility impaired (MI) elk hunts: It shall be unlawful for anyone to apply for a mobility impaired (MI) elk license, except as allowed by 19.31.3.11 NMAC.

E. Youth only (YO) elk hunts: It shall be unlawful for anyone to apply for youth only (YO) elk license except as allowed by 19.31.3.11 NMAC.
[19.31.14.9 NMAC – Rp, 19.31.14.9 NMAC, 4-1-09]

19.31.14.10 ELK MANNER AND METHOD REQUIREMENTS AND RESTRICTIONS:

A. Hunt season and hours: Elk may be hunted or taken only during open seasons and only during the period from one-half hour before sunrise to sunset.

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

C. Tagging:
(1) Any license that permits the taking of elk shall be issued with an elk carcass tag.

(2) It shall be unlawful to possess more than one elk carcass tag per year, except as specifically permitted by rule.

(3) It shall be unlawful for any licensee to fail to tag the elk as prescribed below.

(a) Immediately after killing any elk; the licensee killing the elk shall notch the proper day and month of kill from the elk carcass tag.

(b) The tag shall be attached to the elk carcass and remain attached while the carcass is in any vehicle, left unattended in the field, or while it is in camp or at a residence or other place of storage. The notched tag may be removed from the carcass while the carcass is being removed from the field to a camp or vehicle. In situations where numerous trips are required to remove the carcass from the field, the tag shall remain attached to that portion of the carcass left in a camp or vehicle.

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

D. Seizure: Any conservation officer or other officer authorized to enforce game laws and regulations shall seize any elk carcasses that are improperly tagged.

E. Proof of sex: It shall be unlawful for anyone to transport or possess the carcass of an elk without proof of sex. The antlers of any bull elk taken shall remain attached to the skull plate until arriv-

ing at a residence, taxidermist, meat processing facility, or place of final storage. The scalp and both ears of female or immature male shall accompany the carcass in the same manner.

F. Use of dogs in hunting: It shall be unlawful to use dogs to hunt elk, except leashed dogs may be used to locate wounded or dead elk. Hunters must register with the appropriate department area office for the GMU they will be hunting before their hunt begins to use a dog in this manner.

G. Use of baits or scents: It shall be unlawful for anyone to take or attempt to take any elk by use of baits or scents as defined in 19.31.10.7 NMAC. Scent masking agents on one's person are allowed.

H. Live animals: It shall be unlawful to use live animals as a blind or decoy in taking or attempting to take any elk.

I. Use of calling devices: It shall be unlawful to use any electrically or mechanically recorded calling device in taking or attempting to take any elk.

J. Killing out-of-season: It shall be unlawful to kill any elk out of elk hunting season.

K. Bullets: It shall be unlawful to take or attempt to take elk by the use of tracer ammunition or any ammunition loaded with a full metal jacketed bullet. Only soft-nosed or hollow-pointed bullets may be used in hunting or taking elk.

L. Drugs and explosives: It shall be unlawful to use any form of drug on an arrow or use arrows driven by explosives.

M. Legal sporting arms or weapon types for elk are as follows: any center-fire rifle of .24 caliber or larger; any center-fire handgun of .24 caliber or larger; shotguns not smaller than 28 gauge, firing a single slug; muzzle-loading rifles not smaller than .45 caliber; bows and arrows; and crossbows and bolts (as designated by the director for certified mobility impaired hunters or as otherwise allowed in rule).

N. Areas closed to elk hunting. The following areas shall remain closed to elk hunting, except as permitted by regulation: Sugarite canyon state park; Rio Grande wild and scenic river area, including the Taos valley overlook; all wildlife management areas; the Valle Vidal area; and sub-unit 6B (Valles Caldera national preserve).

[19.31.14.10 NMAC – Rp, 19.31.14.10 NMAC, 4-1-09]

19.31.14.11 CHRONIC WASTING DISEASE CONTROL - ELK: The director has the authority to designate possession criteria to any elk hunter where

chronic wasting disease is a concern. It shall be unlawful to transport dead elk, or their parts, taken from any game management unit or area identified by the director in which the presence of, or possibility of, exposure to chronic wasting disease has been identified to any location outside that game management unit except for the following parts of elk:

A. meat that is cut and wrapped (either commercially or privately);

B. quarters or other portions of meat with no part of the spinal column or head attached;

C. meat that has been boned out;

D. hides with no heads attached;

E. clean skull plates with antlers attached; clean is defined as having been immersed in a bath of at least 1 part chlorine bleach and 2 parts water with no meat or tissue attached;

F. antlers with no meat or tissue attached;

G. upper canine teeth, also known as "buglers," "whistlers," or "ivories";

H. finished taxidermied heads.

[19.31.14.11 NMAC – Rp, 19.31.14.11 NMAC, 4-1-09]

19.31.14.12 QUALITY ELK HUNTS: Quality hunts for elk are as follows:

A. all Valle Vidal hunts;

B. first three mature bull hunts and both bow hunts on the Sargent WMA as follows: ELK-1-143, ELK-1-144, ELK-1-145, ELK-2-141, and ELK-2-142;

C. any elk hunt in game management units 13,15, 16 and 17, including all sub-units, except antlerless or youth only hunts, that are closest to the rut period of September 15 to October 15 for each weapon type as follows: ELK-2-229, ELK-3-231, ELK-2-238, ELK-3-240, ELK-2-248, ELK-1-250, ELK-2-256, ELK-1-257, ELK-2-262, ELK-1-264, ELK-2-270, ELK-1-272, ELK-2-278, ELK-3-280, ELK-2-287 and ELK-3-289;

D. the mobility impaired elk hunts in sub-units 16A and 16D as follows: ELK-1-249 and ELK-1-271;

E. all GMU 6B Valles Caldera national preserve hunts that allow the hunter to take an antlered bull;

F. quality hunt fees in Subsections C and D above shall apply to the conversion of any mature bull or either sex, except youth only, private land authorizations that include any hunt dates from September 15 through October 15 for private lands that lie within the COER, but not to private lands outside COER areas.

[19.31.14.12 NMAC – Rp, 19.31.14.12

NMAC, 4-1-09]

19.31.14.13 SPECIAL ELK HUNTING OPPORTUNITIES:

A. Elk enhancement program:

(1) Program description: The director of the department shall collect all proceeds generated through the auction and lottery of special bull elk permits, and such monies shall be deposited in the game protection fund. These monies shall be made available for expenditure by the department solely for programs and projects to benefit elk and for direct costs incurred in carrying out these programs. These monies shall be used to augment, and not replace, monies appropriated from existing funds available to the department for the preservation, restoration, utilization, and management of elk.

(2) Requirements for issuance of special elk permits:

(a) The state game commission shall authorize the director of the department to issue not more than two special elk permits in any one license year to take one bull elk per permit. The director shall allow the sale of one permit through auction to the highest bidder and one permit to a person selected through a random drawing of a lottery ticket by the department or an incorporated, nonprofit organization dedicated to the conservation of elk.

(b) Proposals for auctioning one special elk permit and the sale of lottery tickets to obtain one special elk permit through a random drawing shall be submitted to the director of the department prior to January 31, preceding the license year when the permit may be legally used.

(c) The proposals for auctioning one permit, and for the sale of lottery tickets and subsequent selection of a recipient for a second permit through a random draw shall each contain and identify: (1) the name of the organization making the request as well as the names, addresses and telephone numbers of those members of the organization who are coordinating the proposal; (2) the estimated amount of money to be raised and the rationale for that estimate; and (3) a copy of the organization's articles of incorporation with a letter attesting that the organization has tax-exempt status. The letter must also affirm that the proponent agrees to the conditions set forth by the director of the department. The letter must be signed and dated by the president and secretary-treasurer, or their equivalents.

(d) The director of the department shall examine all proposals following the close of the application period. The director may reject any application which does not conform with the requirements of this section. In selecting a marketing organization, the director shall consider the qual-

ifications of the organization as a fund raiser; the proposed fund raising plan; the fee charged by the marketing organization for promotional and administrative costs, relative to the funds obtained from auctioning the permit; and the organizations previous involvement with elk management and its conservation objectives. The director may accept any proposals when it is in the best interest of elk to do so.

(e) After a proposal has been approved, the state game commission shall establish open season dates, open areas, and license requirements.

(f) The marketing organization must agree in writing to the following: (1) to transfer all proceeds on or before the tenth day of the month following the auction and drawing for the lottery, and (2) to provide the department with the names, addresses, and the physical descriptions of the individuals to whom the special elk permits are issued.

(g) The department and the marketing organization must agree to the arrangements for the deposit of the proceeds, payment for services rendered, the accounting procedures, and final audit.

(h) Unless his/her hunting privileges have been revoked pursuant to law, any resident of New Mexico, nonresident, or alien is eligible to submit a bid for the special elk auction permit or purchase lottery tickets in an attempt to be selected for the special elk lottery permit.

(i) The special elk permits issued through auction and lottery may be transferred, through sale, barter or gift by the successful individuals to only other individuals qualified to hunt.

(j) Special elk permits granted through auction or lottery, as described above, shall not be considered a ‘once-in-a-lifetime’ permits.

(3) **Enhancement hunts:** Elk enhancement licenses shall be valid from September 1 through January 31 for any legal sporting arms. These licenses shall be valid statewide where hunting is allowed. Bag limit shall be one bull elk. The hunt code shall be ELK-1-500. The authorization to obtain an elk enhancement license may be used either by the applicant or any individual. The authorization may be transferred through sale, barter, or gift.

B. Elk incentive programs:

(1) The director may annually allow up to two (2) elk authorizations to be issued by drawing to elk and deer hunters reporting their prior year’s harvest information as well as trappers reporting their trapping activities by the published deadline using the department’s established website. These incentives may also be available for deer and elk hunters submitting their legally harvested animal for CWD testing.

(2) Authorizations certificates to purchase incentive license may be used either by the applicant or any individual. The authorization may be transferred through sale, barter or gift.

(3) Elk incentive hunts shall be valid only for the dates, legal sporting arms, bag limit and area specified by the director.

C. Application requirements, procedures for determination of the hunting access authorization holders for the Valles Caldera national preserve hunts, and hunt administration:

(1) The department shall issue elk hunting licenses only to persons holding a valid VCNP elk hunting access authorization in accordance with 17-3-16 NMSA.

(2) Prior to the department issuing any elk hunting licenses to persons holding a valid VCNP elk hunting access agreement, the VCNP must provide to the department, written verification from the contractor conducting the drawing process to determine the holders of VCNP elk hunting access authorizations, that the provisions of 17-3-16B, C and D NMSA have been met with respect to all authorizations issued.

(3) The VCNP shall utilize a contractor to conduct the drawing that determines the holders of any VCNP elk hunting access authorization. The contractor must be approved by the department prior to the drawing process conducted in accordance with this subsection.

(4) Each Valles Caldera national preserve elk hunting license shall be valid for one hunt in GMU 6B for which the bag limit and hunt period is specified on the Valles Caldera national preserve elk hunting access authorization.

(5) Valles Caldera national preserve elk hunts, listing the sporting arms, hunt dates, hunt code, number of licenses and bag limit shall be as indicated in 19.31.14.15 NMAC.

D. Unique late season archery bull elk hunts: Late season bow-only elk hunts. These hunts will be administered by the department through an internet registration process, web sale, rather than the random draw process. The open GMUs, hunt dates, hunt code, number of licenses and bag limit shall be as indicated below.

open GMUs or areas	2009 hunt start date	2009 hunt end date	2010 hunt start date	2010 hunt end date	hunt code	licenses	bag limit
12	11/21/2009	11/25/2009	11/21/2010	11/24/2010	ELK-2-451	TBD	APRE/6
34	12/12/2009	12/16/2009	12/11/2010	12/15/2010	ELK-2-452	TBD	APRE/6
37	12/05/2009	12/09/2009	12/04/2010	12/08/2010	ELK-2-453	TBD	APRE/6

E. Youth encouragement hunts:

(1) Only youth hunters as defined by 19. 31.3.11 NMAC that successfully fulfilled all application requirements and responsibilities for draw hunts for deer, elk, antelope, ibex, oryx, or bighorn sheep in the current license year and were unsuccessful in drawing any licenses or permits will be eligible to register for these hunts.

(2) The director, with concurrence of the chairman of the state game commission, may adjust the number of licenses available in all youth encouragement hunts listed below based on changes in population levels, harvest rates, habitat availability, or increases in unlawful hunting activities resulting from these hunts.

(3) These hunts will be administered by the department through an internet registration process, web sale, rather than the random draw process. The open GMUs, hunt dates, hunt code, number of licenses and bag limit shall be as indicated below.

open GMUs or areas	2009 hunt start date	2009 hunt end date	2010 hunt start date	2010 hunt end date	hunt code	licenses	bag limit
5B	11/27/2009	12/01/2009	11/26/2010	11/30/2010	ELK-1-419	20	A
6A	11/27/2009	12/01/2009	11/26/2010	11/30/2010	ELK-1-420	50	A
6A	12/26/2009	12/30/2009	12/26/2010	12/30/2010	ELK-1-421	50	A
6C	11/27/2009	12/01/2009	11/26/2010	11/30/2010	ELK-1-422	50	A
6C	12/26/2009	12/30/2009	12/26/2010	12/30/2010	ELK-1-423	50	A
9	11/27/2009	12/01/2009	11/26/2010	11/30/2010	ELK-3-424	150	ES
9	12/26/2009	12/30/2009	12/26/2010	12/30/2010	ELK-3-425	50	ES
10	11/27/2009	12/01/2009	11/26/2010	11/30/2010	ELK-1-426	35	A
13	11/27/2009	12/01/2009	11/26/2010	11/30/2010	ELK-1-427	60	A
13	12/26/2009	12/30/2009	12/26/2010	12/30/2010	ELK-1-428	60	A
15	11/27/2009	12/01/2009	11/26/2010	11/30/2010	ELK-1-429	60	A
15	12/26/2009	12/30/2009	12/26/2010	12/30/2010	ELK-1-430	60	A
16A	11/27/2009	12/01/2009	11/26/2010	11/30/2010	ELK-1-431	60	A
16A	12/26/2009	12/30/2009	12/26/2010	12/30/2010	ELK-1-432	60	A
16C	11/27/2009	12/01/2009	11/26/2010	11/30/2010	ELK-1-433	60	A
16C	12/26/2009	12/30/2009	12/26/2010	12/30/2010	ELK-1-434	60	A
16D	11/27/2009	12/01/2009	11/26/2010	11/30/2010	ELK-1-435	60	A
16D	12/26/2009	12/30/2009	12/26/2010	12/30/2010	ELK-1-436	60	A
16E	11/27/2009	12/01/2009	11/26/2010	11/30/2010	ELK-1-437	60	A
16E	12/26/2009	12/30/2009	12/26/2010	12/30/2010	ELK-1-438	60	A
17	11/27/2009	12/01/2009	11/26/2010	11/30/2010	ELK-1-439	60	A
17	12/26/2009	12/30/2009	12/26/2010	12/30/2010	ELK-1-440	60	A
34	12/26/2009	12/30/2009	12/26/2010	12/30/2010	ELK-1-441	80	A
36	11/27/2009	12/01/2009	11/26/2010	11/30/2010	ELK-1-442	60	A
36	12/26/2009	12/30/2009	12/26/2010	12/30/2010	ELK-1-443	60	A
49	11/27/2009	12/01/2009	11/26/2010	11/30/2010	ELK-1-444	50	ES
50	12/26/2009	12/30/2009	12/26/2010	12/30/2010	ELK-1-445	80	A
51	11/27/2009	12/01/2009	11/26/2010	11/30/2010	ELK-1-446	90	A
51	12/26/2009	12/30/2009	12/26/2010	12/30/2010	ELK-1-447	90	A
52	11/27/2009	12/01/2009	11/26/2010	11/30/2010	ELK-1-448	50	A
53	11/27/2009	12/01/2009	11/26/2010	11/30/2010	ELK-1-449	40	ES
53	12/26/2009	12/30/2009	12/26/2010	12/30/2010	ELK-1-450	100	ES

[19.31.14.13 NMAC – Rp, 19.31.14.13 NMAC, 4-1-09]

19.31.14.14 POPULATION MANAGEMENT HUNTS:

A. The respective area chief may authorize population management hunts for elk when justified in writing by department personnel.

B. The respective area chief shall designate the sporting arms, season dates, season lengths, bag limits, hunt boundaries, specific requirements or restrictions, and number of licenses or permits. No qualifying license holder shall take more than one elk per license year.

C. The specific hunt dates, hunt area, the name of the department representative providing the information and the date and time of notification shall be written on the license after notification by telephone.

D. Application may be made either on-line or through the special hunt application form provided by the department. On-line applications must be submitted by the deadline date set by the department. Application forms postmarked by the deadline date will be accepted up to five working days after the deadline date.

E. Applications for licenses may be rejected, and fees returned to an applicant, if such applications are not on the proper form or do not supply adequate information.

F. In the event that an applicant is not able to hunt on the dates specified, the applicant's name shall be moved to the bottom of the list and another applicant may be contacted for the hunt.

G. No more than one person may apply under each application.

H. Population management hunts for elk may be anywhere in the state with dates, number of licenses, bag limit, and specific hunt areas to be determined (TBD) by the department. The hunt code to apply for elk population management hunts shall be ELK-5-100.

I. In those instances where a population management hunt is warranted on deeded private lands, the landowner may suggest eligible hunters of their choice by submitting a list of prospective hunter's names to the department for licensing consideration. No more than ½ of the total number of licenses authorized shall be available to landowner identified hunters. The balance of prospective hunters shall be identified by the department.

[19.31.14.14 NMAC – Rp, 19.31.14.14 NMAC, 4-1-09]

19.31.14.15 ELK HUNTS in COER GMUs: This section lists elk management information and subsequent hunting opportunities for GMUs in elk regions where a core occupied elk range has been established. The listed information includes regional elk population information, management goals, harvest objectives, total number of hunting opportunities, GMUs or areas open for hunting, season dates, hunt codes, bag limits, legal weapons, number of licenses available in the public draw and the number and type of authorization certificates available for private lands within the COER of each GMU. Hunt codes for elk hunts allowing the “any legal weapon” type shall be designated ELK-1, hunt codes for elk hunts allowing the “bow only” weapon type shall be designated as ELK-2, hunt codes for elk hunts allowing the “muzzle loading rifles or bow” weapon type shall be designated as ELK-3. Youth hunters must provide hunter education certification number on application. Military only hunters must be full time active military and proof of military status must accompany application. Proof of this service is required. Mobility impaired hunt applicants shall meet eligibility requirements, as designated by the director, prior to applying for mobility impaired hunts.

A. Elk management goals:

(1) Quality hunt management (QHM):

(a) Elk harvest in regional populations, herd units or GMUs within a region results in the trend of annual bull mortality rates to be below 35%.

(b) Seasons should be designed to ensure timing and length of hunts is desirable.

(c) At least 2/3 of all hunters are “satisfied” with the experience.

(2) Optimal opportunity management (OOM):

(a) Elk harvest in regional populations, herd units or GMUs within a region results in the trend of annual bull mortality rates to be below 45%, and harvest near optimal sustainable yield.

(b) Season structure should be designed to ensure timing and length of hunts provides significant amount of opportunity.

(c) At least 1/3 of all hunters are “satisfied” with the experience.

B. Northwest region: GMUs 2, 5A, 9 and 10.

(1) Quality hunt management within COER area in GMU 2.

(2) Optimal opportunity management within COER areas in GMUs 5A, 9 and 10.

(3) Foundational resource information for the northwest region is indicated below.

northwest region population information			sustainable harvest pursuant to goals	
herd unit	population estimate	bull:cow:calf ratio	bulls	cows
San Juan (GMU 2)	500-1100	37:100:39	37-80	45-99
Lindrith (GMU 5A)	950-1150	34:100:36	75-91	81-99
Mt. Taylor (GMU 9)	4734-6336	36:100:31	340-441	356-476
Zuni (GMU 10)	565 – 860	27:100:38	49-74	53-80

GMU	mgmt goal	total licenses by bag limit				maximum projected harvest	
		MB	A	ES bow	total lic.	bulls	cows
2	QHM	235	294	282	811	107	122
5A	OOM	267	238	71	576	145	136
9	OOM	356	1096	4492	1944	312	353
10	OOM	206	471	368	1045	112	144
total		1064	2099	1213	4376	677	754

(4) Public land elk hunts listing the eligibility requirements or restrictions, GMU or area, hunt dates, hunt code, number of licenses, bag limits and weapon types shall be as indicated below.

open GMUs or areas	2009-2010 hunt seasons		2010-2011 hunt seasons		hunt code	licenses	bag limit
	hunt start	hunt end	hunt start	hunt end			
2	09/01/2009	09/15/2009	09/01/2010	09/15/2010	ELK-2-100	120	ES
2	09/16/2009	09/22/2009	09/16/2010	09/22/2010	ELK-2-101	120	ES
2	10/03/2009	10/07/2009	10/02/2010	10/06/2010	ELK-3-102	125	MB
2	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-1-103	75	MB
2	12/05/2009	12/09/2009	12/04/2010	12/08/2010	ELK-1-104	100	A
2 YO	12/05/2009	12/09/2009	12/04/2010	12/08/2010	ELK-1-105	50	A
2 web sale	TBD	TBD	TBD	TBD	ELK-1-106	100	A
5A public land only	09/01/2009	09/22/2009	09/01/2010	09/22/2010	ELK-2-107	11	ES
5A public land only	10/03/2009	10/07/2009	10/02/2010	10/06/2010	ELK-1-108	10	MB
5A public land only	10/03/2009	10/07/2009	10/02/2010	10/06/2010	ELK-1-109	10	A
5A public land only	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-1-110	11	MB
5A public land only	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-1-111	10	A
5A public land only	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-1-112	11	MB

5A public land only	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-1-113	10	A
5A public land only	10/24/2009	10/28/2009	10/23/2010	10/27/2010	ELK-1-114	11	MB
5A public land only	10/24/2009	10/28/2009	10/23/2010	10/27/2010	ELK-1-115	8	A
5A web sale	TBD	TBD	TBD	TBD	ELK-1-116	0	A
9: Marquez WMA	09/01/2009	09/10/2009	09/01/2010	09/10/2010	ELK-2-117	5	ES
9: Marquez WMA	09/16/2009	09/22/2009	09/16/2010	09/22/2010	ELK-2-118	5	ES
9: Marquez WMA	10/03/2009	10/07/2009	10/02/2010	10/06/2010	ELK-3-119	5	MB
9: Marquez WMA	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-3-120	5	MB
9: Marquez WMA	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-3-121	5	MB
9: Marquez WMA	10/24/2009	10/28/2009	10/23/2010	10/27/2010	ELK-3-122	5	A
9: Marquez WMA	10/31/2009	11/04/2009	10/30/2010	11/03/2010	ELK-3-123	5	A
9: Marquez WMA	11/14/2009	11/18/2009	11/13/2010	11/17/2010	ELK-3-124	5	A
9: (including Water canyon WMA)	09/01/2009	09/15/2009	09/01/2010	09/15/2010	ELK-2-125	158	ES
9: (including Water canyon WMA)	09/16/2009	09/22/2009	09/16/2010	09/22/2010	ELK-2-126	157	ES
9: (including Water canyon WMA) MI	10/03/2009	10/07/2009	10/02/2010	10/06/2010	ELK-3-127	40	ES
9: (including Water canyon WMA)	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-3-128	70	MB
9: (including Water canyon WMA)	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-3-129	70	MB
9: (including Water canyon WMA)	10/24/2009	10/28/2009	10/23/2010	10/27/2010	ELK-3-130	40	MB
9: (including Water canyon WMA) crossbows allowed	10/31/2009	11/04/2009	10/30/2010	11/03/2010	ELK-1-131	200	A
9: (including Water canyon WMA)	11/14/2009	11/18/2009	11/13/2010	11/17/2010	ELK-1-132	200	A
9 web sale	TBD	TBD	TBD	TBD	ELK-1-133	308	A
10	09/01/2009	09/15/2009	09/01/2010	09/15/2010	ELK-2-134	125	ES
10	09/16/2009	09/22/2009	09/16/2010	09/22/2010	ELK-2-135	125	ES
10	10/03/2009	10/07/2009	10/02/2010	10/06/2010	ELK-3-136	70	MB
10	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-1-137	70	MB
10 YO	11/07/2009	11/11/2009	11/06/2010	11/10/2010	ELK-1-138	120	A
10	12/05/2009	12/09/2009	12/04/2010	12/08/2010	ELK-1-139	100	A
10 web sale	TBD	TBD	TBD	TBD	ELK-1-140	100	A

(5) Private land elk authorization certificates for qualifying ranches listing the number of authorization certificates, bag limits and weapon types shall be as indicated below.

open GMUs or areas	2009 - 2010 hunt season				2010 - 2011 hunt season			
	MB	A	ES bow only	total	MB	A	ES bow only	total
2	35	44	42	121	35	44	42	121
5A	224	200	60	484	224	200	60	484
9	121	373	167	661	121	373	167	661
10	66	151	118	335	66	151	118	335
total	446	768	387	1601	446	768	387	1601

(6) Private land elk hunts for ranches designated as "ranch only" shall be limited to the following eligibility requirements or restrictions, season dates and legal sporting arms. All private land mobility impaired and youth only hunters must satisfy licensing requirements as stated in 19.31.3 NMAC in order to hunt during the "mobility impaired hunters" or "youth only" hunt periods.

legal sporting arms	open GMUs or area	2009-2010 hunt dates	2010-2011 hunt dates
bows only	5A	09/01/2009 - 09/22/2009	09/01/2010 - 09/22/2010
bows only	2, 9, 10	09/01/2009 - 09/15/2009	09/01/2010 - 09/15/2010
bows only	2, 9, 10	09/16/2009 - 09/22/2009	09/16/2010 - 09/22/2010
muzzle loading rifles and bows	2, 10	any 5 consecutive days, 10/03/2009 - 12/31/2009	any 5 consecutive days, 10/02/2010 - 12/31/2010
muzzle loading rifles and bows, MI	9	10/03/2009 - 10/07/2009	10/02/2010 - 10/06/2010
muzzle loading rifles and bows	9	any 5 consecutive days, 10/10/2009 - 12/31/2009	any 5 consecutive days, 10/09/2010 - 12/31/2010
any legal sporting arms , antlerless ONLY	9	any 5 consecutive days, 10/31/2009 - 12/31/2009	any 5 consecutive days, 10/30/2010 - 12/31/2010
any legal sporting arms	2, 10	any 5 consecutive days, 10/10/2009 - 12/31/2009	any 5 consecutive days, 10/09/2010 - 12/31/2010
any legal sporting arms	5A	any 5 consecutive days, 10/03/2009 - 12/31/2009	any 5 consecutive days, 10/02/2010 - 12/31/2010

C. North central region: COER areas of GMU's 4, 5B, 50, 51 and 52.

- (1) Optimal opportunity management within COER areas in GMUs 4, 5B, 50, 51 and 52.
- (2) Foundational resource information for the north central region shall be as indicated below.

north central region population information			sustainable harvest pursuant to goals	
herd unit	population estimate	bull:cow:calf ratio	bulls	cows
Chama-San Antonio (GMUs 4, 5B, 50, 51, and 52)	18060-22584	47:100:32	1260-1537	1402-1658

GMU	mgmt goal	total licenses by bag limit				maximum projected harvest	
		MB	A	ES bow	total lic.	bulls	cows
4	OOM	1175	533	476	2184	900	361
5B	OOM	362	318	159	839	78	54
50	OOM	328	159	152	639	111	58
51	OOM	963	876	424	2263	323	298
52	OOM	680	671	500	1851	339	300
Total		3508	2557	1711	7776	1751	1071

- (3) Public land elk hunts listing the eligibility requirements or restrictions, GMU or area, hunt dates, hunt code, number of licenses, bag limits and weapon types shall be as indicated below.

open GMUs or areas	2009-2010		2010-2011		hunt code	licenses	bag limit
	hunt start	hunt end	hunt start	hunt end			
4:Sargent WMA	09/01/2009	09/10/2009	09/01/2010	09/10/2010	ELK-2-141	10	ES
4:Sargent WMA	09/16/2009	09/22/2009	09/16/2010	09/22/2010	ELK-2-142	11	ES
4:Sargent WMA	10/03/2009	10/07/2009	10/02/2010	10/06/2010	ELK-1-143	10	MB
4:Sargent WMA	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-1-144	10	MB
4:Sargent WMA	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-1-145	10	MB
4:Sargent WMA	10/24/2009	10/28/2009	10/23/2010	10/27/2010	ELK-1-146	10	MB
4:Sargent WMA	10/31/2009	11/04/2009	10/30/2010	11/03/2010	ELK-1-147	10	A
4:Sargent WMA, YO	10/31/2009	11/04/2009	10/30/2010	11/03/2010	ELK-1-148	10	A
4:Humphries WMA only	09/01/2009	09/10/2009	09/01/2010	09/10/2010	ELK-2-149	10	ES
4:Humphries WMA only	09/16/2009	09/22/2009	09/16/2010	09/22/2010	ELK-2-150	10	ES
4:Humphries/Rio Chama WMAs	10/03/2009	10/07/2009	10/02/2010	10/06/2010	ELK-1-151	15	MB

4:Humphries/Rio Chama WMAs	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-1-152	15	MB
4:Humphries/Rio Chama WMAs	10/31/2009	11/04/2009	10/30/2010	11/03/2010	ELK-1-153	10	A
4:Humphries/Rio Chama WMAs, YO	10/31/2009	11/04/2009	10/30/2010	11/03/2010	ELK-1-154	15	A
5B	09/01/2009	09/15/2009	09/01/2010	09/15/2010	ELK-2-155	75	ES
5B	09/16/2009	09/22/2009	09/16/2010	09/22/2010	ELK-2-156	75	ES
5B	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-1-157	165	MB
5B	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-1-158	100	A
5B	10/24/2009	10/28/2009	10/23/2010	10/27/2010	ELK-1-159	165	MB
5B	10/31/2009	11/04/2009	10/30/2010	11/03/2010	ELK-1-160	100	A
5B	12/19/2009	12/23/2009	12/18/2010	12/22/2010	ELK-1-161	12	MB
5B web sale	TBD	TBD	TBD	TBD	ELK-1-162	100	A
50	09/01/2009	09/22/2009	09/01/2010	09/22/2010	ELK-2-163	117	ES
50	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-1-164	127	MB
50	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-1-165	13	A
50	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-1-166	125	MB
50	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-1-167	10	A
50 web sale	TBD	TBD	TBD	TBD	ELK-1-168	100	A
51	09/01/2009	09/15/2009	09/01/2010	09/15/2010	ELK-2-169	176	ES
51	09/16/2009	09/22/2009	09/16/2010	09/22/2010	ELK-2-170	176	ES
51	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-1-171	218	MB
51	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-1-172	218	MB
51	10/24/2009	10/28/2009	10/23/2010	10/27/2010	ELK-1-173	219	MB
51	11/07/2009	11/11/2009	11/06/2010	11/10/2010	ELK-1-174	238	A
51	11/14/2009	11/18/2009	11/13/2010	11/17/2010	ELK-1-175	239	A
51	12/05/2009	12/09/2009	12/04/2010	12/08/2010	ELK-3-176	145	ES
51 web sale	TBD	TBD	TBD	TBD	ELK-1-177	250	A
52	09/01/2009	09/15/2009	09/01/2010	09/15/2010	ELK-2-178	230	ES
52	09/16/2009	09/22/2009	09/16/2010	09/22/2010	ELK-2-179	230	ES
52 MI	10/03/2009	10/07/2009	10/02/2010	10/06/2010	ELK-3-180	50	MB
52	10/03/2009	10/07/2009	10/02/2010	10/06/2010	ELK-3-181	120	MB
52	10/03/2009	10/07/2009	10/02/2010	10/06/2010	ELK-3-182	50	A
52	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-1-183	227	MB
52	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-1-184	227	MB
52 YO	11/07/2009	11/11/2009	11/06/2010	11/10/2010	ELK-1-185	50	A
52 MI	11/14/2009	11/18/2009	11/13/2010	11/17/2010	ELK-1-186	50	A
52	11/14/2009	11/18/2009	11/13/2010	11/17/2010	ELK-1-187	60	A
52	11/21/2009	11/25/2009	11/20/2010	11/24/2010	ELK-1-188	151	A
52 web sale	TBD	TBD	TBD	TBD	ELK-1-189	256	A

(4) Private land elk authorization certificates for qualifying ranches listing the number of authorization certificates, bag limits and weapon types shall be as indicated below.

open GMUs or areas	2009 - 2010 hunt season				2010 - 2011 hunt season			
	bull	antlerless	ES bow only	total	bull	antlerless	ES bow only	total
4	1105	488	435	2028	1105	488	435	2028
5B	20	18	9	47	20	18	9	47
50	76	36	35	147	76	36	35	147
51	163	149	72	384	163	149	72	384
52	56	54	40	150	56	54	40	150
total	1420	745	591	2756	1420	745	591	2756

(5) Private land elk hunts for ranches designated as "ranch only" shall be limited to the following eligibility requirements or restrictions, season dates and legal sporting arms. All private land mobility impaired and youth only hunters must satisfy licensing requirements as stated in 19.31.3 NMAC in order to hunt during the "mobility impaired hunters" or "youth only" hunt periods.

legal sporting arms	open GMUs or areas	2009-2010 hunt dates	2010-2011 hunt dates
bows only	5B, 51, 52	09/01/2009 - 09/15/2009	09/01/2010 - 09/15/2010
bows only	5B, 51, 52	09/16/2009 - 09/22/2009	09/16/2010 - 09/22/2010
bows only	4, 50	09/01/2009 - 09/22/2009	09/01/2010 - 09/22/2010
any legal sporting arms , MI only	52	10/03/2009 - 10/07/2009	10/02/2010 - 10/06/2010
muzzle loading rifles and bows	52	any 5 consecutive days, 10/03/2009 - 12/31/2009	any 5 consecutive days, 10/02/2010 - 12/31/2010
any legal sporting arms	4	any 5 consecutive days, 10/01/2009 - 12/31/2009	any 5 consecutive days, 10/01/2010 - 12/31/2010
any legal sporting arms	5B, 50, 51, 52	any 5 consecutive days, 10/10/2009 - 12/31/2009	any 5 consecutive days, 10/09/2010 - 12/31/2010

D. Jemez region: COER areas of GMU's 6A, 6B, 6C and 7.

- (1) Quality hunt management goals for GMU 6A and 6B.
- (2) Optimal opportunity management within COER areas in GMU 6C and 7.
- (3) Foundational resource information for the Jemez region shall be as indicated below.

Jemez region population information			sustainable harvest pursuant to goals	
herd unit	population estimate	bull:cow:calf ratio	bulls	cows
Jemez (GMUs 6A, 6B, 6C and 7)	5824-8412	45:100:27	276-389	366-529

GMU	mgmt goal	total licenses by bag limit				maximum projected harvest	
		MB	A	ES bow	total lic.	bulls	cows
6A	QHM	361	120	300	781	148	40
6B	QHM	42	248	35	325	55	105
6C	OOM	488	522	341	1351	129	143
7	OOM	68	185	31	284	19	21
total		959	1075	707	2741	351	309

- (4) Public land elk hunts listing the eligibility requirements or restrictions, GMU or area, hunt dates, hunt code, number of licenses, bag limits and weapon types shall be as indicated below.

open GMUs or areas	2009-2010 hunt season		2010-2011 hunt season		hunt code	licenses	bag limit
	hunt start	hunt end	hunt start	hunt end			
6A	09/01/2009	09/15/2009	09/01/2010	09/15/2010	ELK-2-190	150	ES
6A	09/16/2009	09/22/2009	09/16/2010	09/22/2010	ELK-2-191	105	ES
6A	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-3-192	110	MB
6A	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-1-193	100	MB
6A	10/24/2009	10/28/2009	10/23/2010	10/27/2010	ELK-1-194	100	MB
6A	10/31/2009	11/04/2009	10/30/2010	11/03/2010	ELK-1-195	102	A
6A web sale	TBD	TBD	TBD	TBD	ELK-1-196	0	A
6B:VCNP	09/02/2009	09/08/2009	09/01/2010	09/07/2010	ELK-2-197	20	ES
6B:VCNP	09/12/2009	09/16/2009	09/11/2010	09/15/2010	ELK-2-198	15	ES
6B:VCNP mzl only	10/03/2009	10/07/2009	10/02/2010	10/06/2010	ELK-3-199	12	MB
6B:VCNP mzl only	10/03/2009	10/07/2009	10/02/2010	10/06/2010	ELK-3-200	10	A
6B:VCNP	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-1-201	15	MB
6B:VCNP	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-1-202	8	A
6B:VCNP	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-1-203	15	MB
6B:VCNP	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-1-204	8	A
6B:VCNP MI	10/24/2009	10/26/2009	10/23/2010	10/25/2010	ELK-1-205	15	A
6B:VCNP YO-mentor	10/31/2009	11/02/2009	10/30/2010	11/01/2010	ELK-1-206	28	A
6B:VCNP YO-mentor	11/07/2009	11/09/2009	11/06/2010	11/08/2010	ELK-1-207	28	A

6B:VCNP 2-person	11/14/2009	11/16/2009	11/13/2010	11/15/2010	ELK-1-208	26	A
6B:VCNP	11/21/2009	11/23/2009	11/20/2010	11/22/2010	ELK-1-209	25	A
6B:VCNP	11/28/2009	11/30/2009	11/27/2010	11/29/2010	ELK-1-210	25	A
6B:VCNP web sale	TBD	TBD	TBD	TBD	ELK-1-211	75	A
6C	09/01/2009	09/15/2009	09/01/2010	09/15/2010	ELK-2-212	145	ES
6C	09/16/2009	09/22/2009	09/16/2010	09/22/2010	ELK-2-213	145	ES
6C crossbow allowed	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-3-214	172	MB
6C	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-1-215	144	MB
6C	10/24/2009	10/28/2009	10/23/2010	10/27/2010	ELK-1-216	94	MB
6C	10/31/2009	11/04/2009	10/30/2010	11/03/2010	ELK-1-217	146	A
6C	11/28/2009	12/02/2009	11/27/2010	12/01/2010	ELK-1-218	147	A
6C	12/05/2009	12/09/2009	12/04/2010	12/08/2010	ELK-1-219	100	A
6C web sale	TBD	TBD	TBD	TBD	ELK-1-220	61	A
7	09/01/2009	09/15/2009	09/01/2010	09/15/2010	ELK-2-221	13	ES
7	09/16/2009	09/22/2009	09/16/2010	09/22/2010	ELK-2-222	12	ES
7	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-3-223	25	MB
7	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-1-224	30	MB
7	10/24/2009	10/28/2009	10/23/2010	10/27/2010	ELK-1-225	50	A
7 web sale	TBD	TBD	TBD	TBD	ELK-1-226	100	A

(5) Private land elk authorization certificates for qualifying ranches listing the number of authorization certificates, bag limits and weapon types shall be as indicated below.

open GMUs or areas	2009 - 2010 hunt season				2010 - 2011 hunt season			
	bull	antlerless	ES bow only	total	bull	antlerless	ES bow only	total
6A	51	17	42	110	51	17	42	110
6C	78	68	51	197	78	68	51	197
7	13	35	6	54	13	35	6	54
total	142	120	99	361	142	120	99	361

(6) Private land elk hunts for ranches designated as “ranch only” shall be limited to the following eligibility requirements or restrictions, season dates and legal sporting arms. All private land mobility impaired and youth only hunters must satisfy licensing requirements as stated in 19.31.3 NMAC in order to hunt during the “mobility impaired hunters” or “youth only” hunt periods.

legal sporting arms	open GMUs or area	2009 hunt dates	2010 hunt dates
bows only	6A, 6C, 7	09/01/2009 - 09/15/2009	09/01/2010 - 09/15/2010
bows only	6A, 6C, 7	09/16/2009 - 09/22/2009	09/16/2010 - 09/22/2010
muzzle loading rifles and bows	6A, 6C, 7	any 5 consecutive days, 10/10/2009 - 12/31/2009	any 5 consecutive days, 10/09/2010 - 12/31/2010
any legal weapon	6A, 6C, 7	any 5 consecutive days, 10/17/2007 - 12/31/2009	any 5 consecutive days, 10/18/2010 - 12/31/2010

E. Southwest region:

- (1) Quality hunt management for COER areas of GMU’s 13, 15, 16A, 16B/22, 16C, 16D, 16E and 17.
- (2) Optimal opportunity management for COER areas of GMUs 21A, 21B and 23.
- (3) Foundational resource information for the southwest region shall be as indicated below.

southwest region population information			sustainable harvest pursuant to goals	
herd unit	population estimate	bull:cow:calf ratio	bulls	cows
Datil (GMU 13)	2211-3465	40:100:60	218-342	236-369
greater Gila (GMUs 15, 16A-E)	15749-18610	46:100:52	1551-1833	1675-1833
lesser Gila (GMUs 21A, 21B, 22, 23, 24)	1000-1800	33:100:30	69-124	75-134
San Mateo (GMU 17)	1022-1863	52:100:60	108-198	117-214

GMU	mgmt goal	total licenses by bag limit				maximum projected harvest	
		MB	A	ES bow	total lic.	bulls	cows
13	QHM	580	185	556	1321	347	100
15	QHM	922	641	769	2332	487	231
16A	QHM	232	155	412	799	257	108
16B/22	QHM	323	0	387	710	173	11
16C	QHM	201	118	294	613	132	76
16D	QHM	146	114	171	431	131	74
16E	QHM	242	217	195	654	199	162
totals (15, 16A -E)		2066	1245	2228	5539	1379	662
17	QHM	258	233	233	724	132	80
21A	OOM	102	0	102	204	44	4
21B	OOM	94	113	94	301	71	69
23	OOM	129	0	206	335	61	6
24	OOM	11	0	0	11	6	1
totals (21A, 21B, 23, 24)		336	113	402	851	182	80
southwest region total		3240	1776	3419	8435	2040	922

(4) Public land elk hunts listing the eligibility requirements or restrictions, hunt dates, hunt code, number of licenses, bag limits, and weapon types shall be as indicated below.

open GMUs or areas	2009 - 2010 hunt seasons		2010 - 2011 hunt season		hunt code	licenses	bag limit
	hunt start	hunt end	hunt start	hunt end			
13	09/01/2009	09/10/2009	09/01/2010	09/10/2010	ELK-2-227	125	ES
13	09/11/2009	09/18/2009	09/11/2010	09/18/2010	ELK-2-228	100	ES
13	09/19/2009	09/24/2009	09/19/2010	09/24/2010	ELK-2-229	75	ES
13 YO	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-3-230	25	ES
13	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-3-231	75	MB
13	10/24/2009	10/28/2009	10/23/2010	10/27/2010	ELK-3-232	113	MB
13	11/21/2009	11/25/2009	11/20/2010	11/24/2010	ELK-3-233	100	MB
13	12/05/2009	12/09/2009	12/04/2010	12/08/2010	ELK-3-234	100	A
13 web sale	TBD	TBD	TBD	TBD	ELK-3-235	0	A
15	09/01/2009	09/10/2009	09/01/2010	09/10/2010	ELK-2-236	250	ES
15	09/11/2009	09/18/2009	09/11/2010	09/18/2010	ELK-2-237	200	ES
15	09/19/2009	09/24/2009	09/19/2010	09/24/2010	ELK-2-238	150	ES
15 YO	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-3-239	25	ES
15	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-3-240	200	MB
15	10/24/2009	10/28/2009	10/23/2010	10/27/2010	ELK-3-241	244	MB
15	11/21/2009	11/25/2009	11/20/2010	11/24/2010	ELK-3-242	250	MB
15	12/05/2009	12/09/2009	12/04/2010	12/08/2010	ELK-3-243	250	A
15	12/12/2009	12/16/2009	12/11/2010	12/15/2010	ELK-3-244	250	A
15 web sale	TBD	TBD	TBD	TBD	ELK-3-245	0	A
16A	09/01/2009	09/10/2009	09/01/2010	09/10/2010	ELK-2-246	150	ES
16A	09/11/2009	09/18/2009	09/11/2010	09/18/2010	ELK-2-247	150	ES
16A	09/19/2009	09/24/2009	09/19/2010	09/24/2010	ELK-2-248	100	ES
16A MI	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-1-249	25	MB
16A	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-1-250	75	MB
16A	10/24/2009	10/28/2009	10/23/2010	10/27/2010	ELK-1-251	125	MB
16A	12/05/2009	12/09/2009	12/04/2010	12/08/2010	ELK-1-252	150	A
16A web sale	TBD	TBD	TBD	TBD	ELK-1-253	0	A

16B/22	09/01/2009	09/10/2009	09/01/2010	09/10/2010	ELK-2-254	128	ES
16B/22	09/11/2009	09/18/2009	09/11/2010	09/18/2010	ELK-2-255	128	ES
16B/22	09/19/2009	09/24/2009	09/19/2010	09/24/2010	ELK-2-256	127	ES
16B/22	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-1-257	160	MB
16B/22	10/24/2009	10/28/2009	10/23/2010	10/27/2010	ELK-1-258	160	MB
16B/22 web sale	TBD	TBD	TBD	TBD	ELK-1-259	0	A
16C	09/01/2009	09/10/2009	09/01/2010	09/10/2010	ELK-2-260	100	ES
16C	09/11/2009	09/18/2009	09/11/2010	09/18/2010	ELK-2-261	75	ES
16C	09/19/2009	09/24/2009	09/19/2010	09/24/2010	ELK-2-262	75	ES
16C YO	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-1-263	25	ES
16C	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-1-264	50	MB
16C	10/24/2009	10/28/2009	10/23/2010	10/27/2010	ELK-1-265	96	MB
16C	12/05/2009	12/09/2009	12/04/2010	12/08/2010	ELK-1-266	100	A
16C web sale	TBD	TBD	TBD	TBD	ELK-1-267	0	A
16D	09/01/2009	09/10/2009	09/01/2010	09/10/2010	ELK-2-268	60	ES
16D	09/11/2009	09/18/2009	09/11/2010	09/18/2010	ELK-2-269	50	ES
16D	09/19/2009	09/24/2009	09/19/2010	09/24/2010	ELK-2-270	40	ES
16D MI	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-1-271	25	MB
16D	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-1-272	53	MB
16D	10/24/2009	10/28/2009	10/23/2010	10/27/2010	ELK-1-273	50	MB
16D	12/05/2009	12/09/2009	12/04/2010	12/08/2010	ELK-1-274	100	A
16D web sale	TBD	TBD	TBD	TBD	ELK-1-275	0	A
16E	09/01/2009	09/10/2009	09/01/2010	09/10/2010	ELK-2-276	50	ES
16E	09/11/2009	09/18/2009	09/11/2010	09/18/2010	ELK-2-277	50	ES
16E	09/19/2009	09/24/2009	09/19/2010	09/24/2010	ELK-2-278	50	ES
16E YO	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-1-279	25	ES
16E	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-3-280	71	MB
16E	10/24/2009	10/28/2009	10/23/2010	10/27/2010	ELK-1-281	71	MB
16E	12/05/2009	12/09/2009	12/04/2010	12/08/2010	ELK-1-282	75	A
16E	12/12/2009	12/16/2009	12/11/2010	12/15/2010	ELK-1-283	75	A
16E web sale	TBD	TBD	TBD	TBD	ELK-1-284	0	A
17	09/01/2009	09/10/2009	09/01/2010	09/10/2010	ELK-2-285	75	ES
17	09/11/2009	09/18/2009	09/11/2010	09/18/2010	ELK-2-286	75	ES
17	09/19/2009	09/24/2009	09/19/2010	09/24/2010	ELK-2-287	50	ES
17 YO	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-3-288	25	ES
17	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-3-289	97	MB
17	10/24/2009	10/28/2009	10/23/2010	10/27/2010	ELK-3-290	100	MB
17	12/05/2009	12/09/2009	12/04/2010	12/08/2010	ELK-3-291	100	A
17	12/12/2009	12/16/2009	12/11/2010	12/15/2010	ELK-3-292	100	A
17 web sale	TBD	TBD	TBD	TBD	ELK-3-293	0	A
21A	09/01/2009	09/15/2009	09/01/2010	09/15/2010	ELK-2-294	50	ES
21A	09/16/2009	09/24/2009	09/16/2010	09/24/2010	ELK-2-295	50	ES
21A	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-1-296	50	MB
21A	10/24/2009	10/28/2009	10/23/2010	10/27/2010	ELK-1-297	50	MB
21A web sale	TBD	TBD	TBD	TBD	ELK-1-298	0	A
21B	09/01/2009	09/15/2009	09/01/2010	09/15/2010	ELK-2-299	25	ES
21B	09/16/2009	09/24/2009	09/16/2010	09/24/2010	ELK-2-300	25	ES
21B	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-1-301	25	MB
21B	10/24/2009	10/28/2009	10/23/2010	10/27/2010	ELK-1-302	25	MB
21B	11/14/2009	11/18/2009	11/13/2010	11/17/2010	ELK-1-303	15	A
21B	11/21/2009	11/25/2009	11/20/2010	11/24/2010	ELK-1-304	15	A
21B	12/05/2009	12/09/2009	12/04/2010	12/08/2010	ELK-1-305	15	A
21B	12/12/2009	12/16/2009	12/11/2010	12/15/2010	ELK-1-306	15	A

23	09/01/2009	09/10/2009	09/01/2010	09/10/2010	ELK-2-307	75	ES
23	09/11/2009	09/18/2009	09/11/2010	09/18/2010	ELK-2-308	75	ES
23	09/19/2009	09/24/2009	09/19/2010	09/24/2010	ELK-2-309	50	ES
23 YO	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-1-310	25	ES
23	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-3-311	50	MB
23	10/24/2009	10/28/2009	10/23/2010	10/27/2010	ELK-1-312	50	MB
23 web sale	TBD	TBD	TBD	TBD	ELK-1-313	0	A
24 YO	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-1-314	10	ES

(5) Private land elk authorization certificates for qualifying ranches listing the number of authorization certificates, bag limits and weapon types shall be as indicated below.

open GMUs or areas	2009 - 2010 hunt season				2010 - 2011 hunt season			
	bull	antlerless	ES bow only	total	bull	antlerless	ES bow only	total
13	267	85	256	608	267	85	256	608
15	203	141	169	513	203	141	169	513
16A	7	5	12	24	7	5	12	24
16B	3	0	4	7	3	0	4	7
16C	30	18	44	92	30	18	44	92
16D	18	14	21	53	18	14	21	53
16E	75	67	67	209	75	67	67	209
17	36	33	33	102	36	33	33	102
21A	2	0	2	4	2	0	2	4
21B	44	53	44	141	44	53	44	141
23	4	0	6	10	4	0	6	10
24	1	0	0	1	1	0	0	1
Total	690	416	658	1764	690	416	658	1764

(6) Private land elk hunts for ranches designated as “ranch only” shall be limited to the following eligibility requirements or restrictions, season dates and legal sporting arms. All private land mobility impaired and youth only hunters must satisfy licensing requirements as stated in 19.31.3 NMAC in order to hunt during the “mobility impaired hunters” or “youth only” hunt periods.

legal sporting arms	open GMUs or area	2009 hunt dates	2010 hunt dates
bows only	21A, 21B	09/01/2009 - 09/15/2009	09/01/2010 - 09/15/2010
bows only	21A, 21B	09/16/2009 - 09/24/2009	09/16/2010 - 09/24/2010
bows only	13, 15, 16A, 16B/22, 16C,16D, 16E, 17, 23	09/01/2009 - 09/10/2009	09/01/2010 - 09/10/2010
bows only	13, 15, 16A, 16B/22, 16C,16D, 16E, 17, 23	09/11/2009 - 09/18/2009	09/11/2010 - 09/18/2010
bows only	13, 15, 16A, 16B/22, 16C,16D, 16E, 17, 23	09/19/2009 - 09/24/2009	09/19/2010 - 09/24/2010
muzzle loading rifles and bows	13, 15, 16E, 17, 23	any 5 consecutive days, 10/17/2009 - 12/31/2009	any 5 consecutive days, 10/16/2010 - 12/31/2010
muzzle loading rifles and bows, YO	13, 15, 17	10/10/2009 - 10/14/2009	10/09/2010 - 10/13/2010
muzzle loading rifles only with approval of SW area chief and state game commission chairman.	13	any 5 consecutive days 01/01/2010 -01/31/2010	any 5 consecutive days 01/01/2011 -01/31/2011
antlerless elk only			
any legal sporting arms	16A, 16B/22, 16C, 16D, 21A, 21B	any 5 consecutive days 10/17/2009 - 12/31/2009	any 5 consecutive days, 10/16/2010 - 12/31/2010
any legal sporting arms	16E, 23	any 5 consecutive days 10/24/2009 - 12/31/2009	any 5 consecutive days, 10/23/2010 - 12/31/2010
any legal sporting arms, YO (except GMU 24 not restricted to YO)	16C, 16E, 23, 24	10/10/2009 - 10/14/2009	10/09/2010 - 10/13/2010
any legal sporting arms, MI	16A, 16D	10/10/2009 - 10/14/2009	10/09/2010 - 10/13/2010

F. South central region: GMUs 34 and 36.

- (1) Quality hunt management for GMU 36.
- (2) Optimal opportunity management goals for GMU 34.
- (3) Foundational resource information for the south central region shall be as indicated below.

northeast region population information			sustainable harvest pursuant to goals	
herd unit	population estimate	bull:cow:calf ratio	bulls	cows
Sacramento (GMU 34)	3013-4322	41:100:41	255-265	275-394
Ruidoso (GMU 36)	2503-3557	46:100:42	210-298	226-322

GMU	mgmt goal	total licenses by bag limit				maximum projected harvest	
		MB	A	ES bow	total lic.	bull	cow
34	OOM	690	690	460	1840	454	424
36	QHM	425	208	228	861	309	104
total		1115	898	688	2701	763	528

(4) Public land elk hunts listing the hunt dates, hunt code, number of licenses, bag limits and weapon types shall be as indicated below.

open GMUs or areas	2009 - 2010 hunt seasons		2010 - 2011 hunt seasons		hunt code	licenses	bag limit
	hunt start	hunt end	hunt start	hunt end			
34	09/01/2009	09/10/2009	09/01/2010	09/10/2010	ELK-2-315	200	ES
34	09/13/2009	09/22/2009	09/13/2010	09/22/2010	ELK-2-316	200	ES
34 YO	10/03/2009	10/07/2009	10/02/2010	10/06/2010	ELK-1-317	150	ES
34 MI	10/03/2009	10/07/2009	10/02/2010	10/06/2010	ELK-1-318	50	ES
34	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-3-319	250	MB
34	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-1-320	150	MB
34	11/28/2009	12/02/2009	11/27/2010	12/01/2010	ELK-1-321	250	A
34	12/05/2009	12/09/2009	12/04/2010	12/08/2010	ELK-1-322	250	A
34 web sale	TBD	TBD	TBD	TBD	ELK-1-323	100	A
36	09/01/2009	09/10/2009	09/01/2010	09/10/2010	ELK-2-324	82	ES
36	09/13/2009	09/22/2009	09/13/2010	09/22/2010	ELK-2-325	82	ES
36	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-3-326	135	MB
36	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-1-327	85	MB
36	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-1-328	75	A
36	10/31/2009	11/04/2009	10/30/2010	11/03/2010	ELK-1-329	86	MB
36	10/31/2009	11/04/2009	10/30/2010	11/03/2010	ELK-1-330	75	A
36 web sale	TBD	TBD	TBD	TBD	ELK-1-331	0	A

(5) Private land elk authorization certificates for qualifying ranches listing the number of authorization certificates, bag limits and weapon types shall be as indicated below.

open GMUs or areas	2009 - 2010 hunt season				2010 - 2011 hunt season			
	bull	antlerless	ES bow only	total	bull	antlerless	ES bow only	total
34	90	90	60	240	90	90	60	240
36	119	58	64	241	119	58	64	241
Total	209	148	124	481	209	148	124	481

(6) Private land elk hunts for ranches designated as "ranch only" shall be limited to the following eligibility requirements or restrictions, season dates and legal sporting arms. All private land mobility impaired and youth only hunters must satisfy licensing requirements as stated in 19.31.3 NMAC in order to hunt during the "mobility impaired hunters" or "youth only" hunt periods.

legal sporting arms	open GMUs or area	2009 - 2010 hunt dates	2010 - 2011 hunt dates
bows only	34, 36	09/01/2009 - 09/10/2009	09/01/2010 - 09/10/2010
bows only	34, 36	09/13/2009 - 09/22/2009	09/13/2010 - 09/22/2010
any legal sporting arms, YO & MI only	34	10/03/2009 - 10/07/2009	10/02/2010 - 10/06/2010
muzzle loading rifles and bows	34, 36	any 5 consecutive days, 10/10/2009 - 12/31/2009	any 5 consecutive days, 10/09/2010 - 12/31/2010
any legal sporting arms	34, 36	any 5 consecutive days, 10/17/2009 - 12/31/2009	any 5 consecutive days, 10/16/2010 - 12/31/2010
rifles only with approval of SE area chief and state game commission chairman. antlerless elk only	36	any 5 consecutive days 01/01/2010 -01/31/2010	any 5 consecutive days 01/01/2011 -01/31/2011

G. Northeast region:

- (1) Quality hunt management for COER areas of GMU 45.
- (2) Optimal opportunity management goals for GMU's COERs of 48, 49 and 53.
- (3) Foundational resource information for the northeast region shall be as indicated below.

northeast region population information			sustainable harvest pursuant to goals	
herd unit	population estimate	bull:cow:calf ratio	bulls	cows
Pecos (GMU 45)	1665-2604	27:100:27	109-160	118-185
Whites peak (GMU 48)	630 - 1400	32:100:44	55-123	64-142
Penasco (GMU 49)	350 - 1030	28:100:24	25-73	27-79
Ute-Midnight-San Cristobal (GMU 53)	800 - 1400	27:100:47	76-132	88-153

GMU	mgmt goal	total licenses by bag limit				maximum projected harvest	
		MB	A	ES bow	total lic.	bulls	cows
45	QHM	457	82	163	702	154	20
48	OOM	273	232	202	707	91	76
49	OOM	161	211	125	497	61	73
53	OOM	362	322	174	858	131	187
total		1253	847	664	2764	473	356

- (4) Public land elk hunts listing the hunt dates, hunt code, number of licenses, bag limits and weapon types shall be as indicated below.

open GMUs or areas	2009 - 2010 hunt season		2010 - 2011 hunt season		hunt code	licenses	bag limit
	hunt start	hunt end	hunt start	hunt end			
45	09/01/2009	09/22/2009	09/01/2010	09/22/2010	ELK-2-332	150	ES
45	10/03/2009	10/07/2009	10/02/2010	10/06/2010	ELK-3-333	140	MB
45	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-1-334	140	MB
45	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-1-335	140	MB
45	11/14/2009	11/18/2009	11/13/2010	11/17/2010	ELK-3-336	50	A
45 web sale	TBD	TBD	TBD	TBD	ELK-1-337	25	A
48	09/01/2007	09/15/2009	09/01/2010	09/15/2010	ELK-2-338	90	ES
48	09/16/2009	09/22/2009	09/16/2010	09/22/2010	ELK-2-339	85	ES
48 crossbows allowed	10/03/2009	10/07/2009	10/02/2010	10/06/2010	ELK-3-340	30	MB
48	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-3-341	65	MB
48	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-1-342	35	MB
48	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-1-343	40	A
48	12/05/2009	12/09/2009	12/04/2010	12/08/2010	ELK-1-344	35	MB
48	12/05/2009	12/09/2009	12/04/2010	12/08/2008	ELK-1-345	60	A

48 web sale	TBD	TBD	TBD	TBD	ELK-1-346	46	A
49	09/01/2009	09/22/2009	09/01/2010	09/22/2010	ELK-2-347	120	ES
49	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-1-348	80	MB
49	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-1-349	75	MB
49	11/07/2009	11/11/2009	11/06/2010	11/10/2010	ELK-1-350	80	A
49	11/14/2009	11/18/2009	11/13/2010	11/17/2010	ELK-1-351	75	A
49 web sale	TBD	TBD	TBD	TBD	ELK-1-352	48	A
53	09/01/2009	09/22/2009	09/01/2010	09/22/2010	ELK-2-353	120	ES
53 (exc. Cerro portion)	10/03/2009	10/07/2009	10/02/2010	10/06/2010	ELK-3-354	50	ES
53 (exc. Cerro portion)	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-1-355	75	MB
53 (exc. Cerro portion)	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-1-356	125	MB
53 (exc. Cerro portion)	11/07/2009	11/11/2009	11/06/2010	11/10/2010	ELK-1-357	60	A
53 (exc. Cerro portion)	11/14/2009	11/18/2009	11/13/2010	11/17/2010	ELK-1-358	70	A
53 (exc. Cerro portion) web sale	TBD	TBD	TBD	TBD	ELK-1-359	100	A

(5) Private land elk authorization certificates for qualifying ranches listing the number of authorization certificates, bag limits and weapon types shall be as indicated below.

open GMUs and areas	2009 - 2010 hunt season				2010 - 2011 hunt seasons			
	MB	A	ES bow only	total	MB	A	ES bow only	total
45	37	7	13	57	37	7	13	57
48	108	86	117	311	108	86	117	311
49	6	8	5	19	6	8	5	19
53	112	92	54	258	112	92	54	258
total	263	193	189	645	263	193	189	645

(6) Private land elk hunts for ranches designated as “ranch only” shall be limited to the following eligibility requirements or restrictions, season dates and legal sporting arms. All private land mobility impaired and youth only hunters must satisfy licensing requirements as stated in 19.31.3 NMAC in order to hunt during “mobility impaired” or “youth only” hunt periods.

legal sporting arms	open GMUs or area	2009 - 2010 hunt dates	2010 - 2011 hunt dates
bows only	45, 49, 53	09/01/2009 - 09/22/2009	09/01/2010 - 09/22/2010
bows only	48	09/01/2009 - 09/15/2009	09/01/2010 - 09/15/2010
bows only	48	09/16/2009 - 09/22/2009	09/16/2010 - 09/22/2010
muzzle loading rifles and bows	45, 48, 53	any 5 consecutive days, 10/03/2009 - 12/31/2009	any 5 consecutive days, 10/02/2010 - 12/31/2010
any legal sporting arms	45, 49, 53	any 5 consecutive days, 10/10/2009 - 12/31/2009	any 5 consecutive days, 10/09/2010 - 12/31/2010
any legal sporting arms	48	any 5 consecutive days 10/17/2009 - 12/31/2009	any 5 consecutive days, 10/16/2010 - 12/31/2010
rifles only with approval of NE area chief and state game commission chairman. antlerless elk only	48	any 5 consecutive days 01/01/2010 -01/31/2010	any 5 consecutive days 01/01/2011 -01/31/2011

[19.31.14.15 NMAC – Rp, 19.31.14.15 NMAC, 4-1-09]

19.31.14.16 ELK HUNTS WHERE NO COER IS ESTABLISHED: This section lists public draw elk hunts in GMUs with no established COER. The list includes eligibility requirements or restrictions, GMUs or areas open for hunting, season dates, hunt codes, weapon types, number of available licenses and bag limits. Hunt codes for elk hunts for any legal weapon hunts shall be designated ELK-1, hunt codes for elk hunts using only bow and arrows shall be designated as ELK-2, elk hunts for hunters using muzzle loading rifles or bow and arrows shall be designated as ELK-3. Youth hunters must provide hunter education certification number on application.

A. Public lands in GMUs with no established core occupied elk range:

open GMUs and areas	2009 – 2010		2010 – 2011		hunt code	lic.	bag limit
	hunt start	hunt end	hunt start	hunt end			
12	09/01/2009	09/22/2009	09/01/2010	09/22/2010	ELK-2-360	30	ES
12	10/03/2009	10/07/2009	10/02/2010	10/06/2010	ELK-1-361	30	MB
12	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-1-362	30	A
18	09/01/2009	09/22/2009	09/01/2010	09/22/2010	ELK-2-363	50	ES
28 McGregor range, military only	12/12/2009	12/16/2009	12/11/2010	12/15/2010	ELK-1-364	8	ES
28 McGregor range	12/12/2009	12/16/2009	12/11/2010	12/15/2010	ELK-1-365	8	ES
37	09/01/2009	09/10/2009	09/01/2010	09/10/2010	ELK-2-366	15	ES
37	09/11/2009	09/18/2009	09/11/2010	09/18/2010	ELK-2-367	15	ES
37	09/19/2009	09/24/2009	09/19/2010	09/24/2010	ELK-2-368	15	ES
37	10/03/2009	10/07/2009	10/02/2010	10/06/2010	ELK-3-369	25	MB
37	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-1-370	25	MB
37	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-1-371	25	A
38	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-1-372	15	ES
43	09/26/2009	09/30/2009	09/25/2010	09/29/2010	ELK-1-373	60	ES
54: Colin Neblett WMA/south	10/03/2009	10/07/2009	10/02/2010	10/06/2010	ELK-3-374	20	MB
54: Colin Neblett WMA/south	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-1-375	20	MB
54: Colin Neblett WMA/south	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-1-376	20	MB
54: Colin Neblett WMA/south	10/24/2009	10/28/2009	10/23/2010	10/27/2010	ELK-1-377	20	MB
54: Colin Neblett WMA/south	10/31/2009	11/04/2009	10/30/2010	11/03/2010	ELK-1-378	20	A
55: Colin Neblett WMA/north	10/03/2009	10/07/2009	10/02/2010	10/06/2010	ELK-3-379	20	MB
55: Colin Neblett WMA/north	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-1-380	20	MB
55: Colin Neblett WMA/north	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-1-381	20	MB
55: Colin Neblett WMA/north	10/24/2009	10/28/2009	10/23/2010	10/27/2010	ELK-1-382	20	MB
55: Colin Neblett WMA/north	10/31/2009	11/04/2009	10/30/2010	11/03/2010	ELK-1-383	20	A
55 ES Barker WMA	09/01/2009	09/22/2009	09/01/2010	09/22/2010	ELK-2-384	10	ES
55 ES Barker WMA	10/03/2009	10/07/2009	10/02/2010	10/06/2010	ELK-3-385	10	MB
55: Urraca WMA	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-1-386	10	MB
55: Urraca WMA	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-1-387	10	MB
55: Urraca WMA	10/24/2009	10/28/2009	10/23/2010	10/27/2010	ELK-1-388	10	MB
55: Urraca WMA	10/31/2009	11/04/2009	10/30/2010	11/03/2010	ELK-1-389	10	MB
55: Urraca WMA	11/07/2009	11/11/2009	11/06/2010	11/10/2010	ELK-1-390	15	A
55: Urraca WMA	11/14/2009	11/18/2009	11/13/2010	11/17/2010	ELK-1-391	15	A
55: Valle Vidal and Greenwood areas	09/01/2009	09/15/2009	09/01/2010	09/15/2010	ELK-2-392	20	ES
55: Valle Vidal and Greenwood areas	09/16/2009	09/22/2009	09/16/2010	09/22/2010	ELK-2-393	20	ES
55: Valle Vidal and Greenwood areas	10/03/2009	10/07/2009	10/02/2010	10/06/2010	ELK-3-394	35	MB
55: Valle Vidal and Greenwood areas	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-1-395	15	MB

55: Valle Vidal and Greenwood areas, YO	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-1-396	20	MB
55: Valle Vidal and Greenwood areas	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-1-397	35	MB
55: Valle Vidal and Greenwood areas, YO	10/31/2009	11/04/2009	10/30/2010	11/03/2010	ELK-1-398	35	A
55: Valle Vidal and Greenwood areas	10/31/2009	11/04/2009	10/30/2010	11/03/2010	ELK-1-399	35	A
55: Valle Vidal and Greenwood areas	11/14/2009	11/18/2009	11/13/2010	11/17/2010	ELK-1-400	50	A
55: VV/Greenwood areas - web sale	TBD	TBD	TBD	TBD	ELK-1-401	123	A
56	10/10/2009	10/14/2009	10/09/2010	10/13/2010	ELK-1-402	10	MB
56	10/17/2009	10/21/2009	10/16/2010	10/20/2010	ELK-1-403	10	A
57: Sugarite canyon state park	09/01/2009	09/22/2009	09/01/2010	09/22/2010	ELK-2-404	5	ES
portions of 57/58 (determined by department annually)	10/03/2009	10/07/2009	10/02/2010	10/06/2010	ELK-1-405	10	MB
portions of 57/58 (determined by department annually)	12/05/2009	12/09/2009	12/04/2010	12/08/2010	ELK-1-406	10	A

B. Private land only elk hunting:

(1) For private lands that are not within core occupied elk range or private lands that lie within GMUs with no designated core occupied elk range, the department may work with interested landowners to develop appropriate bag limits, weapon types, season dates and authorization numbers for private land hunting needed to achieve the proper harvest within the exterior boundaries of participating ranches.

(2) **Private land-only elk hunts in the northeast area:** The department may use input from landowners to develop appropriate license numbers and bag limits for private land hunting needed to achieve the desired and proper harvest within the exterior boundaries of participating ranches. These hunts shall be restricted to the areas, season dates and sporting arms type as indicated below, except that the bag limit from January 1 through January 31 is one antlerless elk. Elk hunting licenses issued pursuant to this section shall be designated as "ranch only".

open GMUs and areas	2009-2010		2010-2011		hunt code
	hunt start	hunt end	hunt start	hunt end	
46 bow hunt	09/01/2009	09/22/2009	09/01/2010	09/22/2010	ELK -2-407
46 any consecutive 5 days	10/01/2009	01/31/2010	10/01/2010	01/31/2011	ELK -1-408
54 bow hunt	09/01/2009	09/22/2009	09/01/2010	09/22/2010	ELK -2-409
54 any consecutive 5 days	10/01/2009	01/31/2010	10/01/2010	01/31/2011	ELK -1-410
55A bow hunt	09/01/2009	09/22/2009	09/01/2010	09/22/2010	ELK -2-411
55A any consecutive 5 days	10/01/2009	01/31/2010	10/01/2010	01/31/2011	ELK -1-412
56 bow hunt	09/01/2009	09/22/2009	09/01/2010	09/22/2010	ELK -2-413
56 any consecutive 5 days	10/01/2009	01/31/2010	10/01/2010	01/31/2011	ELK -1-414
57 bow hunt	09/01/2009	09/22/2009	09/01/2010	09/22/2010	ELK -2-415
57 any consecutive 5 days	10/01/2009	01/31/2010	10/01/2010	01/31/2011	ELK -1-416
58 bow hunt	09/01/2009	09/22/2009	09/01/2010	09/22/2010	ELK -2-417
58 any consecutive 5 days	10/01/2009	01/31/2010	10/01/2010	01/31/2011	ELK -1-418

(3) Unlimited private land either-sex or antlerless licenses valid for GMU 55B shall be available over-the-counter or by mail without deadline at all department of game and fish offices. Licenses are "ranch only" and require the landowner's signature on the application prior to purchasing the license. Licenses issued for GMU 55B shall be limited to any 30 consecutive day period from April 1 through March 31. Any legal sporting arms for taking elk may be used during these hunts. Applications will be available only from the Raton area office and only to verified landowners.

(4) Unlimited private land either-sex, or antlerless licenses valid for GMUs 41, 42, 43, 47 and 59 shall be available over-the-counter or by mail without deadline to all department of game and fish offices. Licenses are "ranch only" and require the landowner's signature on the application prior to purchasing the licenses. Applications will be available only from the Raton area office and only to verified landowners.

legal sporting arms	open GMUs or area	bag limit	2009 - 2010 hunt dates	2010 - 2011 hunt dates
bows only	41, 42, 43, 47, 59	ES	09/01/2009 - 09/22/2009	09/01/2010 - 09/22/2010
any legal sporting arms	41, 42, 43, 47, 59	ES	any 5 consecutive days, 10/01/2009 - 11/30/2009	any 5 consecutive days, 10/01/2010 - 11/30/2010
any legal sporting arms	41, 42, 43, 47, 59	A	any 5 consecutive days 11/01/2009 - 12/31/2009	any 5 consecutive days, 11/01/2010 - 12/31/2010

[19.31.14.16 NMAC - Rp, 19.31.14.16 NMAC, 4-1-09]

**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 15 P R O N G H O R N
ANTELOPE AND JAVELINA**

19.31.15.1 ISSUING AGENCY:
New Mexico Department of Game and Fish.
[19.31.15.1 NMAC - Rp, 19.31.15.1 NMAC, 4-1-09]

19.31.15.2 S C O P E :
Sportspersons interested in pronghorn antelope and javelina hunting and management. Additional requirements may be found in Chapter 17, NMSA 1978, and Chapters 30, 31, 32 and 33 of Title 19.
[19.31.15.2 NMAC - Rp, 19.31.15.2 NMAC, 4-1-09]

**19.31.15.3 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.
[19.31.15.3 NMAC - Rp, 19.31.15.3 NMAC, 4-1-09]

19.31.15.4 DURATION: April 1, 2009 through March 31, 2011.
[19.31.15.4 NMAC - Rp, 19.31.15.4 NMAC, 4-1-09]

19.31.15.5 EFFECTIVE DATE:
April 1, 2009, unless a later date is cited at the end of individual sections.
[19.31.15.5 NMAC - Rp, 19.31.15.5 NMAC, 4-1-09]

19.31.15.6 O B J E C T I V E :
Establishing open hunting seasons and regulation, rules, and procedures governing the distribution and issuance of pronghorn antelope and javelina permits and licenses by the department.
[19.31.15.6 NMAC - Rp, 19.31.15.6

NMAC, 4-1-09]

19.31.15.7 DEFINITIONS:

A. "Antelope private land use system" or "A-PLUS" shall mean the program in which the director may issue authorization certificates to private lands whose owners, manager, or lessees sign a hunting agreement with the department.

B. "Antelope management units" or "AMUs" shall mean those areas as documented in the state game commission's rule 19.30.4 NMAC Boundary Descriptions for Wildlife Management Areas.

C. "Arrows" shall mean only those arrows or bolts having broadheads with steel cutting edges.

D. "Baiting" shall mean the placing, exposing, depositing, distributing, or scattering of any salt, grain, scent or other feed on or over areas where hunters are attempting to take pronghorn antelope or javelina.

E. "Bow" shall mean compound, recurve, or long bow. Sights on bows shall not project light nor magnify.

F. "Crossbows" shall mean a device with a bow limb or band of flexible material that is attached horizontally to a stock and has a mechanism to hold the string in a cocked position. Sights on crossbows shall not project light nor magnify.

G. "Department" shall mean the New Mexico department of game and fish.

H. "Director" shall mean the director of the New Mexico department of game and fish.

I. "ES or either sex" shall mean any one animal of the species.

J. "Entry permit" shall entitle the holder of a valid official license to hunt where hunter numbers are limited by rule.

K. "F-IM or female or immature pronghorn antelope" shall mean a pronghorn antelope without horns or with both horns shorter than its ears.

L. "Game management unit" or "GMU" shall mean those areas as described in the state game commission's rule 19.30.4 NMAC Boundary Descriptions for Wildlife Management Areas.

M. "License" shall mean a valid official document that is issued or

approved by the director that each person hunting pronghorn antelope or javelina in New Mexico must have or obtain prior to hunting.

N. "License year" shall mean the period from April 1 through March 31.

O. "MB or mature buck pronghorn antelope" shall mean a pronghorn antelope with at least one horn longer than its ears.

P. "Modern firearms" shall mean center-fire firearms, not to include any fully automatic firearms. Legal shotguns shall be only those shotguns capable of being fired from the shoulder.

Q. "Muzzle-loader or muzzle-loading firearms" shall mean those rifles and shotguns in which the charge and projectile are loaded through the muzzle. Only black powder, Pyrodex or equivalent black powder substitute may be used. Use of smokeless powder is prohibited. Legal muzzle-loader shotguns shall be only those shotguns capable of being fired from the shoulder.

R. "Private land authorization certificate" shall mean a valid official document that entitles a person to purchase an antelope hunting license for specific season dates, weapon types, bag limits, and hunt areas.

S. "TBD or to be determined" shall mean the details of hunt dates, license numbers or hunt areas will be determined by the department.

T. "Unlimited" shall mean there is no set limit on the number of permits or licenses established for the described hunt areas.

U. "Wildlife management areas" or "WMAs" shall mean those areas as described in the state game commission's rule 19.30.4 NMAC Boundary Descriptions for Wildlife Management Areas.

V. "Mentor/youth only hunts" shall be open and available for any one adult (18 years and older) and up to 3 youth applicants (under 18 years as of opening day of the hunt). Youth applicants for any mentor/youth only firearm hunts must provide hunter education certificate number on application.

[19.31.15.7 NMAC - Rp, 19.31.15.7 NMAC, 4-1-09]

19.31.15.8 ADJUSTMENT OF LICENSES, PERMITS, AUTHORIZATIONS, AND HARVEST LIMITS:

The director, with the verbal concurrence of the chairman or his designee, may adjust the number of licenses or permits for javelina up or down by no more than 20 percent of the total permits available in the area or GMU to address significant changes in population levels or habitat availability. The director, with the verbal concurrence of the chairman or his designee, may adjust the number of licenses, permits, or authorization certificates for pronghorn antelope up or down to address significant changes in population levels or habitat availability. This adjustment may be applied to any or all of the specific hunt codes for pronghorn antelope. The director may consider requests from organizations or private landowners working with children suffering from terminal illness or disease to change season dates, weapon types or bag limits to provide for special hunting situations on a case by case basis. The director may change or cancel any hunts on military lands to accommodate closures on those lands; provided the subsequent hunts have the same season length and bag limit as assigned on original hunt code.

[19.31.15.8 NMAC – Rp, 19.31.15.8 NMAC, 4-1-09]

19.31.15.9 PRONGHORN ANTELOPE AND JAVELINA LICENSE APPLICATION REQUIREMENTS AND RESTRICTIONS:

A. One license per pronghorn antelope or javelina per year: It shall be unlawful for anyone to hold more than one permit or license for pronghorn antelope or javelina during a current license year unless otherwise allowed by rule.

B. Validity of license or permit: All pronghorn antelope and javelina entry permits, licenses, or authorizations shall be valid only for the specified dates, eligibility requirements or restrictions, legal sporting arms, bag limit and area specified by the hunt code printed on the permit, license, or carcass tag.

C. Mobility impaired (MI) hunts: It shall be unlawful for anyone to apply for a mobility impaired (MI) pronghorn license, except as allowed by 19.31.3.11 NMAC.

D. Youth only (YO) hunts: It shall be unlawful for anyone to apply for a youth only (YO) pronghorn or javelina license, except as allowed by 19.31.3.11 NMAC.

E. Military only hunts: It shall be unlawful for anyone to apply for a military only pronghorn or javelina license, except as allowed by 19.31.3.11 NMAC.

F. Mentor/youth only

hunts: It shall be unlawful for anyone to apply for a mentor/youth only license, except as allowed by 19.31.3.11 NMAC.

[19.31.15.9 NMAC – Rp, 19.31.15.9 NMAC, 4-1-09]

19.31.15.10 PRONGHORN ANTELOPE AND JAVELINA MANNER AND METHOD REQUIREMENTS AND RESTRICTIONS:

A. Seasons and hours: Pronghorn antelope and javelina may be only hunted or taken during open seasons and only during the period from one-half hour before sunrise to sunset.

B. Bag limit: It is unlawful for any person to hunt for or take more than one pronghorn antelope or javelina during a current license year unless otherwise provided by regulation.

C. Tagging:

(1) Any license that permits the taking of any pronghorn antelope or javelina shall be issued with a tag bearing the species name.

(2) It shall be unlawful to possess more than one tag per pronghorn antelope or javelina except as permitted by regulation.

(3) It shall be unlawful for any licensee to fail to tag the pronghorn antelope or javelina as prescribed below:

(a) Immediately after killing any pronghorn antelope or javelina, the licensee killing the animal shall notch the proper day and month of kill from the species tag.

(b) The tag shall be attached to the carcass of the killed pronghorn antelope or javelina and the tag shall remain attached to the carcass while the carcass is in any vehicle, left unattended in the field, or while it is in camp or at a residence or other place of storage. The notched tag may be removed from the carcass while the carcass is being removed from the field to a camp or vehicle. In situations where numerous trips are required to remove the carcass from the field, the tag shall remain attached to that portion of the carcass left in a camp or vehicle.

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

D. Seizure: Any conservation officer or other officer authorized to enforce game laws and regulations shall seize the carcasses of pronghorn antelope or javelina that are improperly tagged.

E. Proof of sex of pronghorn antelope: It shall be unlawful for anyone to transport or possess the carcass of any pronghorn antelope without proof of sex until the carcass arrives at a residence, taxidermist, meat processing facility, or place of final storage. The horns of any

buck pronghorn antelope taken shall remain attached to the skull. The scalp and both ears of females or immature males of pronghorn antelope shall accompany the carcass in same manner.

F. Use of dogs in hunting: It shall be unlawful to use dogs to hunt pronghorn antelope or javelina, except leashed dogs may be used to locate wounded or dead pronghorn antelope or javelina. Hunters must register with the appropriate department area office for the AMU or GMU they will be hunting before their hunt begins to use a dog in this manner.

G. Use of baits or scents: It shall be unlawful for anyone to take or attempt to take any pronghorn antelope or javelina by use of baits or scents. Scent masking agents on one's person are allowed.

H. Live animals: It shall be unlawful to use live animals as a blind or decoy in taking or attempting to take any pronghorn antelope or javelina.

I. Use of calling devices: It shall be unlawful to use any electrically or mechanically recorded calling device in taking or attempting to take any pronghorn antelope or javelina.

J. Killing out-of-season: It shall be unlawful to kill any pronghorn antelope or javelina out of their respective hunting seasons.

K. Legal sporting arms or weapon types for pronghorn antelope and javelina are as follows: any center-fire rifle; any center-fire handgun; shotguns not smaller than 28 gauge, firing a single slug; muzzle-loading rifles (muzzle-loading handguns are legal sporting arms for javelina only); bows and arrows; and crossbows and bolts (as designated by the director for certified mobility impaired hunters or as otherwise allowed in rule).

L. Areas closed to pronghorn antelope or javelina hunting: The following areas shall remain closed to pronghorn antelope and javelina hunting, except as permitted by regulation: Sugarite canyon state park; Rio Grande wild and scenic river area, including the Taos valley overlook; all wildlife management areas; the Valle Vidal area; and sub-unit 6B (Valles Caldera national preserve).

[19.31.15.10 NMAC – Rp, 19.31.15.10 NMAC, 4-1-09]

19.31.15.11 PRONGHORN ANTELOPE POPULATION MANAGEMENT HUNTS:

A. The respective area chief may authorize population management hunts for antelope when justified in writing by department personnel.

B. The respective area chief shall designate the sporting arms, season dates, season lengths, bag limits, hunt

boundaries, specific requirements or restrictions, and number of licenses or permits. No qualifying license holder shall take more than one antelope per license year.

C. The specific hunt dates, hunt area, the name of the department representative providing the information and the date and time of notification shall be written on the license after notification by telephone.

D. Application may be made either on-line or through the special hunt application form provided by the department. On-line applications must be submitted by the deadline date set by the department. Application forms postmarked by the deadline date will be accepted up to five working days after the deadline date.

E. Applications for licenses may be rejected, and fees returned to an applicant, if such applications are not on the proper form or do not supply adequate information.

F. In the event that an applicant is not able to hunt on the dates specified, the applicant’s name shall be moved to the bottom of the list and another applicant may be contacted for the hunt.

G. No more than one person may apply under each application.

H. Population management hunts for antelope may be anywhere in the state with dates, number of licenses, bag limit, and specific hunt areas to be determined (TBD) by the department. The hunt code to apply for antelope population management hunts shall be ANT-5-100.

I. In those instances where a population management hunt is warranted on deeded private lands, the landowner may suggest eligible hunters of their choice by submitting a list of prospective hunter’s names to the department for licensing consideration. No more than ½ of the total number of licenses authorized shall be available to landowner identified hunters. The balance of prospective hunters shall be identified by the department.

[19.31.15.11 NMAC – Rp, 19.31.15.11 NMAC, 4-1-09]

19.31.15.12 INTERNET HARVEST REPORTING INCENTIVE. The director may annually allow up to two (2) pronghorn antelope authorizations to be issued by drawing to elk and deer hunters reporting their prior year’s harvest information as well as trappers reporting their trapping activities by the published deadline using the department’s established website. These incentives may also be available for deer and elk hunters submitting their legally harvested animal for CWD testing. Authorization certificates awarded pursuant to this rule may be transferred through sale, barter, or gift. Pronghorn antelope incentive hunts shall be valid only for the dates, legal sporting arms, bag limit and area specified by the director.

[19.31.15.12 NMAC – Rp, 19.31.15.12 NMAC, 4-1-09]

19.31.15.13 PRONGHORN ANTELOPE HUNTING SEASONS:

A. Pronghorn antelope hunts for any legal sporting arms, listing the open areas or AMUs, hunt dates, hunt code, number of licenses and bag limit for the 2009-2010 hunt season shall be as indicated below. Youth hunters must provide hunter education certificate number on application.

open AMUs or areas	hunt start	hunt end	hunt code	licenses	bag limit
3, 5, 10, 12, 13, 15, 16, 17, 18, 20.	10/03/2009	10/05/2009	ANT-1-100	100	MB
3, 5, 6, 10, 23, 24, 25, 26, 27, 28, 31, 32, 33, 34, 36, 37, 38, 39, 43, MI.	08/01/2009	08/02/2009	ANT-1-101	45	MB
12, MI.	07/31/2009	08/02/2009	ANT-1-102	2	MB
13, MI.	07/31/2009	08/02/2009	ANT-1-103	5	MB
16, MI.	07/31/2009	08/02/2009	ANT-1-104	2	MB
18, MI.	07/31/2009	08/02/2009	ANT-1-105	5	MB
6, 23, 24, 25, 26, 27, 31, 32, 33, 34, 36, 37, 38, 39, 40, 43.	09/12/2009	09/13/2009	ANT-1-106	300	MB
selected ranches in SE area, YO.	09/19/2009	09/20/2009	ANT-1-107	75	F-IM
19 Stallion range of WSMR.	09/12/2009	09/13/2009	ANT-1-108	5	MB
19 Stallion range of WSMR, YO.	09/12/2009	09/13/2009	ANT-1-109	5	MB
19 Stallion range of WSMR, MI.	09/12/2009	09/13/2009	ANT-1-110	5	MB
20, MI.	07/31/2009	08/02/2009	ANT-1-111	2	MB
42, 44, 45, 46, 47, 48, 49, 53, 54, 55, 56, 57, 58, MI.	08/01/2009	08/02/2009	ANT-1-112	25	MB
selected ranches in NE area, YO.	08/22/2009	08/24/2009	ANT-1-113	20	MB
41, 42, 44, 45, 46, 47, 48, 49, 53, 54, 55, 56, 57, 58.	08/22/2009	08/24/2009	ANT-1-114	500	MB
selected ranches in NE area, YO.	08/29/2009	08/30/2009	ANT-1-115	50	F-IM

B. Pronghorn antelope hunts for bows, listing the open AMUs, hunt dates, hunt code, number of licenses and bag limit for the 2009-2010 hunt season shall be as indicated below:

open AMUs or areas	hunt start	hunt end	hunt code	licenses	bag limit
3, 5, 10.	08/15/2009	08/23/2009	ANT-2-100	10	MB
12.	08/15/2009	08/23/2009	ANT-2-101	15	MB
13.	08/15/2009	08/23/2009	ANT-2-102	30	MB
16.	08/15/2009	08/23/2009	ANT-2-103	25	MB
17.	08/15/2009	08/23/2009	ANT-2-104	2	MB
20.	08/15/2009	08/23/2009	ANT-2-105	30	MB
6, 23, 24, 25, 26, 27, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 43.	08/15/2009	08/19/2009	ANT-2-106	200	MB
42, 44, 45, 46, 47, 48, 49, 53, 54, 55, 56, 57, 58.	08/08/2009	08/12/2009	ANT-2-107	100	MB

C. Pronghorn antelope hunts for legal muzzle loading rifles and bows, listing the hunt dates, open areas or AMUs, hunt code, number of licenses and bag limit for the 2009-2010 hunt season 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. Mentor/youth only hunts are restricted to applications that combine one adult hunter with up to three youth hunters pursuant to 19.31.3.11 NMAC. Youth hunters must provide hunter education certificate number on application.

open AMUs or areas	hunt start	hunt end	hunt code	licenses	bag limit
11.	10/03/2009	10/05/2009	ANT-3-100	25	MB
29.	09/05/2009	09/06/2009	ANT-3-101	40	MB
29 McGregor range, YO.	09/05/2009	09/06/2009	ANT-3-102	10	MB
29 McGregor range, military only.	09/05/2009	09/06/2009	ANT-3-103	10	MB
29 selected ranches, mentor/youth only.	09/05/2009	09/06/2009	ANT-3-104	10	MB
52 portion west of the Rio Grande, YO.	08/15/2009	08/18/2009	ANT-3-105	25	MB
52 portion west of the Rio Grande.	08/15/2009	08/18/2009	ANT-3-106	150	MB

D. A-PLUS pronghorn antelope hunts: The director may allot A-PLUS pronghorn antelope authorization certificates for use on those ranches whose owners, manager, or lessees sign and return a hunting agreement with the department. Private land hunt dates for the 2009-2010 hunt season shall be as indicated below, listing areas or AMUs open, the hunt date, hunt code, number of licenses and bag limit:

open AMUs or areas	hunt start	hunt end	hunt code	licenses	bag limit
3, 5, 10, 12, 13, 15, 16, 17, 18, 20.	10/03/2009	10/05/2009	ANT-1-700	TBD	MB
selected ranches in AMUs 3, 5, 6, 10, 23, 24, 25, 26, 27, 28, 31, 32, 33, 34, 36, 37, 38, 39, 40, 43.	09/12/2009	09/13/2009	ANT-1-701	TBD	F-IM
selected ranches in AMUs 3, 5, 6, 10, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 36, 37, 38, 39, 40, 43.	09/12/2009	09/13/2009	ANT-1-702	TBD	MB
selected ranches in AMUs 3, 5, 6, 10, 23, 24, 25, 26, 27, 28, 31, 32, 33, 34, 36, 37, 38, 39, 40, 43.	09/19/2009	09/20/2009	ANT-1-703	TBD	F-IM
selected ranches in SE Area, YO.	09/19/2009	09/20/2009	ANT-1-704	TBD	ES
selected ranches in AMUs 41, 42, 44, 45, 46, 47, 48, 49, 53, 54, 55, 56, 57, 58.	08/22/2009	08/24/2009	ANT-1-705	TBD	MB
selected ranches in AMUs 41, 42, 44, 45, 46, 47, 48, 49, 53, 54, 55, 56, 57, 58.	09/12/2009	09/14/2009	ANT-1-706	TBD	MB
selected ranches in NE area.	08/29/2009	08/30/2009	ANT-1-707	TBD	F-IM

[19.31.15.13 NMAC – Rp, 19.31.15.13 NMAC, 4-1-09]

19.31.15.14 JAVELINA HUNTING SEASONS:

Javelina hunts for the 2009-2010 and 2010-2011 hunt seasons shall be as indicated below, listing the open GMUs or areas, eligibility requirements or restrictions, hunt dates, hunt codes, number of licenses, and bag limit. Hunt codes for javelina hunts allowing “any legal weapon” type shall be designated JAV-1, hunt codes for javelina hunts allowing “bow only” weapon type shall be designated as JAV-2. Youth hunters must provide hunter education certification number on application. Mobility impaired hunt applicants shall meet eligibility requirements, as designated by the director, prior to applying for mobility impaired hunts. 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. The

open area for the JAV-2-101 and the JAV-1-102 hunts include the Big Hatchets special management area in GMU 26.

open GMUs or areas	2009-2010 hunt start and end dates		2010-2011 hunt start and end dates		hunt code	licenses	bag limit
statewide, YO	01/01/2010	03/31/2010	01/01/2011	03/31/2011	JAV-1-100	100	ES
GMUs 19, 23-27	01/16/2010	01/31/2010	01/16/2011	01/31/2011	JAV-2-101	300	ES
GMUs 19, 23-27	02/01/2010	02/15/2010	02/01/2011	02/15/2011	JAV-1-102	1000	ES
statewide except GMUs 19, 23-27	01/01/2010	01/15/2010	01/01/2011	01/15/2011	JAV-2-103	300	ES
statewide except GMUs 19, 23-27	01/16/2010	03/31/2010	01/16/2011	03/31/2011	JAV-1-104	1000	ES
28 McGregor range, military only.	12/26/2009	12/27/2009	1/1/2011	1/2/2011	JAV-1-105	5	ES

[19.31.15.14 NMAC – Rp, 19.31.15.14 NMAC, 4-1-09]

**NEW MEXICO
DEPARTMENT OF GAME
AND FISH**

This is an amendment to 19.31.10 NMAC, Sections 6, 7 and 18, effective 4-1-2009.

19.31.10.6 OBJECTIVE: ~~[Basic regulation governing]~~ To establish general rules, restrictions, requirements, definitions, and regulations governing lawful hunting, fishing, or trapping and the lawful taking or killing of game animals, furbearers, game birds, and game fish, water pollution, possession of wildlife, permits and licenses issued, importation, intrastate transportation, release of wildlife, restrictive devices for fish, manner and methods of hunting and fishing and use of department lands.
[19.31.10.6 NMAC - Rp, 19.31.10.6 NMAC, 4-1-2007; A, 4-1-2009]

19.31.10.7 DEFINITIONS:

A. “Big game species” shall mean deer, bear, cougar, elk, pronghorn antelope (American pronghorn), Barbary sheep, bighorn sheep, javelina, oryx, and Persian ibex.

B. “Modern firearms” shall mean center-fire firearms, not to include any fully automatic firearms. Legal shotguns shall be only those shotguns capable of being fired from the shoulder.

C. “Muzzle-loader or muzzle-loading firearms” shall mean those rifles and shotguns in which the charge and projectile are loaded through the muzzle. Only blackpowder, Pyrodex or equivalent blackpowder substitute may be used. Use of smokeless powder is prohibited. Legal muzzle-loader shotguns shall be only those shotguns capable of being fired from the shoulder.

D. “Restricted muzzle-loading rifle” shall mean any muzzle-loading rifle using open sights, black powder or equivalent and firing a traditional lead bullet. The use of in-line ignition, scopes, pelleted powder, smokeless powder and sabots,

including powerbelt-type projectiles, are prohibited.

E. “Bow” shall mean compound, recurve, or long bow. Sights on bows shall not project light nor magnify.

F. “Arrows” shall mean only those arrows or bolts having broadheads with steel cutting edges.

G. “Trotline” shall be synonymous with “set line” or “throw line” or “jug”, and shall mean a fishing line that is used without rod or reel and that need not be held in the hand or closely attended.

H. “Angling” shall mean taking or attempting to take fish by angling hook and line, with the line held in the hand or attached to a pole or rod or other device that is held in the hand or closely attended.

I. “Spear fishing” shall mean taking or attempting to take game fish with spears, jigs, and arrows with barbs that are discharged under the surface of the water.

J. “Bait fish” is defined as those nongame fish which are not otherwise protected by statute or regulation.

K. “Chumming” is defined as a means of attracting fish by placing organic materials, non-injurious to aquatic life, into the water.

L. “Protected species” shall mean any of the following animals:

(1) all animals defined as protected wildlife species and game fish under Section 17-2-3 New Mexico Statutes Annotated 1978 Compilation;

(2) all animals defined as furbearing animals under Section 17-5-2 New Mexico Statutes Annotated 1978 Compilation;

(3) all animals listed as endangered species or subspecies as stated in regulation(s) set by the state game commission.

M. “Retention” or “retain” shall mean the holding of in captivity.

N. “Established road” is defined as follows:

(1) a road, built ~~and/or~~ or maintained by equipment, which shows no evi-

dence of ever being closed to vehicular traffic by such means as berms, ripping, scarification, reseeding, fencing, gates, barricades or posted closures;

(2) a two-track road ~~[completely void of vegetation in the tracks]~~ which shows use prior to hunting seasons for other purposes such as recreation, mining, logging, and ranching and which shows no evidence of ever being closed to vehicular traffic by such means as berms, ripping, scarification, reseeding, fencing, gates, barricades or posted closures.

O. “Non-toxic shot” shall mean shot approved for use by the U. S. fish and wildlife service.

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

Q. “Baiting” shall mean the placing, exposing, depositing, distributing, or scattering of any salt, grain, scent or other feed on or over areas where hunters are attempting to take protected game mammals or game birds.

R. “Nets” shall mean cast nets, dip nets, and seines which shall not be longer than 20 feet and shall not have a mesh larger than three-eighths of an inch.

S. “Barbless lure or fly” shall mean an artificial lure made of wood, metal, or hard plastic or an artificial fly made from fur, feathers, other animal or man-made materials tied onto an angling hook to resemble or simulate insects, bait fish, or other foods. A barbless fly or lure may only bear a single hook, from which any or all barbs must be removed or bent completely closed, or which are manufactured without barbs. Living or dead arthropods and annelids, or rubber or plastic moldings of these or other foods are not included.

T. “Crossbow” shall mean a device with a bow limb or band of flexible material that is attached horizontally to a stock and has a mechanism to hold the string in a cocked position. Sights on crossbows shall not project light nor magnify.

U. “Angling hook” shall mean a single, double, or treble (triple) point attached to a single shank.

V. “Sporting arms or weapon types” shall be designated as follows:

(1) all hunt codes denoted with - 1- shall authorize use of any legal weapon;

(2) all hunt codes denoted with - 2- shall authorize use of bows only;

(3) all hunt codes denoted with - 3- shall authorize use of bows and muzzle-loading firearms.

W. “Bag limit” shall mean the protected animal, qualified by species, sex, age, antler requirement, or size allowed by rule that a legally licensed hunter may attempt to take or harvest.

X. “Written permission” shall mean a document (which may include a valid hunting, trapper, or fishing license) that asserts the holder has permission from the private land owner or his designee to hunt, fish, or trap on the landowner’s property. The information on the document must be verifiable and include the name, date, and phone number of the person granting the permission.

[19.31.10.7 NMAC - Rp, 19.31.10.7 NMAC, 4-1-2007; A, 6-30-2008; A, 4-1-2009]

19.31.10.18 UNLAWFUL TAKING OR KILLING OF GAME ANIMALS, FURBEARERS, GAME BIRDS, OR GAME FISH ON PRIVATE LAND:

A. It shall be unlawful to hunt, capture, take, attempt to take, or kill any game animal, furbearer, game bird, or game fish on any private property that is in compliance with 30-14-1 and 30-14-6 NMSA 1978 posting requirements without possessing written permission from the landowner or person in control of the land or trespass rights, unless otherwise permitted in rule or statute.

B. It shall be unlawful to hunt, capture, take, attempt to take, or kill any game animal, furbearer, game bird, or game fish on private property if the consent to enter or remain has been denied or withdrawn by the owner or person in control of the land or trespass rights, per 30-14-1 NMSA 1978, unless otherwise permitted in rule or statute.

C. It shall be unlawful to knowingly enter upon any private property to hunt, capture, take, attempt to take, or kill any game animal, furbearer, game bird, or game fish without possessing written permission from the landowner or person in control of the land or trespass rights unless otherwise permitted in rule or statute.

D. Any game animals, furbearers, game birds, or game fish taken

in violation of this section shall be subject to seizure.

[19.31.10.18 NMAC - N, 4-1-2009]

**NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION**

This is an amendment to 8.106.110 NMAC, Section 14, effective 03/31/2009.

8.106.110.14 APPROVAL EFFECTIVE DATE: Beginning with applications dated ~~[February 1, 2009]~~ July 1, 2004, or later, general assistance benefits for an approved application shall be effective ~~[the date of approval or from the 30th day after the day of application, whichever is earlier. Payment in the initial month shall be prorated from the date of authorization.]~~ as of the date of application. Payment in the first month shall be prorated from the date of application.

[8.106.110.14 NMAC - N, 07/01/2004, A/E, 01/30/2009; A, 03/31/2009]

**NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION**

This is an amendment to 8.106.120 NMAC, section 9, effective 03/31/2009.

8.106.120.9 CERTIFICATION PERIODS:

A. Certification period: Cash assistance shall be approved for a fixed certification period at the end of which the assistance shall be terminated.

B. Assigning the certification period:

(1) GA-time-limited disability: The certification period for a individual with a verified time-limited disability shall: **(a)** be set for the length of the disability established by medical documentation at the time of approval;

(b) be assigned for a fixed period beginning the ~~[first]~~ month of ~~[approval]~~ application, not to exceed six months; and

(c) be terminated at the end of the initial certification unless;

(i) the recipient submits a recertification application, and

(ii) the recipient meets the financial eligibility requirements, and

(iii) the IRU re-determines eligibility due to disability prior to the end of the certification period.

~~**(2) GA-disability:** The certification period for an individual with a verified disability shall begin in the first month of approval and be assigned for a fixed period of time]~~

(2) GA-temporary disability:

The certification period for a temporary disability depends on the type and length of disability established by medical documentation, and shall be assigned for a fixed period of six months, beginning the month of application. A temporary disability with a duration of six months or longer shall be reviewed and verified by the IRU prior to extending the certification period beyond six months.

(3) GA-permanent disability:

The certification period for a permanent disability shall be twelve months, beginning in the month of application. A permanent disability with a duration of 12 months or longer shall be reviewed and verified by the IRU prior to extending the certification period beyond the first six months.

~~**(3)**~~ **(4) GA-unrelated dependent child:** The certification period begins in the ~~[first]~~ month of application and cannot exceed six months.

~~**(4)**~~ **(5) Shelter home care:**

Adults receiving a state supplement payment for SSI recipients in an ARCSH setting shall be certified for twelve months, beginning in the month of application.

[8.106.120.9 NMAC - N, 07/01/2004; A, 03/16/2005; A/E, 01/30/2009; A, 03/31/2009]

**NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION**

This is an amendment to 8.106.610 NMAC, section 8, effective 03/31/2009.

8.106.610.8 CASH ASSISTANCE ISSUANCE:

A. Method of payment: Cash assistance benefits are paid by deposit of funds into an electronic benefit transfer (EBT) account.

(1) The initial month’s cash assistance payment is posted to the benefit group’s EBT account on the first working day after the date of authorization.

(2) Cash assistance payments are issued into the recipient’s EBT account so that the funds are available to the benefit group on the first working day of the month.

B. Benefit issuance: EBT account cards shall be issued at time of application to the authorized payee or authorized representative.

C. Replacement card:

The caseworker, the HSD help desk or the contractor customer service help desk shall have a card deactivated upon request of an adult participant in the benefit group or authorized payee. The card will be deactivated immediately and a replacement card provided to the participant. Once a card is deactivated it cannot be reactivated for any reason.

D. Authorizing payments:

(1) Cash benefit payments are authorized, changed or terminated through the department's automated eligibility system.

(2) An initial month's cash assistance payment that is issued by warrant is sent by mail on the first working day after the date of authorization.

E. Initiation of payment:

~~(1) Payment is initiated and prorated from the date of authorization or from the 30th day after the day of application, whichever is earlier.~~

~~(2) If the case was eligible in a month prior to the month of approval, but is not eligible for payment in the month following the month of disposition, the benefit group is not eligible for payment in any of these months.~~

~~(3) Payments effective in the current month: A payment that is issued during the month is deposited into the EBT account no later than the business day after payment is approved.~~

~~(4) Payments effective in the ongoing month:~~

~~(a) When authorized, the payment amount remains the same from month to month until changed.~~

~~(b) EBT issuances are transmitted to the fiscal agent so that the funds are available on the first working day of the month. Payments authorized after the monthly transmission to the fiscal agent are issued as part of the next nightly benefit batch.]~~

(1) The initial month's GA cash assistance payment is prorated from the date of application.

(2) A benefit group may be eligible for payment in the application month, but is not eligible for the month following the month of application.

F. Ongoing monthly issuance: Ongoing cash assistance payments are authorized in the regular monthly issuance process.

(1) The payment amount remains the same from month to month in the certification period, unless changes are made that affect eligibility or benefit amount.

(2) **Warrants:** During the monthly issuance process, if necessary, hard copy checks are written the night before the third to the last working day of the month. They are mailed so as to arrive on or about the first mail delivery day of the month.

G. Change in amount of payment:

(1) After approval, there is a continuing responsibility on the part of both the benefit group and the caseworker to make sure that eligibility and benefit amount are correctly determined. Failure on either side

to recognize and carry out this responsibility can result in overpayment to the benefit group. Overpayments for any reason are charged to the benefit group and must be repaid to the department.

(2) A benefit group's cash assistance payment shall be increased or decreased after receipt and verification of information indicating that changes in a benefit group's circumstances affect the amount of assistance to which the benefit group is entitled.

(3) Changes in the payment amount shall be made in accordance with changes in program policy.

H. Affecting changes:

(1) A change in the benefit group's circumstances may change the cash assistance amount for which the group is eligible.

(2) The cash assistance payment reduction or termination of benefits shall be effective in the month following the month the notice of adverse action expires.

(3) The cash assistance payment will be reduced in the month following issuance of a notification of change in circumstances, when the benefit group reports a change in writing, an adult has signed the written report, and the caseworker has sufficient information to effect the change in benefit amount.

(4) If a change in benefit amount occurs as a result of an untimely report by the benefit group, an overpayment or underpayment may occur. If an underpayment occurs, it shall be corrected by issuing a supplemental payment effective the month following the month the change is verified. In case of an overpayment, an overpayment claim shall be established for all appropriate months and efforts shall be made to recover the overpayment from the benefit group.

I. Whereabouts unknown: Eligibility shall be terminated if the whereabouts of the benefit group are unknown to the department. A benefit group's whereabouts shall be considered to be unknown if:

(1) mail sent to the last known address is returned to the department indicating that the benefit group no longer lives at that address and at least 30 days have passed since the caseworker sent the mail;

(2) warrants for two consecutive months are returned to the HSD accounting section of the administrative services division; or

(3) the benefit group does not make any withdrawals from the benefit group's EBT account for 60 days or more. [8.106.610.8 NMAC - N, 07/01/2004; A, 02/28/2007, A/E, 01/30/2009; A, 03/31/2009]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an emergency amendment to 8.139.500 NMAC, Section 8, effective 04/01/2009.

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 contiguous 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	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)
	\$1,430	\$1,127	\$ 867	[\$176] \$200
2	\$1,925	\$1,517	\$1,167	[\$323] \$367
3	\$2,420	\$1,907	\$1,467	[\$463] \$526
4	\$2,915	\$2,297	\$1,767	[\$588] \$668
5	\$3,410	\$2,687	\$2,067	[\$698] \$793
6	\$3,905	\$3,077	\$2,367	[\$838] \$952
7	\$4,400	\$3,467	\$2,667	[\$926] \$1,052
8	\$4,895	\$3,857	\$2,967	[\$1,058] \$1,202
\$Each Additional Member	+\$495	+\$390	+\$300	[\$132] \$150

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	\$144.00
Standard Deduction for Household of 4	\$147.00
Standard Deduction for Household Size of 5	\$172.00
Standard Deduction for Household Size of 6 or more	\$197.00
Earned Income Deduction (EID)	20%
Dependent Care Deduction	Actual Amount
Heating/Cooling Standard Utility Allowance (HCSUA)	\$278.00
Limited Utility Allowance (LUA)	\$101.00
Telephone Standard (TS)	\$ 32.00
Excess Shelter Cost Deduction Limit for Non -Elderly/Disabled Households	\$446.00
Homeless Household Shelter Standard	\$ 143.00
Minimum Allotment for Eligible One -and Two-Person Households	[\$14.00] \$16.00

[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, 10/01/2007; A/E, 10/01/2008; A/E, 04/01/2009]

NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

This is an emergency amendment to 8.139.610 NMAC, Section 12, effective 04/01/2009.

8.139.610.12 GENERAL (BENEFIT AMOUNT)

A. The food stamp benefit amount to be issued depends on the number of eligible members in the household and the net monthly income used to determine eligibility.

(1) HSD uses a 30-day calendar month to determine a household's food stamp benefit amount. A household applying on the 31st of the month will be treated as if it applied on the 30th.

(2) When a household is determined eligible, the food stamp benefit amount is calculated, issuance authorization is processed that night, and food stamp benefits are issued the following work day.

B. Maximum food stamp benefit amount:

(1) The maximum food stamp allotment (MFSA or maximum food stamp benefit amount) "means the diet required to feed a family of four persons consisting of a man and a woman 20 through 30 years of age, a child six through eight years of age, and a child nine through 11 years of age determined in accordance with USDA calculations". The cost of such a diet is the basis for determining uniform food stamp benefit amounts for all households regardless of their actual composition. To develop maximum food stamp benefit amounts, USDA makes adjustments in the MFSA tak-

ing into account economies of scale and other adjustments required by law.

(2) Except when food stamp benefits are prorated and when reductions are made at the national level, a household's monthly food stamp benefit amount is equal to the MFSA for the household's size reduced by thirty percent (30%) of its net monthly income. The basis of issuance tables (supplement 400-B) contain the maximum food stamp benefit amounts by household size and income.

(3) If the tables (supplement 400-B) are not used, the maximum food stamp benefit amount can be calculated by multiplying a household's net income by thirty percent, rounding the result up to the next whole dollar, and subtracting that amount from the MFSA for the appropriate household size (Subsection E of 8.139.500.8 NMAC).

C. Initial month: A household's food stamp benefit amount for the initial month of certification will be based on the day of the month the household applies for food stamp benefits. The household receives food stamp benefits from the date of application to the end of the month, unless the applicant household consists of residents of a public institution.

(1) Applying from institutions: For households applying for SSI and food stamp benefits before release from an institution, the food stamp benefit amount for the initial month of certification will be based on the date of the month the household is released from the institution. The household will receive food stamp benefits from the date of the household's release from the institution to the end of the month.

(2) Benefits less than \$10: If the initial month's calculations yield a food stamp benefit amount of less than \$10, then no issuance will be made for the initial month. For households entitled to no food stamp benefits in the initial month, but eligible in subsequent months, the caseworker shall certify a household beginning with the month of application.

(3) Combined issuance: A household will receive benefits for the month of application and the following month, and without regard to the household's designated issuance date in the second month, when the household has completed the application and interview process; provided all required verification; has been determined eligible for food stamp benefits in the initial month and the following month; and approval occurs in the month following the month of application.

(4) Not entitled to combined issuance: The following households will not be entitled to combined issuance of the food stamp benefits:

- (a) a household certified for one month only;
- (b) a household determined ineligible for the month of application, but eligible for the second month;
- (c) a household entitled to expedited service who must provide postponed verification to obtain the second month's food stamp benefits; and
- (d) a household that has been recertified.

D. Expedited service: Households eligible for expedited service will receive benefits for the application month. All verification, except identification, may be postponed. If certified for more than one month, benefits for the following month are held until postponed verification is provided. If verification is not provided, benefit issuance may not continue. The case is closed on the 30th day after application.

E. Minimum benefit amount: (1) Except during an initial month, all eligible one- and two-person households, including categorically eligible households, will receive a minimum monthly food stamp benefit amount of [~~\$10.00~~] \$16.00.

(2) All eligible households with three or more members entitled to \$1.00, \$3.00, and \$5.00 food stamp benefit amounts will receive food stamp benefit amounts of \$2.00, \$4.00, and \$6.00, respectively, to correspond with current coupon book denominations.
[02/01/95, 07/01/98; 8.139.610.12 NMAC - Rn, 8 NMAC 3.FSP.620, 05/15/2001; A, 02/28/2007; A/E, 04/01/2009]

**NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION**

8.281.600 NMAC, Medicaid Eligibility Institutional Care Categories 081, 083, 084: Benefit Description, filed 12-30-94 is repealed and replaced by 8.281.600 NMAC, Medicaid Eligibility Institutional Care Categories 081, 083, 084: Benefit Description, effective 4-1-09.

**NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION**

**TITLE 8 SOCIAL SERVICES
CHAPTER 281 MEDICAID ELIGIBILITY - INSTITUTIONAL CARE (CATEGORIES 081, 083 and 084)
PART 600 BENEFIT DESCRIPTION**

8.281.600.1 ISSUING AGENCY: New Mexico Human Services Department.
[8.281.600.1 NMAC - Rp, 8 NMAC 4.ICM.000.1, 4/1/09]

8.281.600.2 SCOPE: The rule applies to the general public.
[8.281.600.2 NMAC - Rp, 8 NMAC 4.ICM.000.2, 4/1/09]

8.281.600.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended and by the state human services department pursuant to state statute. See Section 27-2-12 et seq. NMSA 1978 (Repl. Pamp. 1991).
[8.281.600.3 NMAC - Rp, 8 NMAC 4.ICM.000.3, 4/1/09]

8.281.600.4 DURATION: Permanent
[8.281.600.4 NMAC - Rp, 8 NMAC 4.ICM.000.4, 4/1/09]

8.281.600.5 EFFECTIVE DATE: February 1, 1995, unless a later date is cited at the end of a section.
[8.281.600.5 NMAC - Rp, 8 NMAC 4.ICM.000.5, 4/1/09]

8.281.600.6 OBJECTIVE: The objective of these regulations is to provide eligibility policy and procedures for the medicaid program.
[8.281.600.6 NMAC - Rp, 8 NMAC 4.ICM.000.6, 4/1/09]

8.281.600.7 DEFINITIONS: [RESERVED]

8.281.600.8 [RESERVED]

8.281.600.9 BENEFIT DESCRIPTION: Applicant/recipient who is eligible for institutional care medicaid is eligible to receive the full range of medicaid-covered services, unless coverage is restricted due to transfer of asset penalties.
[7/1/00; 8.281.600.9 NMAC - Rp, 8 NMAC 4.ICM.600, 4/1/09]

8.281.600.10 BENEFIT DETERMINATION:
A. Application for institutional care medicaid is made using the application/redetermination of eligibility for medical assistance of aged, blind and disabled individuals (form MAD 381). Completed applications must be acted upon and notice of approval, denial, or delay sent out within 45 days from the date of registration. The ISD worker explains time limits to the applicant and informs him or her of the date by which the application should be processed.

B. Representatives applying on behalf of individuals: If a representative makes application on behalf of an institutionalized individual, the representative is relied upon for information. The ISD worker sends all notices to the applicant/recipient in care of the representative. If the individual who makes an application is an employee of the institution, the ISD worker contacts the applicant's family or other involved individuals. The ISD worker focuses on the applicant/recipient's current circumstances and on past circumstances which may provide clues to existing or potential resources.
[7/1/00; 8.281.600.10 NMAC - Rp, 8 NMAC 4.ICM.620, 4/1/09]

8.281.600.11 INITIAL BENEFITS:
A. For an applicant/recipient

ent who loses SSI eligibility after entering an institution, the institutional care medicaid application date is the first day of the month of SSI termination, or the month the application is received by the ISD worker, whichever is earlier.

B. Notice of determination: Applicants eligible for institutional care medicaid are notified of the approval and advised of the amount, if any, of the medical care credit. Applicants who are ineligible are notified of the denial and provided with an explanation of appeal rights. [8.281.600.11 NMAC - Rp, 8 NMAC 4.ICM.623, 4/1/09]

8.281.600.12 ONGOING BENEFITS: A complete redetermination of eligibility must be performed by the ISD worker for each open case at least annually. The redetermination includes contact with the recipient, representative or if applicable, the institution's contact person.

A. Regular reviews: For each regular yearly review, the ISD worker must determine:

(1) whether medical care credit payments are up to date; an overdue balance may indicate a change in circumstances that is unreported, particularly where rental property is involved; and

(2) whether the deposit to the recipient's personal fund is consistently no more than the applicable personal needs allowance amount per month; a larger deposit may indicate an increase in income that is unreported or a previously unidentified source of income.

B. Additional reviews: Additional reviews are scheduled by the ISD worker depending upon the nature of the recipient's income, resources or medical condition. The following situations may require more frequent review:

(1) social security cost-of-living increases;

(2) VA cost-of-living increases;

(3) rental income which is sporadic and requires review every three months; or

(4) level of care changes and determinations; the end date on the abstract must be posted for follow-up; the utilization review contractor confirmation form, notice of level of care certification period, is valid for 60 days for high level nursing facility (NF) or low level NF starting from the date on the form.

[8.281.600.12 NMAC - Rp, 8 NMAC 4.ICM.624, 4/1/09]

8.281.600.13 RETROACTIVE BENEFIT COVERAGE: Up to three months of retroactive medicaid coverage can be furnished to applicants who have received medicaid-covered services during the retroactive period and would have met

applicable eligibility criteria had they applied during the three months prior to the month of application [42 CFR Section 435.914].

A. Application for retroactive benefit coverage: Application for retroactive medicaid can be made by checking "yes" in the "application for retroactive medical payments" box on the application/redetermination of eligibility for medical assistance of aged, blind and disabled individuals (form MAD 381) or by checking "yes" to the question on "does anyone in your household have unpaid medical expenses in the last three months?" on the application for assistance (form ISD 100). Applications for retroactive medicaid benefits must be made within 180 days from the date of application for assistance. Medicaid-covered services which were furnished more than two years prior to application are not covered.

B. Approval requirements: To establish retroactive eligibility, the ISD worker must verify that all conditions of eligibility were met for each of the three retroactive months and that the applicant received medicaid-covered services. Each month must be approved or denied on its own merits. Retroactive eligibility can be approved on either the eligibility system or on the retroactive medicaid eligibility authorization (form ISD 333).

C. Notice:

(1) **Notice to applicant:** The applicant must be informed if any of the retroactive months are denied.

(2) **Recipient responsibility to notify provider:** After the retroactive eligibility has been established, the ISD worker must notify the recipient that he/she is responsible for informing all providers with outstanding bills of the retroactive eligibility determination. If the recipient does not inform all providers and furnish verification of eligibility which can be used for billing and the provider consequently does not submit the billing within 120 days from the date of approval of retroactive coverage, the recipient is responsible for payment of the bill.

[8.281.600.13 NMAC - Rp, 8 NMAC 4.ICM.625, 4/1/09]

8.281.600.14 CHANGES IN ELIGIBILITY:

A. The following procedures apply when an institutional care medicaid recipient leaves an institution:

(1) the recipient is notified in writing that his/her eligibility for institutional care medicaid has terminated;

(2) the institutional care medicaid case is closed;

(3) the recipient is screened for other medicaid program eligibility; or

(4) the recipient is referred to the

social security administration for determination of eligibility for SSI benefits if appropriate; if a recipient dies in an institution, the case is closed the following month.

B. Discharge status:

Discharge status continues after the UR contractor determines that there is no medical necessity for a high NF or low NF placement. Discharge status does not apply to an acute care placement. After placement in discharge status, the recipient continues to be eligible for institutional care medicaid since he/she still requires institutional care.

(1) **Abstract submission:**

Discharge status requires a new abstract be submitted at regular intervals. The institution must attach verification to the abstract that adequate placement has been and is being sought.

(2) **Case closure:** The ISD worker takes no action to close a case until the recipient is actually discharged from the institution. If the recipient is transferred from high NF to low NF, medicaid coverage is not interrupted, unless the recipient is ineligible for other reasons.

[8.281.600.14 NMAC - Rp, 8 NMAC 4.ICM.630, 4/1/09]

HISTORY OF 8.281.600 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:

ISD Rule 380.0000, Medical Assistance for Persons Requiring Institutional Care, filed 12/29/83.

ISD Rule 380.0000, Medical Assistance for Persons Requiring Institutional Care, filed 8/11/87.

MAD Rule 380.0000, Medical Assistance for Persons Requiring Institutional Care, filed 2/5/88.

MAD Rule 380.0000, Medical Assistance for Persons Requiring Institutional Care, filed 2/25/88.

MAD Rule 380.0000, Medical Assistance for Persons Requiring Institutional Care, filed 6/1/88.

MAD Rule 380.0000, Medical Assistance for Persons Requiring Institutional Care, filed 1/31/89.

MAD Rule 380.0000, Medical Assistance for Persons Requiring Institutional Care, filed 6/21/89.

MAD Rule 880.0000, Medical Assistance for Persons Requiring Institutional Care, filed 3/21/90.

MAD Rule 880, Medical Assistance for Persons Requiring Institutional Care, filed 5/3/91.

MAD Rule 880, Medical Assistance for Persons Requiring Institutional Care, filed 6/12/92.

MAD Rule 880, Medical Assistance for Persons Requiring Institutional Care, filed 11/16/94.

MAD Rule 882, Resources - Medical

Assistance for Persons Requiring Institutional Care, filed 3/9/93.
 MAD Rule 882, Resources - Medical Assistance for Persons Requiring Institutional Care, filed 11/16/94.
 MAD Rule 882, Resources, filed 12/29/94.
 MAD Rule 883, Income - Medical Assistance for Persons Requiring Institutional Care, filed 3/18/93.
 MAD Rule 883, Income - Medical Assistance for Persons Requiring Institutional Care, filed 11/16/94.
 MAD Rule 883, Income, filed 12/29/94.
 MAD Rule 885, Medical Care Credit, filed 11/16/94.
 MAD Rule 888, Medicare Catastrophic Coverage Act of 1988 Regarding Transfers of Assets, filed 3/10/94.
 MAD Rule 888, Transfers of Assets, filed 12/27/94.
 MAD Rule 889, Spousal Impoverishment, filed 8/17/92.
 MAD Rule 889, Spousal Impoverishment, filed 2/17/94.

History of Repealed Material:

MAD Rule 880, Medical Assistance for Persons Requiring Institutional Care, filed 11/16/94 - Repealed effective 2/1/95.
 MAD Rule 882, Resources, filed 12/29/94 - Repealed effective 2/1/95.
 MAD Rule 883, Income, filed 12/29/94 - Repealed effective 2/1/95.
 MAD Rule 885, Medical Care Credit, filed 11/16/94 - Repealed effective 2/1/95.
 MAD Rule 888, Transfers of Assets, filed 12/27/94 - Repealed effective 2/1/95.
 MAD Rule 889, Spousal Impoverishment, filed 2/17/94 - Repealed effective 2/1/95.
 8 NMAC 4.ICM.600, Benefit Description, filed 12/30/94 - Repealed effective 4/1/09.

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.510 NMAC, Section 12, effective April 1, 2009.

8.200.510.12 POST-ELIGIBILITY CALCULATION (MEDICAL CARE CREDIT): Apply applicable deductions in the order listed below when determining the medical care credit for an institutionalized spouse.

<u>DEDUCTION</u>	<u>AMOUNT</u>
A. Personal needs allowance for institutionalized spouse	\$60
B. Basic community spouse monthly income allowance standard (CSMIA)	\$1,750
(CSMIA standard minus income of community spouse — deduction	
C. * Excess shelter allowance for allowable expenses for community spouse	\$989
D. ** Extra maintenance allowance	
E. Dependent family member 1/3 X (CSMIA — dependent member's income)	
F. Non-covered medical expenses	
G. * The allowable shelter expenses of the community spouse must exceed \$525 per month for any deduction to apply.	
H. ** To be deducted, the extra maintenance allowance for the community spouse must be ordered by a court of jurisdiction or a state administrative hearing officer.	
I. MAXIMUM TOTAL: The maximum total of the community spouse monthly income allowance and excess shelter deduction is \$2,739.]	
A. Personal needs allowance for institutionalized spouse	\$60
B. Minimum monthly maintenance needs allowance (MMMNA)	\$1,750
C. The community spouse monthly income allowance (CSMIA) is calculated by subtracting the community spouse's gross income from the MMMNA:	
(1) If allowable shelter expenses of the community spouse exceed \$525 deduct an excess shelter allowance from community spouse's income that includes: expenses for rent; mortgage (including interest and principal); taxes and insurance; any maintenance charge for a condominium or cooperative; and an amount for utilities (if not part of maintenance charge above); use the standard utility allowance (SUA) deduction used in the food stamp program for the utility allowance.	
(2) Excess shelter allowance may not exceed a maximum of \$989.	
D. Any extra maintenance allowance ordered by a court of jurisdiction or a state administrative hearing officer.	
E. Dependent family member income allowance (if applicable) calculated as follows: 1/3 X MMMNA - dependent member's income)	
F. Non-covered medical expenses	
G. The maximum total of the community spouse monthly income allowance and excess shelter deduction may not exceed \$2,739.	

[1-1-95, 7-1-95, 3-30-96, 8-31-96, 4-1-97, 6-30-97, 4-30-98, 6-30-98, 1-1-99, 7-1-99, 7-1-00; 8.200.510.12 NMAC - Rn, 8 NMAC 4.MAD.510.2 & A, 1-1-01, 7-1-01; A, 1-1-02; A, 7-1-02; A, 1-1-03; A, 7-1-03; A, 1-1-04; A, 7-1-04; A, 1-1-05; A, 7-1-05; A, 1-1-06; A, 7-1-06; A, 1-1-07; A, 7-1-07; A, 1-1-08; A, 7-1-08, A, 1-1-09, A, 4-1-09]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.520 NMAC, section 11, which will be effective April 1, 2009.

8.200.520.11 FEDERAL POVERTY INCOME GUIDELINES:

A. **100% of federal poverty:** 100% of federal poverty income guidelines

<u>Size of assistance unit</u>	<u>Poverty income guidelines</u>
1	[\$867] \$903 per month*
2	[\$1,167] \$1,215 per month*
3	[\$1,467] \$1,526 per month
4	[\$1,767] \$1,838 per month
5	[\$2,067] \$2,150 per month
6	[\$2,367] \$2,461 per month
7	[\$2,667] \$2,773 per month
8	[\$2,967] \$3,085 per month

Add ~~[\$300]~~ \$312 for each additional person in the assistance unit.

*Use only these two standards for the QMB program.

B. **120% of federal poverty:** This income level is used only in the determination of the maximum income limit for specified low income medicare beneficiaries (SLIMB) applicants/recipients.

<u>Applicant/recipient</u>	<u>Amount</u>
1. Individual	At least [\$867] \$903 per month but no more than [\$1,040] \$1,083 per month.
2. Couple	At least [\$1,167] \$1,215 per month but no more than [\$1,400] \$1,457 per month.

For purposes of this eligibility calculation, couple means an applicant couple or an applicant with an ineligible spouse when income is deemed.

C. **133% of federal poverty:** 133% of federal poverty income guidelines

<u>Size of assistance unit</u>	<u>Poverty income guidelines</u>
1	[\$1,153] \$1,201 per month
2	[\$1,552] \$1,615 per month
3	[\$1,951] \$2,030 per month
4	[\$2,350] \$2,444 per month
5	[\$2,749] \$2,859 per month
6	[\$3,148] \$3,273 per month
7	[\$3,547] \$3,688 per month
8	[\$3,946] \$4,102 per month

Add ~~[\$399]~~ \$414 for each additional person in the assistance unit.

D. **135% of federal poverty:** This income level is used only in the determination of the maximum income limit for qualified individuals 1 (QI-1) applicants/recipients. The following income levels apply:

<u>Applicant/recipient</u>	<u>Amount</u>
1. Individual	At least [\$1,040] \$1,083 per month but no more than [\$1,170] \$1,219 per month.
2. Couple	At least [\$1,400] \$1,457 per month but no more than [\$1,575] \$1,640 per month.

For purposes of this eligibility calculation, couple means an applicant couple or an applicant with an ineligible spouse when income is deemed.

E. **150% of federal poverty:** This income level is used only in the determination of the maximum income limit for state coverage insurance (SCI) (category 062) applicants/recipients. The following income levels apply:

<u>Size of assistance unit</u>	<u>Poverty income guidelines</u>
1	[\$1,300] \$1,354 per month
2	[\$1,750] \$1,822 per month
3	[\$2,200] \$2,289 per month
4	[\$2,650] \$2,757 per month
5	[\$3,100] \$3,224 per month
6	[\$3,550] \$3,692 per month
7	[\$4,000] \$4,159 per month
8	[\$4,450] \$4,627 per month

Add ~~[\$500]~~ \$468 for each additional person in the assistance unit.

F. **185% of federal poverty:**

<u>Size of assistance unit</u>	<u>Poverty income guidelines</u>
1	[\$1,604] \$1,670 per month
2	[\$2,159] \$2,247 per month
3	[\$2,714] \$2,823 per month
4	[\$3,269] \$3,400 per month
5	[\$3,824] \$3,976 per month
6	[\$4,379] \$4,553 per month
7	[\$4,934] \$5,130 per month
8	[\$5,489] \$5,706 per month

Add ~~[\$555]~~ \$576 for each additional person in the assistance unit.

- G. **200% of federal poverty:** 200% of federal poverty income guidelines
- | Size of assistance unit | Poverty income guidelines |
|-------------------------|--|
| 1 | [\$1,734] \$1,805 per month |
| 2 | [\$2,334] \$2,429 per month |
| 3 | [\$2,934] \$3,052 per month |
| 4 | [\$3,534] \$3,675 per month |
| 5 | [\$4,134] \$4,299 per month |
| 6 | [\$4,734] \$4,922 per month |
| 7 | [\$5,334] \$5,545 per month |
| 8 | [\$5,934] \$6,169 per month |
- Add ~~[\$600]~~ \$624 for each additional person in the assistance unit.
- H. **235% of federal poverty:** 235% of federal poverty income guidelines
- | Size of assistance unit | Poverty income guidelines |
|-------------------------|--|
| 1 | [\$2,037] \$2,123 per month |
| 2 | [\$2,742] \$2,856 per month |
| 3 | [\$3,447] \$3,587 per month |
| 4 | [\$4,152] \$4,320 per month |
| 5 | [\$4,857] \$5,053 per month |
| 6 | [\$5,562] \$5,784 per month |
| 7 | [\$6,267] \$6,517 per month |
| 8 | [\$6,972] \$7,250 per month |
- Add ~~[\$705]~~ \$733 for each additional person in the assistance unit.
- I. **250% of federal poverty:** 250% of federal poverty income guidelines
- | Size of assistance unit | Poverty income guidelines |
|-------------------------|--|
| 1 | [\$2,167] \$2,257 per month |
| 2 | [\$2,917] \$3,036 per month |
| 3 | [\$3,667] \$3,815 per month |
| 4 | [\$4,417] \$4,594 per month |
| 5 | [\$5,167] \$5,373 per month |
| 6 | [\$5,917] \$6,153 per month |
| 7 | [\$6,667] \$6,932 per month |
| 8 | [\$7,417] \$7,711 per month |
- Add ~~[\$750]~~ \$779 for each additional person in the assistance unit.
- [1-1-95, 4-1-95, 4-15-96, 4-1-97, 3-31-98, 3-1-99, 4-1-99, 4-1-00; 8.200.520.11 NMAC - Rn, 8 NMAC 4.MAD.520.1-5, & 14, & A, 1-1-01; A, 4-1-01; A, 4-1-02; A, 4-1-03; A, 4-1-04; A, 4-1-05; A, 4-1-06; A, 4-1-07; A, 4-1-08; A, 4-1-09]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.215.500 NMAC, Sections 7, 11 – 14, 16, 18, 20 and 21, effective April 1, 2009.

8.215.500.7 DEFINITIONS: ~~[RESERVED]~~ **Relative:** A son/daughter; grandson/granddaughter; step-son/step-daughter; in-laws; mother/father; step-mother/step-father; half sister/half brother; grandmother/grandfather; aunt/uncle; sister/brother; step-brother/step-sister; and niece/nephew.
[8.215.500.7 NMAC - N, 4-1-09]

8.215.500.11 RESOURCE STANDARDS: A “resource” is defined as cash or liquid assets and real or personal property which is owned and can be used either directly, or by sale or conversion, for the applicant/recipient’s support and maintenance. Resources may be liquid or non-liquid and may be excluded from the eligibility determination process under certain conditions. A liquid resource is an asset which can readily be converted to cash. A non-liquid resource is an asset or property which

cannot readily be converted to cash.

A. **Resource determination:** The resource determination is made as of the first moment of the first day of the month of application. An applicant/recipient is ineligible for any month in which his/her countable resources exceed the allowable resource standard as of the first moment of the first day of the month. Changes in the amount of countable resources during a month do not affect eligibility or ineligibility for that month.

B. **Distinguishing between resources and income:** Resources must be distinguished from income to avoid counting a single asset twice. As a general rule, ownership of a resource precedes the current month while income is received in the current month. Income held by an applicant/recipient until the following month becomes a resource. [2-1-95, 7-31-97; 8.215.500.11 NMAC - Rn, 8 NMAC 4.SSI.510, 3-1-01; A, 4-1-09]

8.215.500.12 APPLICABLE RESOURCE STANDARDS: The resource standard for medicaid extension as well as retroactive SSI medicaid eligibility determinations is \$2,000. See Section QMB-510 for resource standards applicable to QMB. See Section QDS-510 for stan-

dards applicable to the qualified disabled working individuals program. See Section SMB-510 for standards applicable to the SLIMB program.

A. **Liquid resources:** The face value of liquid resources such as cash, savings or checking accounts is considered in determining medicaid eligibility. The countable value of resources such as securities, bonds, real estate contracts and promissory notes is based on their current fair market value.

(1) An applicant/recipient must provide verification of the value of all liquid resources. The resource value of a bank account is customarily verified by a statement from the bank showing the account balance as of the first moment of the first day of the month in question. If an applicant/recipient cannot provide this verification, the ~~[ISS]~~ ISD worker sends a bank or postal savings clearance to the appropriate institution(s).

(2) If the applicant/recipient can demonstrate that a check was written and delivered to a payee but not cashed by the payee prior to the first moment of the first day of the month, the amount of that check is subtracted from the applicant/recipient’s checking account balance to arrive at the amount to be considered a countable

resource.

B. Nonliquid resources: The value of nonliquid resources is computed at current fair market value. See below for discussion of equity value.

(1) **Real property:** If an applicant/recipient is the sole owner of real property other than a home and has the right to dispose of it, the entire equity value is included as a countable resource. If an applicant/recipient owns property with one or more individuals and the applicant/recipient has the right, authority or power to liquidate the property or his/her share of the property, it is considered a resource. If a property right cannot be liquidated, the property will not be considered a resource to the individual. The applicant/recipient must provide a copy of the legal document which indicates his/her interest in the property.

(2) **Vehicles:** One automobile is totally excluded regardless of value if it is used for transportation for the individual or a member of the individual's household. Any other automobiles are considered to be nonliquid resources. Equity in the other automobiles is counted as a resource. Recreational vehicles and boats are considered household goods and personal effects rather than vehicles.

(3) **Household goods and personal effects:** Household goods and personal effects are considered countable resources if the items were acquired or are held for their value or are held as an investment. Such items can include but are not limited to: gems, jewelry that is not worn or held for family significance, or collectibles. [2-1-95, 7-31-97; 8.215.500.12 NMAC - Rn, 8 NMAC 4.SSI.511, 3-1-01; A, 1-1-06; A/E, 2-1-07; A, 4-1-09]

8.215.500.13 C O U N T A B L E RESOURCES: Before a resource can be considered countable, the three [~~3~~] criteria listed below must be met.

A. Ownership interest: An applicant/recipient must have an ownership interest in a resource for it to be countable. The fact that an applicant/recipient has access to a resource, or has a legal right to use it, does not make it countable unless the applicant/recipient also has an ownership interest in it.

B. Legal right to convert resource to cash: An applicant/recipient must have the legal ability to spend the funds or to convert non-cash resources into cash.

(1) **Physical possession of resource:** The fact that an applicant/recipient does not have physical possession of a resource does not mean it is not his/her resource. If he/she has the legal ability to spend the funds or convert the resource to cash, the resource is considered countable.

Physical possession of savings bonds is a legal requirement for cashing them.

(2) **Unrestricted use of resource:** An applicant/recipient is considered to have free access to the unrestricted use of a resource even if he/she can take those actions only through an agent, such as a representative payee or guardian.

(3) If there is a legal bar to the sale of a resource, the resource is not countable. If the co-owner of real property can bring an action to partition and sell the property, his/her interest in the property is a countable resource.

C. Legal ability to use a resource: If a legal restriction exists which prevents the use of a resource for the applicant/recipient's own support and maintenance, the resource is not countable.

D. Joint ownership of resources: If an applicant/recipient owns either liquid or non-liquid resources jointly with others, he/she has [~~thirty (30)~~] 30 days from the date requested by the [~~ISS~~] ISD worker to submit all documentation required to [~~verify~~] prove his/her claims regarding ownership of, access to, and legal ability to use the resource for personal support and maintenance. Failure to do so results in the presumption that the resource is countable and belongs to the applicant/recipient.

(1) **Jointly held property:** If jointly held property is identified during review of an active case, the [~~ISS~~] ISD worker must:

(a) determine whether the property is a countable resource;

(b) determine whether the value of the jointly held property plus the value of other countable resources exceeds the allowable resource maximum;

(c) if the value of countable resources exceeds the allowable maximum, advance notice is furnished to the applicant/recipient of the intent to close the case and his/her right to verify claims regarding ownership of, access to and legal ability to use the property for personal support and maintenance;

(d) if the applicant/recipient fails to provide required information or respond within the advance notice period, the case is closed; and

(e) if, after expiration of the advance notice period but prior to the end of the month in which the advance notice expires, the applicant/recipient provides the required evidence to show the property is not a countable resource, or is countable in an amount which, when added to the value of other countable resources, does not exceed the maximum allowable limit, and eligibility continues to exist on all other factors, the case is reinstated for the next month.

(2) **Joint bank accounts:** If liq-

uid resources are in a joint bank account of any type, the applicant/recipient's ownership interest, while the parties to the account are alive, is presumed to be proportionate to the applicant/recipient's contributions to the total resources on deposit.

(a) The applicant/recipient is presumed to own a proportionate share of the funds on deposit unless he/she presents clear and convincing evidence that the parties to the account intended the applicant/recipient to have a different ownership interest.

(b) To establish the applicant/recipient's ownership interest in a joint account, the following are required:

(i) statement by the applicant/recipient regarding contributions to the account; reasons for establishing the account; who owns the funds in the account; and any supporting documentation; plus

(ii) corroborating statements from the other account holder(s); if either the applicant/recipient or the other account holder is not capable of making a statement, the applicant/recipient or representative must obtain a statement from a third party who has knowledge of the circumstances surrounding the establishment of the joint account.

(c) Failure to provide required documentation within [~~thirty (30)~~] 30 days of the date requested by the [~~ISS~~] ISD worker results in a determination that the entire account amount belongs to the applicant/recipient.

(d) If the existence of a jointly held bank account is identified during the review of an active case, the [~~ISS~~] ISD worker requests evidence of ownership and accessibility. If the evidence is not furnished within [~~thirty (30)~~] 30 days of the request, the case is closed.

E. Other countable resources: Other liquid or non-liquid resources must be considered in the calculation of total countable resources. Under certain circumstances, the following non-liquid resources may be included in the calculation of countable resources:

(1) burial funds;

(2) burial spaces;

(3) life estates;

(4) life insurance and other insurance products;

(5) income-producing property;

and

(6) other financial investment products.

F. The home as a countable resource: If the applicant/recipient or his/her representative states the applicant/recipient does not intend to return to the home and it is not the residence of the applicant/recipient's spouse or dependent relative, the home is considered a countable resource. If the applicant/recipient or

his/her representative puts the home up for sale and it is not the primary residence of the applicant/recipient's spouse or a dependent relative, the home is considered a countable resource.

G. Value of property:

The applicant/recipient must supply the ISD worker with written documentation regarding the fair market value of the property from a real estate agent, title company or mortgage insurance company in and familiar with the area in which the property is located in addition to any encumbrances against the property. The ISD worker determines the equity value of the property by subtracting the amount of the encumbrances from the fair market value of the property. [2-1-95, 7-31-97; 8.215.500.13 NMAC - Rn, 8 NMAC 4.SS1.512, 3-1-01; A/E, 2-1-07; A, 4-1-09]

8.215.500.14 RESOURCE EXCLUSIONS:

Some types of resources can be excluded from the calculation of countable resources if they meet the specific criteria listed below.

A. Burial fund exclusion:

Up to \$1,500 can be excluded from the countable liquid resources of an applicant/recipient if designated as burial funds. An additional amount of up to \$1,500 can be excluded from countable liquid resources if designated as burial funds for the spouse of the applicant/recipient. The burial fund exclusion is separate from the burial space exclusion.

(1) **Retroactive designation of burial funds:** An applicant/recipient can retroactively designate funds for burial back to the first day of the month in which the applicant/recipient intended the funds to be set aside for burial. The applicant/recipient must sign a statement indicating the month the funds were set aside for burial.

(2) **Limit on exclusion:** An applicant/recipient can designate as much of his/her liquid resources as he/she wishes for burial purposes. However, only one burial fund allowance of up to \$1,500 each for the applicant/recipient and his/her spouse can be excluded from countable resources. A burial fund does not continue from one period of eligibility to another (i.e., across a period of ineligibility). For each new period of eligibility, any exclusion of burial funds must be developed as for an initial application.

(3) **Removal of designation:** An applicant/recipient cannot "undesignate" burial funds unless one of the following occurs:

- (a) eligibility terminates;
- (b) part, or all, of the funds can no longer be excluded because the applicant/recipient purchased excluded life insurance or an irrevocable burial contract

which partially or totally offsets the available burial fund exclusion; or

(c) the applicant/recipient uses the funds for another purpose.

(4) **Reduction of burial fund exclusion:** The \$1,500 burial fund exclusion is reduced by the following:

(a) the face value of excluded life insurance policies;

(b) assets held in irrevocable burial trusts; irrevocable means the value paid cannot be returned to the applicant/recipient;

(c) assets that are not burial space items held in irrevocable burial contracts;

(d) assets held in other irrevocable burial arrangements.

(5) **Interest from burial fund:** Interest derived from a burial fund is not considered a countable resource or income if all of the following conditions exist:

(a) the original amount is excluded;

(b) the excluded burial fund is not commingled with non-excluded burial funds; and

(c) the interest earned remains with the excluded burial funds.

(6) **Commingling of burial funds:** Burial funds cannot be commingled with non-burial funds. If only part of the funds in an account is designated for burial, the burial fund exclusion cannot be applied until the funds designated for burial expenses are separated from the non-burial funds. Countable and excluded burial funds can be commingled.

(7) **Life insurance policy designated as burial fund:** An applicant/recipient can designate a life insurance policy as a burial fund at the time of application. The [ISS] ISD worker must first analyze the [policy] rule according to Subsection H of 8.215.500.14.NMAC, *life insurance exclusion*, and following subsections.

(8) **Burial contracts:** If an applicant/recipient has a prepaid burial contract, the [ISS] ISD worker determines whether it is revocable or irrevocable and whether it is paid for. Until all payments are made on a burial contract, the amounts paid are considered burial funds and no burial space exclusions apply. An applicant/recipient may have a burial contract which is funded by a life insurance policy. The life insurance may be either revocably or irrevocably assigned to a funeral director or mortuary. A revocable contract exists if the value can be returned to the applicant/recipient. An irrevocable contract exists when the value cannot be returned.

(a) If the contract or insurance policy assignment is revocable, the following apply.

(i) If the burial contract is funded by a life insurance policy, the pol-

icy is the resource which must be evaluated. The burial contract itself has no value. It exists only to explain the applicant/recipient's burial arrangements.

(ii) No exclusions can be made for burial space items because the applicant/recipient does not have a right to them if the contract is not paid for or the policy is not paid up.

(b) If the assignment is irrevocable, the life insurance or burial contract [~~are not countable resources~~] is not a countable resource because the applicant/recipient does not own [them] it.

(i) The burial space exclusions can apply if the applicant/recipient has the right to the burial space items.

(ii) The value of the irrevocable burial arrangement is applied against the \$1,500 burial fund exclusion only if the applicant/recipient has other liquid resources to designate for burial.

B. Burial space exclusion: A burial space or an agreement which represents the purchase of a burial space held for the burial of an applicant/recipient, his/her spouse, or any other member of his/her immediate family, is an excluded resource regardless of value. Interest and accruals on the value of a burial space are excluded from consideration as countable income or resources. When calculating the value of resources to be deemed to an applicant/recipient from his/her parent(s) or spouse, the value of spaces held by the parent(s)/spouse which are to be used for the burial of the applicant/recipient or any other member of the applicant/recipient's immediate family, including the deemer parent/spouse, must be excluded. The burial space exclusion is separate from, and in addition to, the burial fund exclusion.

(1) **Burial space definitions:** "Burial space" is defined as a(n) burial plot, gravesite, crypt, mausoleum, casket, urn, niche, or other repository customarily used for the deceased's bodily remains. A burial space also includes necessary and reasonable improvements or additions, such as vaults, headstones, markers, plaques, burial containers (e.g., caskets), arrangements for the opening and closing of a gravesite, and contracts for care and maintenance of the gravesite, sometimes referred to as endowment or perpetual care. Items that serve the same purpose are excluded once per individual, such as excluding a cemetery lot and a casket, but not a casket and an urn.

(2) **Burial space contract:** An agreement which represents the purchase of a burial space is defined as a contract with a burial provider for a burial space held for the eligible applicant/recipient or a member of his/her immediate family. Until all payments are made on the contract, the amounts paid are considered burial funds

and no burial space exclusions apply. An eligible applicant/recipient's immediate family includes:

- (a) the spouse;
- (b) natural or adoptive parents;
- (c) minor or adult children, including adoptive and stepchildren;
- (d) siblings, including adoptive and stepsiblings; and
- (e) spouse of any of the above relatives;
- (f) if a relative's relationship to an applicant/recipient is by marriage only, the relationship ceases to exist upon the dissolution of the marriage.

(3) **Burial space "held" for an applicant/recipient:** A burial space is considered held for an applicant/recipient if:

- (a) someone has title to [~~and/or~~] or possesses a burial space intended for the use of the applicant/recipient or a member of his/her immediate family; or
- (b) someone has a contract with a funeral service company for a specified burial space for the applicant/recipient or a member of his/her immediate family, such as an agreement which represents the individual's current right to the use of the items at the amount shown.

(c) until the purchase price is paid in full, a burial space is not considered "held for" an individual under an installment sales contract or similar device if:

- (i) the individual does not currently own the space;
- (ii) the individual does not currently have the right to use the space; and
- (iii) the seller is not currently obligated to provide the space.

C. **Life estate exclusion:** A life estate gives an applicant/recipient certain rights to real property. These rights determine how the resource is treated in determining eligibility for medicaid.

(1) **Possession:** An applicant/recipient has the right to live on the real property for the rest of his/her life. If it is his/her principal place of residence (home), the life estate is evaluated in accordance with Subsection E of 8.215.500.14.NMAC, *exclusions for real property and home*, and following subsections.

(2) **Use and profit:** An applicant/recipient has the right to use and obtain profit from the real property. If it is income producing property, such as a rental or farm, the life estate is evaluated as income producing property. See Subsection F of 8.215.500.14 NMAC, *income-producing property exclusion*, and following subsections.

(3) **Sale of the life estate interest:** An applicant/recipient has the right to sell his/her life estate interest. The value of this interest is less than the fair market value

of the property and is similar to a lease because of the time frame involved. The value of the life estate is based on the age and life-expectancy of the applicant/recipient.

(4) **Valuation of life estates:** The "unisex life estate and remainder interest tables" are used to determine the value of a life estate. See 8.200.520.14 NMAC, *resource exclusions*. The value is computed by multiplying the current market value by the percentage reduction on the unisex table under the column for the applicant/recipient's age. If an applicant/recipient feels the value calculated based on this method is overstated, he/she can obtain a valuation of the life estate in the area for use as documentation of lesser value.

(5) **Legal documentation establishing life estate:** The legal document establishing a life estate may affect one or more of the rights discussed above. Joint ownership of a life estate may require the co-owner's approval for sale. See 8.215.500.13 NMAC, *countable resources*, and following subsections for criteria to use in evaluating the countability of the resource.

D. Settlement exclusions:

(1) Agent orange settlement payments made to veterans or their survivors are excluded from consideration as resources.

(2) Payments made under the Radiation Exposure Compensation Act are excluded from consideration as resources.

(3) Payments by the remembrance, responsibility and the future foundation to individual survivors forced into slave labor by the Nazis are excluded as resources.

(4) Payments received from a state-administered fund established to aid victims of crime are excluded for nine [(9)] months, beginning the month after the month of receipt.

E. **Exclusions for real property and home:** A home is any shelter used by an applicant/recipient [~~and/or~~] or his/her spouse as the principal place of residence. The home includes any buildings and contiguous land used in the operation of the home. A home is not considered a countable resource while in use by the applicant/recipient as his/her principal place of residence. The home continues to be excluded during periods when the applicant/recipient resides in an acute care or long term care medical facility if the applicant/recipient, or his/her representative, states that the applicant/recipient intends to return to the home.

[(1) **Exclusion of home:**] If the applicant/recipient or his/her representative states the applicant/recipient does not intend to return to the home but the home is the residence of the applicant/recipient's

spouse or dependent relative, the home is an excluded resource. If the applicant/recipient or his/her representative puts the home up for sale and it is *not* the primary residence of the applicant/recipient's spouse or a dependent relative, the home is considered a countable resource.

[(2) **The home as a countable resource:** If the applicant/recipient or his/her representative states the applicant/recipient does not intend to return to the home and it is not the residence of the applicant/recipient's spouse or dependent relative, the home is considered a countable resource. If the applicant/recipient or his/her representative puts the home up for sale and it is not the primary residence of the applicant/recipient's spouse or a dependent relative, the home is considered a countable resource.]

(3) **Definitions:** "Relative" is defined as son/daughter; grandson/granddaughter; step son/step daughter; in laws; mother/father; step mother/step father; half sister/half brother; grandmother/grandfather; aunt/uncle; sister/brother; step brother/step sister; and niece/nephew.

(4) **Value of property:** The ISS determines the fair market value of the home by obtaining the appraised value from a real estate agent, a title company or mortgage insurance company. An approximation of the fair market value using a calculation based on the tax assessed value may be appropriate in some areas of the state. The ISS must develop several reliable sources, such as local newspaper aids, or "multiple listing" publications for determining the fair market value of the home.]

F. **Income-producing property exclusion:** To be excluded from consideration as a countable resource, income-producing property that does not qualify as a bona fide business (e.g., rental property or mineral rights) must have an equity value of no more than \$6,000 and an annual rate of return of at least six percent [(6%)] of the equity value. See Subparagraph (b) of Paragraph (1) of Subsection F of 8.215.500.14 NMAC, *determination of rate of return*, below if the equity value exceeds \$6,000 but the rate of return is at least six percent [(6%)] annually. The \$6,000 and six percent [(6%)] limitation does not apply to property used in a trade or bona fide business, or to property used by an applicant/recipient as an employee which is essential to the applicant/recipient's self-support (e.g., tools used in employment as a mechanic, property owned or being purchased in conjunction with operating a business). Existence of a bona fide business can be established by documentation such as business tax returns.

(1) **Determination of rate of return:** To calculate the annual rate of return for income producing property when

the \$6,000 and six percent [(6%)] limits apply, the previous year's income tax statement, or at least three [(3)] months earnings is used to project the rate of return for the year.

(a) If the income is sporadic or has decreased from that needed to maintain a six percent [(6%)] rate of return for the coming year, the property is reevaluated at appropriate intervals.

(b) If the annual rate of return is at least six percent [(6%)] of the equity value but the equity exceeds \$6,000, only the excess equity is a countable resource.

(c) If the annual rate of return is less than six percent [(6%)] but the usual rate of return is more, the property is excluded as a countable resource if all of the following conditions are met:

(i) unforeseeable circumstances, such as a fire, cause a temporary reduction in the rate of return;

(ii) the previous year's rate of return, as documented by the income tax statement or several months receipts, is at least six percent [(6%)]; and

(iii) the property is expected to produce a rate of return of at least six percent [(6%)] ~~within eighteen (18)~~ six percent within 18 months of the end of the year in which the adverse circumstances occurred; the [ISS] ISD worker records in the case narrative the plan of action which is expected to increase the rate of return.

(d) The [ISS] ISD worker notifies the applicant/recipient in writing that the property is excluded based on its expected increase in return and that it will be reevaluated at the end of the ~~[eighteen (18)]~~ 18 month grace period. When this period ends, the property must be producing an annual rate of at least six percent [(6%)] to continue to be excluded as a countable resource.

(2) **Types of income-producing property:** Income-producing property includes:

(a) a business, such as a farm or store, including necessary capital and operating assets such as land and buildings, inventory, or livestock; the property must be in current use or have been used with a reasonable expectation of resumed use within a year of its most recent use; the [ISS] ISD worker must account for the cash actually required to operate the business; liquid business assets of any amount are excluded;

(b) non-business property includes rental property, leased property, land leased for its mineral rights and property producing items for home consumption; property which produces items solely for home use is assumed to be producing an annual rate of return of at least six percent [(6%)];

(c) employment-related property, such as tools or equipment; the

applicant/recipient must provide a statement from his/her employer to establish that tools or equipment are required for continued employment; if the applicant/recipient is self-employed, only those tools normally required to perform the job adequately are excluded; the applicant/recipient must obtain a statement from someone in the same line of self-employment to establish what is excludable.

G. **Vehicle exclusion:** The term "vehicle" includes any mode of transportation, such as a passenger car, truck or special vehicle. Included in this definition are vehicles which are unregistered, inoperable, or in need of repair. Vehicles used solely for purposes other than transportation, such as disassembly to resell parts, racing, or as an antique are not included in this definition. Recreational vehicles and boats are classified as personal effects and are evaluated under the household goods and personal effects exclusion. One vehicle is totally excluded regardless of value if it is used for transportation for the individual or a member of the individual's household. Any other automobiles are considered to be nonliquid resources. Equity in the other automobiles is counted as a resource.

H. **Life insurance exclusion:** The value of life insurance policies is not considered a countable resource if the total cumulative face value of all policies owned by the applicant/recipient does not exceed \$1,500. A policy is considered to be "owned" by the applicant/recipient if the applicant/recipient is the only one who can surrender the policy for cash.

(1) **Consideration of burial insurance and term insurance:** Burial insurance and term insurance are not considered when computing the cumulative face value because this insurance is redeemable only upon death.

(2) **Calculation when value exceeds limit:** If the total cumulative face value of all countable life insurance policies owned by the applicant/recipient exceeds \$1,500, the [ISS] ISD worker:

(a) verifies the total cash surrender value of all policies and considers the total amount a countable resource; and

(b) informs the applicant/recipient that the insurance policies can be converted to term insurance or ordinary life insurance of lower face value at his/her option, if the cash surrender value, alone or in combination with other countable resources, exceeds the resource standard.

I. **Produce for home consumption exclusion:** The value of produce for home consumption is totally excluded.

J. **Exclusion of settlement payments from the department of housing and urban development:**

Payments from the department of housing and urban development (HUD) as defined in *Underwood v. Harris* are excluded as income and resources. These one-time payments were made in the spring of 1980 to certain eligible tenants of subsidized housing [Section 236 of the National Housing Act].

(1) **Segregation of payment:** To be excluded as a resource, payments retained by an applicant/recipient must be kept separate. These payments must not be combined with any other countable resources.

(2) **Income from segregated funds:** Interest or dividend income received from segregated payment funds is not excluded from income, or, if retained, is not an excluded resource. This interest or dividend income must be kept separate from excludable payment funds.

K. **Lump sum payments exclusion:** SSI and social security lump sum payments for retroactive periods are excluded as countable resources for nine [(9)] months after the month in which they are received. See Paragraph (4) of Subsection A of 8.215.500.16 NMAC, *treatment of SSI or social security lump sum payments*, for policy regarding SSI and social security lump sums which are placed into the ownership of a medicaid qualifying trust. Social security lump sum payments are considered infrequent income.

L. **Home replacement exclusion:** The value of a promissory note or similar installment sales contract which constitutes proceeds from the sale of an excluded home is excluded from countable resources if all of the following conditions are met:

(1) the note results from the sale of the applicant/recipient's home as described in Subsection E of 8.215.500.14 NMAC, *exclusion for real property and home*, and following subsections;

(2) within three [(3)] months of receipt (execution) of the note, the applicant/recipient purchases a replacement home which meets the definition of a home in Subsection E of 8.215.500.14 NMAC, *exclusion for real property and home*, and following subsections; and

(3) all note-generated proceeds are reinvested in the replacement home within three [(3)] months of receipt.

(4) **Additional exclusions:** In addition to excluding the value of the note itself, the down payment received from the sale of the former home, as well as that portion of any installment amount constituting payment on the principal are also excluded from countable resources.

(5) **Failure to purchase another excluded home timely:** If the applicant/recipient does not purchase another

er home which can be excluded under the provisions of Subsection E of 8.215.500.14 NMAC, *exclusions for real property and home*, and following subsections within three [(3)] months, the value of the promissory note or similar installment sales contract received from the sale of an excluded home becomes a countable resource as of the first moment of the first day of the month following the month the note is executed. If the applicant/recipient purchases a replacement home after the expiration of the three [(3)] month period, the value of the promissory note or similar installment sales contract becomes an excluded resource effective the month following the month of purchase of the replacement home provided that all other proceeds are fully and timely reinvested.

(6) **Failure to reinvest proceeds timely:** If the proceeds from the sale of an excluded home under a promissory note or similar installment sales contract are not reinvested fully within three [(3)] months of receipt in a replacement home, the following resources become countable as of the first moment of the first day of the month following receipt of the payment:

(a) the fair market value of the note; ~~and~~

(b) the portion of the proceeds, retained by the individual, which was not timely reinvested; and

(c) the fair market value of the note remains a countable resource until the first moment of the first day of the month following the receipt of proceeds that are fully and timely reinvested in the replacement home; failure to reinvest proceeds for a period of time does not permanently preclude exclusion of the promissory note or installment sales contract; however, previously received proceeds that were not timely reinvested remain countable resources to the extent they are retained.

(7) **Interest payments:** If interest is received as part of an installment payment resulting from the sale of an excluded home under a promissory note or similar installment sales contract, the interest payments are considered countable unearned income in accordance with Paragraph (3) of Subsection C of 8.215.500.20 NMAC, *interest on promissory note or sales contract*.

(8) **When the home replacement exclusion does not apply:** If the home replacement exclusion does not apply, the market value of a promissory note or sales contract as well as the portion of the payment received on the principal are considered countable resources.

M. **Household goods and personal effects exclusion:** Household goods and personal effects are excluded if they meet one of the following four criteria. They are:

(1) items of personal property, found in or near the home, which are used on a regular basis; items may include but are not limited to: furniture, appliances, recreational vehicles (i.e. boats and RVs), electronic equipment (i.e. computers and television sets), and carpeting;

(2) items needed by the householder for maintenance, use and occupancy of the premises as a home; items may include but are not limited to: cooking and eating utensils, dishes, appliances, tools, and furniture.

(3) items of personal property ordinarily worn or carried by the individual; items may include but are not limited to: clothing, shoes, bags, luggage, personal jewelry including wedding and engagement rings, and personal care items;

(4) items otherwise having an intimate relation to the individual; items may include but are not limited to: prosthetic devices, educational or recreational items such as books or musical instruments, items of cultural or religious significance to an individual; or items required because of an individual's impairment.

[2-1-95, 7-31-97; 8.215.500.14 NMAC - Rn, 8 NMAC 4.SSI.513, 3-1-01; A, 5-1-01; A, 7-1-05; A, 1-1-06; A, 4-1-09]

8.215.500.16 TRUSTS: In some instances, an applicant/recipient with a trust can be eligible for SSI cash benefits but not be automatically eligible for medicaid. If the social security administration (SSA) determines that an SSI recipient has a trust, SSI notifies the human services department (HSD) of the existence of the trust. The recipient is then notified that the trust document must be submitted to and reviewed by HSD before medicaid eligibility is determined.

A. **Medicaid qualifying trusts:** A "medicaid-qualifying trust" (MQT) is a trust or similar legal device established prior to August 11, 1993, other than by will, by an applicant/recipient or spouse, under which the applicant/recipient may be the beneficiary of all or part of the payments from the trust. The distribution of trust payments is determined by one or more trustees who are permitted to exercise discretion with respect to the distribution of payments to the applicant/recipient. When the use of an attorney is solicited to establish a trust, the beneficiary of that trust is not exempt from the requirements of MQT provisions. Legal instruments such as trusts are almost always drafted by an attorney. It is the grantor him/herself who actually establishes or creates the trust when he/she signs or executes it.

(1) **Amount deemed available from an MQT:** The amount from an MQT that is deemed available to an applicant/recipient is the maximum amount

that could be distributed to the applicant/recipient, or for the care of the applicant/recipient, regardless of restrictions imposed by the trust on the allowable use of the funds. If, for example, the trustee can make payments to a health care provider for medical services, the applicant/recipient beneficiary is considered to be receiving benefits from the trust even though these benefits are not paid directly to the beneficiary. This provision applies regardless of whether the MQT was set up for the purpose of qualifying for medicaid or whether the trust is irrevocable.

(2) **Revocable trusts:** Revocable trusts that limit access to the assets held in trust must be dissolved and the assets spent down before eligibility can be established.

(3) **Beneficiary of trust lives in an ICF-MR:** If the beneficiary of a trust is an applicant/recipient who is mentally retarded and resides in an intermediate care facility for the mentally retarded (ICF-MR), that applicant/recipient's trust is not considered an MQT if the trust or trust decree was established prior to April 7, 1986, and is solely for the benefit of that applicant/recipient.

(4) **Treatment of SSI or social security lump sum payments:** SSI or social security lump sum payments for retroactive periods which are placed into an MQT do not qualify for the ~~six (6)~~ nine month exclusion from countable resources.

B. **Trusts creating medicaid eligibility: [Reserved]**

[2-1-95, 7-31-97; 8.215.500.16 NMAC - Rn, 8 NMAC 4.SSI.517, 3-1-01; A, 4-1-09]

8.215.500.18 INCOME:

A. An applicant/recipient's gross countable monthly income must be less than the maximum allowable monthly standard for the applicable medicaid category. Income may be in the form of cash, checks, money orders, or in-kind, including personal property or food. If income is not received in the form of cash, the cash value of the item is determined and counted as income. Income is counted in the month received. Income is considered available throughout the month, regardless of when in the month it is received. The ~~ISS~~ ISD worker verifies and documents all income.

B. **Types of income:** Countable income is the sum of unearned income ~~and/or~~ or earned income, less disregards ~~and/or~~ or exclusions, plus deemed income.

(1) **Earned income:** Earned income consists of the total gross income received by an individual for services performed as an employee or as a result of self-employment.

(a) Royalties earned in connection with the publication of the applicant/recipient's work and any honorar-

ium/fees received for services rendered are considered earned income.

(b) The self-employed applicant/recipient must provide an estimate of his/her current income based on the tax return filed for the previous year ~~and/or~~ or current records maintained in the regular course of business. The estimate of net earnings for the entire previous taxable year is prorated equally among all months of the current year, even if the business is seasonal.

(i) Consideration is given to the applicant/recipient's explanation as to why he/she believes the estimated net earnings for the current year vary substantially from the information shown on his/her tax return for past years.

(ii) A satisfactory explanation is that the business suffered heavy loss or damage from fire, flood, burglary, serious illness or disability of the owner, or other such catastrophic events. Documentation must include copies of newspaper accounts or medical reports and must be filed in the case record to substantiate the need for a reduced estimate of current self-employment income.

(2) **Unearned income:** Unearned income consists of all other income (minus exclusions and disregards) that is not earned in the course of employment or self-employment.

(3) **Deemed income:** Deemed income is income which must be considered available to the assistance unit and counted in determining eligibility whether or not the income is actually made available. For household member(s) who are not members of the assistance unit but who have a support obligation to the assistance unit, income can only be deemed from a parent to his/her minor child(ren) who live in the same household and from one spouse to the other when both live in the same household. [2-1-95, 7-31-97; 8.215.500.18 NMAC - Rn, 8 NMAC 4.SSI.520, 3-1-01; A, 4-1-09]

8.215.500.20 U N E A R N E D INCOME:

A. Unearned income includes all income not earned in the course of employment or self-employment.

B. Income paid to one spouse is considered the income of that spouse. One-half the total income paid to a couple is considered available to each member of the couple.

(1) If payment is made in the name of either or both spouses and another party, only the applicant/recipient's proportionate share is considered available to him/her.

(2) If income is derived from property for which ownership is not established, such as unprobated property, one-

half of the income is considered available to each member of a married couple.

C. **Standards for unearned income:** Unearned income is computed on a monthly basis. If there are no expenses incurred with the receipt of unearned income, such as annuities, pensions, retirement payments or disability benefits, the gross amount is considered countable unearned income.

(1) **Social security overpayments:** If the social security administration withholds an amount because of an overpayment, the gross social security payment amount is used to determine eligibility.

(2) **Rental income:** If an applicant/recipient has rental property, the ~~[ISS]~~ ISD worker allows the cost of real estate taxes, maintenance and repairs, advertising, mortgage insurance and interest payments on the mortgage as deductions from the amount received as rent.

(3) **Interest on promissory note or sales contract:** The portion of the payment representing interest received from a promissory note or sales contract is considered unearned income. The market value of promissory notes or sales contracts and the portion of the payment representing payment of the principal are considered resources. See also Subsection L of 8.215.500.14 NMAC, home replacement exclusion.

D. **Unearned income exclusions:**

(1) **Interest from an excluded burial fund:** Interest from an excluded burial fund is not considered unearned income if the interest is applied toward the fund balance. If the interest is paid to the applicant/recipient, it is considered unearned income.

(2) **Tax refunds and earned income tax credit:** Tax refunds from any public agency for property taxes or taxes on food purchases are totally excluded. Any portion of a federal income tax return which constitutes an earned income tax credit is excluded.

(3) **Grants, scholarships and fellowships:** All grants, scholarships and fellowships used to pay tuition and fees at an educational institution, including vocational and technical schools, are totally excluded. Any portion of a grant, scholarship or fellowship used to pay any other expense, such as food, clothing or shelter, is not excluded.

(4) **Veterans payments:** Veterans aid and attendance (A&A) payments are excluded from unearned income for determination of eligibility.

(a) If an applicant/recipient receives an augmented VA payment as a veteran or veteran's widow or widower, the payment amount may include an increment for a dependent. If so, the VA must be con-

tacted to provide documentation of the portion of the payment which represents the dependent's increment. When verified, this amount of the VA payment is considered the dependent's income.

(b) The portion of a veterans administration improved pension (VAIP) benefit intended for unreimbursed medical expenses is excluded for purposes of eligibility determination.

(5) **Payments by a third party:** Third party payments are excluded as income if made directly to the applicant/recipient's creditor.

(a) Third party payments may include mortgage payments by credit life or credit disability insurance and installment payments by a family member on a burial plot or prepaid burial contract.

(b) Interest from a burial contract that is automatically applied to the outstanding balance is excluded from unearned income. If the payment or interest is sent to the individual, it is counted as unearned income regardless of the sender's (third party's) intentions. This applies even if the sender specifies the purpose of the payment on the check.

(c) This provision does not apply if the signature of the creditor and the individual must both be present in order to negotiate the check (two-party check).

(6) **Indian tribe per capita payments:** Funds held in trust by the secretary of the interior for an Indian tribe and distributed on a per capita basis and any interest and investment income from these funds are excluded as income and resources in the eligibility determination process.

(7) **Plans for achieving self-support:** Income derived from, or necessary to, an approved plan for achieving self-support for a blind or disabled applicant/recipient under ~~[sixty five (65)]~~ 65 years of age is excluded.

(a) For an applicant/recipient who is blind or disabled and over ~~[sixty five (65)]~~ 65 years of age, this exclusion applies only if he/she received medicaid for the month preceding his/her 65th birthday.

(b) The self-support plan must be in writing and contain the following:

(i) designated occupational objective;

(ii) specification of any savings (resource) or earnings needed to complete the plan, such as amounts needed for purchase of equipment or for financial independence;

(iii) identification and segregation of any income saved to meet the occupational goal; and

(iv) designation of a time period for completing the plan and achieving the occupational goal.

(c) Plans for achieving self-sup-

port are developed by vocational rehabilitation counselors. If a self-support plan is not in place, the ~~[HSS]~~ ISD worker makes a referral to the division of vocational rehabilitation (DVR).

(d) The ~~[HSS]~~ ISD worker forwards the written plan and documentation to the MAD eligibility unit. The plan must be approved by that unit.

(e) An approved plan is valid for the following specified time periods:

(i) initial period of no more than ~~[eighteen (18)]~~ 18 months;

(ii) extension period of no more than ~~[eighteen (18)]~~ 18 months;

(iii) final period of no more than ~~[twelve (12)]~~ 12 months; and

(iv) total period of no more than ~~[forty eight (48)]~~ 48 months.

(8) **Agent orange settlement payments:** Agent orange settlement payments made to veterans or their survivors are excluded from consideration as income in determining eligibility.

(9) **Radiation Exposure Compensation Act payments:** Payments made under the Radiation Exposure Compensation Act are excluded from consideration as income in determining eligibility.

(10) Remembrance, responsibility and the future foundation: Payments to individual survivors forced into slave labor by the Nazis are excluded.

~~[40]~~ (11) **Victims compensation payments:** Payments made by a state-administered fund established to aid victims of crime are excluded from consideration as income in determining eligibility.

~~[44]~~ (12) **SSI lump sums for retroactive periods:** Supplemental security income (SSI) lump sum payments for retroactive periods are excluded from consideration as countable income in the month received.

~~[42]~~ (13) **Life insurance and other burial benefits:** Life insurance and other burial benefits are unearned income to the beneficiary (not the owner). The ~~[HSS]~~ ISD worker must subtract the amount spent on the insured individual's last illness ~~[and/or]~~ or burial up to \$1,500. Any excess is counted as unearned income.

~~[43]~~ (14) **100% state-funded assistance payment:** Any 100% state-funded assistance payment based on need, such as general assistance (GA), is excluded. Any interim payments made by a state or municipality from all state or local funds while an SSI application is pending are excluded.

[2-1-95, 7-31-97; 8.215.500.20 NMAC - Rn, 8 NMAC 4.SSI.522, 3-1-01; A, 4-1-09]

8.215.500.21 DEEMED INCOME:

A. **Availability:** Deemed income is income which must be considered

available to members of an assistance unit regardless of whether the income is actually made available.

B. **Situations in which deeming occurs:** For household member(s) who are not members of the assistance unit but who have a support obligation to the assistance unit member(s), income can only be deemed from a parent(s) to his/her minor child(ren) who live in the same household and from one spouse to the other when both live in the same household.

C. **Parent or spouse receiving benefits based on economic need:** In a deeming situation where one parent or the spouse is receiving a needs benefit, the benefit plus all of the income of the spouse/parent who receives the benefit is excluded from the deeming process. This exclusion applies only to the income of the individual who receives the benefit.

(1) **Needs benefit defined:** "Needs benefit" is any benefit or assistance which is paid by a governmental agency on the basis of economic need.

(2) **Consideration of household membership:** Even if the income of one parent is excluded from the deeming process, the parent is considered a member of the household for purposes of determining the parental allocation. This does not apply to benefits received under the ~~[aid to families with dependent children (AFDC)]~~ temporary assistance to needy families (TANF) program. No income is allocated to a parent or child if that parent or child is receiving ~~[AFDC]~~ TANF assistance.

D. **Applicant living with ineligible spouse:**

(1) If an applicant/recipient is living in the same household with an ineligible spouse, income may be deemed from the ineligible spouse to the applicant/recipient.

(2) The methodology described below does not apply to the qualified medicare beneficiaries (QMB) program. See Sections QMB 523.2 through QMB 523.23 for methodology applicable to the QMB program only.

(a) **Evaluation of applicant's income:** Determine the amount of income available to the applicant using only the applicant's own income and allow the ~~[twenty dollar (\$20)]~~ \$20 disregard. If the applicant/recipient has earned income, the first ~~[sixty five dollars (\$65)]~~ \$65 plus one-half of the remainder is also disregarded.

(i) If an applicant/recipient's own income exceeds the income standard for an individual, the applicant/recipient is ineligible. No further calculation needs to be done.

(ii) If an applicant/recipient's countable income is less than the standard for an individual, determine the ineligible spouse's gross income.

(b) **Evaluation of ineligible spouse's gross income:** Determine the ineligible spouse's gross income (both earned and unearned). Subtract the ~~[twenty dollar (\$20)]~~ \$20 general disregard plus the first ~~[sixty five dollars (\$65)]~~ \$65 and one-half of the remainder from any earned income. If there are no children in the household, compare the ineligible spouse's countable income to one-half of the SSI federal benefit rate (FBR) for an individual not living in the household of others. If the ineligible spouse's countable income is less than one-half of the SSI FBR, no income is deemed from the ineligible spouse to the applicant/recipient. If the ineligible spouse's countable income equals or exceeds one-half of the SSI FBR, income is deemed from the ineligible spouse to the applicant.

E. **Applicant living with ineligible spouse and children:**

(1) A "child" is under ~~[eighteen (18)]~~ 18 years of age or under ~~[twenty one (21)]~~ 21 years of age if a full-time student at an accredited institution of learning.

(2) If there are children in the household, subtract a living allowance for each ineligible child from the ineligible spouse's countable income. The living allowance is one-half of the monthly SSI FBR for an individual not living in a household with others less any income attributable to the child. If the remaining amount is less than one-half of the SSI FBR, no income is deemed from the ineligible spouse to the applicant/recipient. If the remaining amount equals or exceeds one-half of the SSI FBR, income is deemed from the ineligible spouse to the applicant/recipient.

(3) **Determination of countable income:** Add the total gross unearned income of the ineligible spouse to the total gross unearned income of the applicant/recipient. The ~~[twenty dollar (\$20)]~~ \$20 disregard is deducted from the combined total of the couple's unearned income. If the total unearned income is less than ~~[twenty dollars (\$20)]~~ \$20, the remainder is deducted from the combined total of the couple's earned income. The first ~~[sixty five dollars (\$65)]~~ \$65 and 1/2 of the remainder is subtracted from the combined total of the couple's earned income. After all applicable disregards have been subtracted, the remaining earned and unearned income amounts are combined to arrive at the total countable income. If the total countable income is less than the income standard for a couple, the applicant/recipient is eligible.

F. **Applicant child living with ineligible parents:** A "child" applicant/recipient is under ~~[eighteen (18)]~~ 18 years of age. The ~~[FAA]~~ ISD worker determines the total gross monthly amount of

parental income, both unearned and earned. The [FAA] ISD worker applies appropriate income disregards to calculate the countable deemed income. See 8.200.520.18 NMAC, *deemed income worksheet*. If the deemed income plus the child's separate income exceeds the income standard for an applicant/recipient, the child is not eligible for that month.

G. Applicant/recipient parent and applicant/recipient child(ren): If a household is composed of an applicant/recipient parent and an applicant/recipient child(ren), the income is deemed from the ineligible spouse to the applicant/recipient spouse if appropriate. See Subsection B of 8.215.500.21 NMAC, *deemed income*.

(1) If there is enough total income to make the applicant/recipient parent ineligible, the remainder of the income is carried over to be deemed to the child(ren). Deemed income is divided equally among the applicant/recipient children.

(2) If the total countable income of the child, including the deemed income, is more than the applicable income standard, the child is ineligible.

[2-1-95, 7-31-97; 8.215.500.21 NMAC - Rn, 8 NMAC 4.SSI.523, 3-1-01; A, 6-1-04; A, 4-1-09]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.281.500 NMAC, Sections 5, 7, 9, and 11 - 24, effective April 1, 2009.

8.281.500.5 EFFECTIVE DATE: February 1, 1995, unless a later date is cited at the end of a section.

[2-1-95; 8.281.500.5 NMAC - Rn, 8 NMAC 4.ICM.000.5, 3-1-01; A, 4-1-09]

8.281.500.7 DEFINITIONS [RESERVED]

A. Actuarially sound: With respect to an annuity or promissory note, the payments made to the beneficiary do not exceed his/her life expectancy and returns to the beneficiary at least equal to the amount used to establish the contract.

B. Annuity: A financial instrument usually sold by a life insurance company, that pays out a regular income at fixed intervals for a certain period of time, often beginning at a certain age and continuing for the life of the owner.

C. Assets: All income and resources of an applicant/recipient and their spouse, if applicable.

D. Bona fide: A bona fide agreement is made in good faith and is

legally valid.

E. Community spouse: The spouse of an institutionalized spouse who is residing in the community and not in an institution.

F. Community spouse resource allowance: An amount of a couple's resources that is set aside for the community spouse when the other spouse is institutionalized. There is a state minimum and a federal maximum amount of resources that can be set aside for the community spouse.

G. Encumbrance: A general term for any claim or lien on a parcel of real property, including mortgages, deeds of trust and abstracts of judgments.

H. Fair market value: An estimate of the value of an asset, if sold at the prevailing price at the time it was actually transferred. Value is based on criteria used in appraising the value of assets for the purpose of determining medicaid eligibility.

I. Home equity: (Also known as equity value.) The value of a home minus the total amount owed on it in mortgages, liens and other encumbrances.

J. Income: Anything that an applicant/recipient receives in cash or in kind that he/she can use to meet his/her needs for food and shelter. In-kind income is not cash, but is actual food or shelter, or something that the applicant/recipient can use to get one of these.

K. Institutionalized spouse: An applicant/recipient who is in an acute care hospital, nursing facility, intermediate care facility for the mentally retarded, swingbed or certified in-state inpatient rehabilitation center.

L. Life estate: An interest in property that exists for the life of a person. For example, an individual gives a life estate in a house to person A and the remainder to person B. A has a life estate and B has a remainder interest until person A dies.

M. Liquid resource: Cash or something that can easily be converted to cash within 20 business days.

N. Loan: A transaction in which one party advances money to, or on behalf of another party, who promises to repay the lender in full, with or without interest.

O. Lookback period: A period of time in the past through which the ISD worker may examine all financial transactions for asset transfers.

P. Minimum monthly maintenance needs allowance: A minimum level of income that the federal government allows to be set aside for the support of the community spouse when the other spouse is in an institution.

Q. Negotiable agreement: An agreement (i.e., a loan) in which the ownership of the agreement and the whole amount of money can be transferred from one person to another.

R. Non-liquid resource: An asset such as real property, which cannot be easily converted to cash within twenty (20) days.

S. Promissory note: A promissory note is a written, unconditional agreement in which one person promises to pay a specified sum of money at a specified time to another person.

T. Relative: Relative is defined as son/daughter; grandson/granddaughter; step-son/step-daughter; in-laws; mother/father; step-mother/step-father; half sister/half brother; grandmother/grandfather; aunt/uncle; sister/brother; step-brother/step-sister; and niece/nephew.

U. Remainder/remainderman: An interest in property that occurs after a life estate. For example, an individual gives a life estate in a house to person A and the remainder to person B. A has a life estate and B has a remainder interest. Person B is also called the remainderman.

V. Resources: Cash or other liquid assets and any real or personal property that applicant/recipient (or spouse if any) owns and could convert to be used for his/her support and maintenance.

W. Restricted coverage: Eligibility for medicaid except for payment for long term care services in a nursing facility.

X. Reverse mortgage: A loan against home equity providing cash advances to a borrower and requiring no repayment until a future date.

Y. Transfer: To change over the possession, control or ownership of something.

[8.281.500.7 NMAC - N, 4-1-09]

8.281.500.9 NEED DETERMINATION: Applicants for and recipients of institutional care medicaid must apply for and take all necessary steps to obtain any income or resources to which they may be entitled. Such steps must be taken within ~~thirty~~ (30) 30 days of the date the human services department (HSD) furnishes notice of the potential entitlement.

A. Failure to apply for and take steps to determine eligibility for other benefits: Failure or refusal to apply for and take all necessary steps to determine eligibility for other benefits after notice is received results in an applicant/recipient becoming ineligible for institutional care medicaid.

B. Exceptions to general requirement: Applicants/recipients who

have elected a lower VA payment do not need to reapply for veterans administration improved pension (VAIP) benefits. Crime victims are not required to accept victims compensation payments from a state-administered fund as a condition of medicaid eligibility.

[2-1-95; 7-31-97; 8.281.500.9 NMAC - Rn, 8 NMAC 4.ICM.500, 3-1-01; A, 4-1-09]

8.281.500.11 APPLICABLE RESOURCE STANDARDS: The resource criteria and eligibility standards of this section apply to all applicants for and recipients of institutional care medicaid. An applicant/recipient is eligible for institutional care medicaid on the factor of resources if countable resources do not exceed two thousand dollars (\$2,000). Some of an applicant/recipient's resources are counted in the eligibility determination and some resources are excluded. Any resource which is not specifically excluded under 8.281.500.13 NMAC, resource exclusions, is considered a countable resource for the purpose of determining institutional care medicaid eligibility.

A. Liquid resources: The face value of liquid resources such as cash, savings or checking accounts is considered in determining medicaid eligibility. The countable value of resources such as securities, bonds, real estate contracts and promissory notes is based on their current fair market value.

(1) An applicant/recipient must provide verification of the value of all liquid resources. The resource value of a bank account is customarily verified by a statement from the bank showing the account balance as of the first moment of the first day of the month in question. If an applicant/recipient cannot provide this verification, the income support specialist (ISS) sends a bank or postal savings clearance to the appropriate institution(s).

(2) If the applicant/recipient can demonstrate that a check was written and delivered to a payee but not cashed by the payee prior to the first moment of the first day of the month, the amount of that check is subtracted from the applicant/recipient's checking account balance to arrive at the amount to be considered a countable resource.

B. Nonliquid resources: The value of nonliquid resources is computed at current fair market value. See below for discussion of equity value.

(1) Real property:

(a) If an applicant/recipient is the sole owner of real property other than a home and has the right to dispose of it, the entire equity value is included as a countable resource.

(b) If an applicant/recipient owns property with one or more individuals and

the applicant/recipient has the right, authority or power to liquidate the property or his/her share of the property, it is considered a resource. If a property right cannot be liquidated, the property will not be considered a resource to the individual. The applicant/recipient must provide a copy of the legal document which indicates his/her interest in the property.

(2) Vehicles: One automobile is totally excluded regardless of value if it is used for transportation for the individual or a member of the individual's household. Any other automobiles are considered to be nonliquid resources. Recreational vehicles and boats are considered household goods and personal effects rather than vehicles.

(3) Household goods and personal effects: Household goods and personal effects are considered countable resources if the items were acquired or are held for their value or are held as an investment. Such items can include but are not limited to: gems, jewelry that is not worn or held for family significance, or collectibles.]

A. Liquid resources: A liquid resource is cash or something that can easily be converted to cash within 20 business days. The face or surrender value of liquid resources such as cash, savings or checking accounts, and other financial instruments are considered in determining medicaid eligibility. The countable value of liquid resources is based on their current fair market value.

(1) An applicant/recipient must provide verification of the value of all liquid resources. The resource value of a bank account is customarily verified by a statement from the bank showing the account balance as of the first moment of the first day of the month in question. If an applicant/recipient cannot provide this verification, the ISD worker provides the applicant/recipient with a detailed request of all documents needed to determine eligibility.

(2) If the applicant/recipient can demonstrate that a check was written and delivered to a payee but not cashed by the payee prior to the first moment of the first day of the month, the amount of that check is subtracted from the applicant/recipient's checking account balance to arrive at the amount to be considered a countable resource.

B. Nonliquid resources: A non-liquid resource is something such as real property that cannot easily be converted to cash within 20 business days. The value of non-liquid resources is computed at current market value minus encumbrances or financial penalties for early withdrawal. [2-1-95, 7-31-97; 8.281.500.11 NMAC - Rn, 8 NMAC 4.ICM.511, 3-1-01; A, 1-1-06; A/E, 2-1-07; A, 4-1-09]

8.281.500.12 C O U N T A B L E RESOURCES: Before a resource can be considered countable, the three [(3)] criteria listed below must be met.

A. Ownership interest: An applicant/recipient must have an ownership interest in a resource for it to be countable. The fact that an applicant/recipient has access to a resource, or has a legal right to use it, does not make it countable unless the applicant/recipient also has an ownership interest in it.

B. Legal right to convert resource to cash: An applicant/recipient must have the legal ability to spend the funds or to convert non-cash resources into cash.

(1) Physical possession of resource: The fact that an applicant/recipient does not have physical possession of a resource does not mean it is not his/her resource. If he/she has the legal ability to spend the funds or convert the resource to cash, the resource is considered countable. Physical possession of savings bonds is a legal requirement for cashing them.

(2) Unrestricted use of resource: An applicant/recipient is considered to have free access to the unrestricted use of a resource even if he/she can take those actions only through an agent, such as a representative payee, [or] guardian, conservator, trustee, or an individual acting pursuant to a power of attorney. If there is a legal bar to the sale of a resource, the resource is not countable. However, if a co-owner of real property can bring an action to partition and sell the property, his/her interest in the property is a countable resource.

C. Legal ability to use a resource: If a legal restriction exists which prevents the use of a resource for the applicant/recipient's own support and maintenance, the resource is not countable.

D. Joint ownership of resources: If an applicant/recipient owns either liquid or non-liquid resources jointly with others, he/she has [thirty (30)] 30 days from the date requested by the [ISS] ISD worker to submit all documentation required to verify his/her claims regarding ownership of, access to, and legal ability to use the resource for personal support and maintenance. Failure to do so results in the presumption that the resource is countable and belongs to the applicant/recipient.

(1) Jointly held property: If jointly held property is identified during review of an active case, the [ISS] ISD worker must:

(a) determine whether the property is a countable resource;

(b) determine whether the value of the jointly held property plus the value of other countable resources exceeds the allowable resource maximum; and

(c) if the value of countable resources exceeds the allowable maximum, advance notice is furnished to the applicant/recipient of the intent to close the case and his/her right to verify claims regarding ownership of, access to and legal ability to use the property for personal support and maintenance.

(i) If the applicant/recipient fails to provide required information or respond within the advance notice period, the case is closed.

(ii) If, after expiration of the advance notice period but prior to the end of the month in which the advance notice expires, the applicant/recipient provides the required evidence to show the property is not a countable resource, or is countable in an amount which, when added to the value of other countable resources, does not exceed the maximum allowable limit, and eligibility continues to exist on all other factors, the case is reinstated for the next month.

(2) **Joint bank accounts:** If liquid resources are in a joint bank account of any type, the applicant/recipient's ownership interest, while the parties to the account are alive, is presumed to be proportionate to the applicant/recipient's contributions to the total resources on deposit.

(a) The applicant/recipient is presumed to own a proportionate share of the funds on deposit unless he/she presents clear and convincing evidence that the parties to the account intended the applicant/recipient to have a different ownership interest.

(b) To establish the applicant/recipient's ownership interest in a joint account, the following are required:

(i) statement by the applicant/recipient regarding contributions to the account; reasons for establishing the account; who owns the funds in the account; and any supporting documentation; plus

(ii) corroborating statements from the other account holder(s);

(iii) if either the applicant/recipient or the other account holder is not capable of making a statement, the applicant/recipient or representative must obtain a statement from a third party who has knowledge of the circumstances surrounding the establishment of the joint account.

(c) Failure to provide required documentation within ~~thirty (30)~~ 30 days of the date requested by the ~~[ISS]~~ ISD worker results in a determination that the entire account amount belongs to the applicant/recipient.

(d) If the existence of a jointly held bank account is identified during the review of an active case, the ~~[ISS]~~ ISD worker requests evidence of ownership and

accessibility. If the evidence is not furnished within ~~thirty (30)~~ 30 days of the request, the case is closed.

(3) **Life estate:** A life estate interest in one's own home will count as a resource if the applicant/recipient has not resided on the property continuously for at least 12 months from the date of the life estate purchase. For a purchase of a life estate in the home of another, see Paragraph (2) of Subsection D of 8.281.500.14 NMAC, *asset transfers*.

(a) The "unisex life estate and remainder interest tables" are used to determine the value of a life estate. See 8.200.520.14 NMAC, *asset transfers*. The value is computed by multiplying the current fair market value by the percentage reduction on the unisex table under the column for the applicant/recipient's age.

(b) If an applicant/recipient feels the value calculated based on this method is overstated, he/she can obtain a valuation of the life estate in the area for use as documentation of lesser value.

E. **The home as a countable resource:** If the applicant/recipient or his/her representative states the applicant/recipient does not intend to return to the home and it is not the residence of the applicant/recipient's spouse or dependent relative, the home is considered a countable resource. If the applicant/recipient or his/her representative puts the home up for sale and it is not the primary residence of the applicant/recipient's spouse or a dependent relative, the home is considered a countable resource.

F. **Value of property:** The applicant/recipient must supply the ISD worker with written documentation regarding the fair market value of the property from a real estate agent, title company or mortgage insurance company familiar with the area in which the property is located in addition to any encumbrances against the property. The ISD worker determines the equity value of the property by subtracting the amount of the encumbrances from the fair market value of the property. **Definitions:** "Relative" is defined as son/daughter; grandson/granddaughter; step-son/step-daughter; in-laws; mother/father; step-mother/step-father; half sister/half brother; grandmother/grandfather; aunt/uncle; sister/brother; step-brother/step-sister; and niece/nephew.

G. **Hardship:** Applicants/recipients who are on restricted coverage due to excess equity in their homes may request an undue hardship waiver based on the criteria specified at 8.281.500.24 NMAC, *undue hardship*.

H. **Real property:**
(1) If an applicant/recipient is the sole owner of real property, other than the

applicant/recipient's or his/her spouse's primary residence and has the right to dispose of it, the entire equity value is included as a countable resource.

(2) If an applicant/recipient owns property with one or more individuals and the applicant/recipient has the right, authority or power to liquidate the property or his/her pro-rata share of the property, it is considered a resource. If a property right cannot be liquidated, the property will not be considered a resource to the individual. The applicant/recipient must provide a copy of the legal document which indicates his/her interest in the property.

I. **Vehicles:** One automobile is totally excluded regardless of value if it is used for transportation for the individual or a member of the individual's household. Any other automobiles are considered to be non-liquid resources. Recreational vehicles and boats are considered household goods and personal effects rather than vehicles.

J. **Household goods and personal effects:** Household goods and personal effects are considered countable resources if the items were acquired or are held for their value or are held as an investment. Such items can include but are not limited to: gems, jewelry that is not worn or held for family significance, or collectibles.

K. **Promissory notes:** If an applicant/recipient holds or owns a promissory note and the note is negotiable, it is a countable resource. The value is the outstanding principal balance due at the time of the medicaid application, unless the applicant/recipient proves that it has a lower value.

(1) A promissory note held by the applicant/recipient must be a bona fide loan. This means that it must be legally valid and made in good faith. The ISD worker must evaluate the note and determine whether or not it is a bona fide loan. In order to determine if the note is a bona fide loan, the ISD worker should obtain documentation of the applicant/recipient's receipt of payments on the note at the time of application and at recertification. If the applicant/recipient sells or transfers the promissory note, then he/she may be subject to a penalty for a transfer of assets for less than fair market value.

(2) If the promissory note is non-negotiable, and the applicant/recipient receives payments on the note that could be used for food or shelter, then the amount of the payment retained in the month following receipt is a resource to the applicant/recipient.

(3) If an applicant/recipient purchases a promissory note, loan or mortgage, the repayment terms must be actuarially sound, provide for equal payment amounts with no deferral or balloon payments, and it

must contain a provision that prohibits cancellation of the balance upon the death of the lender. A promissory note not meeting these requirements shall be treated as a transfer of assets for less than fair market value. If a promissory note does not meet these requirements, the value of the note, loan or mortgage is the outstanding balance due on the date of the applicant/recipient's application for Medicaid.

L. Pension funds: A pension fund, if accessible to the applicant/recipient, is a countable resource. Any fees for withdrawal of the funds are subtracted from the balance and the remainder is a countable resource.

M. Individual retirement accounts (IRA): An IRA is a tax-deductible savings account that sets aside money for retirement. Funds in an IRA are counted as an asset in their entirety less the amount of penalty for early withdrawal.

N. Keogh plan: A Keogh plan is a retirement plan established by a self-employed individual alone or for the self-employed individual and his or her employees. If the Keogh plan was established for the self-employed individual alone, the funds in the plan are counted as an asset in their entirety less the amount of penalty for early withdrawal. If the Keogh plan was established for employees other than the spouse of the applicant/recipient, the funds do not count as an asset.

O. Loans: In some circumstances a loan may be a countable resource.

(1) **Negotiable loan.** If an applicant/recipient owns a loan agreement or is a lender and the agreement is a negotiable, bona fide loan:

(a) the outstanding principal balance is a resource of the applicant/recipient;

(b) the cash provided to the borrower is no longer the lender's resource because the lender cannot access it for his or her own use; the loan agreement replaces the cash as the lender's resource;

(c) payments that the lender receives from the borrower against the loan principal are conversions of a resource, not income; if retained, the payments are counted as the lender's resource starting in the month following the month of receipt; and

(d) interest income received by the lender is unearned income.

(2) **Non-negotiable loan.** If the applicant/recipient owns a loan agreement or is a lender and the loan agreement is not a bona fide loan or is not negotiable:

(a) the agreement is not a resource of the lender;

(b) payments against the principal are income to the lender, not conversion of a resource;

(c) the cash specified in the agreement may be a resource if the lender can

access it for his or her own use; and

(d) interest income received by the lender is unearned income.

(3) **Bona fide loan.** If the applicant/recipient is the borrower and the agreement is a bona fide loan:

(a) the loan agreement itself is not a resource for the applicant/recipient; and

(b) the cash provided by the lender is not income, but is the borrower's resource if retained in the month following the month of receipt.

(4) **Not a bona fide loan.** If the applicant/recipient is the borrower and the agreement is not a bona fide loan:

(a) the loan agreement itself is not a resource of the applicant/recipient; and

(b) the cash provided by the lender is income in the month received and is a resource if retained in the month following the month it was received.

(5) **Informal loan.** If the agreement is an agreement between individuals who are not in the business of lending money or providing credit, it is an informal loan. An informal loan is bona fide if it meets all of the following criteria:

(a) the agreement is enforceable under state law;

(b) the agreement is in effect at the time that the cash is provided to the borrower; money given to an individual with no obligation to repay cannot become a loan at a later date;

(c) the obligation to repay the loan must be acknowledged by both the lender and the borrower; when money or property is given and accepted based on any understanding other than it is to be repaid by the receiver, there is no loan;

(d) the agreement must include a plan or schedule for repayment, and the borrower's express intent to repay by pledging real or personal property or anticipated future income (such as SSI benefits);

(e) the repayment plan or schedule must be feasible; in determining the plan's feasibility, consider the amount of the loan, the individual's resources and income and the individual's living expenses.

(f) if the applicant/recipient is the borrower, the loan proceeds are a resource if they are retained in the month following the month of receipt; the resource value is the amount of the proceeds that the applicant/recipient still holds in the month following the month of receipt;

(g) if the applicant/recipient is the lender, the agreement is a countable resource starting in the month after the month that the lender provides the proceeds to the borrower; and

(h) the agreement's resource value is the outstanding principal balance unless the lender provides evidence that the loan has a lower value.

P. Other financial

instruments: Other financial instruments will be evaluated to determine if they are a countable resource.

Q. Continuing care retirement community, assisted living, life care community or like living arrangement: The portion of initial fees paid upon signing a contract for housing and care that has a potential to be refunded to the applicant/recipient is countable.

[E-] R. Other countable resources: Other liquid or non-liquid resources must be considered in the calculation of total countable resources. ~~[Under certain circumstances,]~~ The following non-liquid resources may be included in the calculation of countable resources if they cannot be excluded pursuant to 8.281.500.13 NMAC, *resource exclusions*:

(1) burial funds;

(2) burial spaces;

(3) life insurance and other insurance products such as, annuities; ~~and~~

(4) income-producing property; and

(5) other financial investment products.

[2-1-95, 7-31-97; 8.281.500.12 NMAC - Rn, 8 NMAC 4.ICM.512, 3-1-01; A/E, 2-1-07; A, 4-1-09]

8.281.500.13 RESOURCE EXCLUSIONS: Some types of resources can be excluded from the calculation of countable resources if they meet the specific criteria listed below.

A. Burial fund exclusion: Up to \$1,500 can be excluded from the countable liquid resources of an applicant/recipient if designated as his/her burial fund. An additional amount of up to \$1,500 can be excluded from countable liquid resources if designated as burial funds for the spouse of the applicant/recipient. The burial fund exclusion is separate from the burial space exclusion.

(1) **Retroactive designation of burial funds:** An applicant/recipient can retroactively designate funds for burial back to the first day of the month in which the applicant/recipient intended the funds to be set aside for burial. The applicant/recipient must sign a statement indicating the month the funds were set aside for burial.

(2) **Limit on exclusion:** An applicant/recipient can designate as much of his/her liquid resources as he/she wishes for burial purposes. However, only one burial fund allowance of up to \$1,500 each for the applicant/recipient and his/her spouse can be excluded from countable resources. A burial fund exclusion does not continue from one period of eligibility to another (i.e., across a period of ineligibility). For each new period of eligibility, any exclusion of burial funds must be developed as for an initial application.

(3) **Removal of designation:** An applicant/recipient cannot “un-designate” burial funds, unless one of the following occurs:

(a) eligibility terminates;

(b) part, or all, of the funds can no longer be excluded because the applicant/recipient purchased excluded life insurance or an irrevocable burial contract which partially or totally offsets the available burial fund exclusion; or

(c) the applicant/recipient uses the funds or any portion of the funds for another purpose; this action makes the funds countable; any designated burial funds used for another purpose will be counted as income in the month withdrawn and as a resource thereafter.

(4) **Reduction of burial fund exclusion:** The \$1,500 burial fund exclusion is reduced by the following:

(a) the face value of excluded life insurance policies;

(b) assets held in irrevocable burial trusts; irrevocable means the value paid cannot be returned to the applicant/recipient;

(c) assets that are not burial space items held in irrevocable burial contracts;

(d) assets held in other irrevocable burial arrangements; and

(e) assets held in an irrevocable trust available to meet burial expenses.

(5) **Interest from burial fund:** Interest derived from a burial fund is not considered a countable resource or income if all the following conditions exist:

(a) the original amount is excluded;

(b) the excluded burial fund is not commingled with non-excluded burial funds;

(c) the interest earned remains with the excluded burial funds.

(6) **Commingling of burial funds:** Burial funds cannot be commingled with non-burial funds. If only part of the funds in an account are designated for burial, the burial fund exclusion cannot be applied until the funds designated for burial expenses are separated from the non-burial funds. Countable and excluded burial funds can be commingled.

(7) **Life insurance policy designated as burial fund:** An applicant/recipient can designate a life insurance policy as a burial fund at the time of application. The [HSS] ISD worker must first analyze the policy according to Subsection H of 8.281.500.13 NMAC, life insurance exclusion, and following subsections.

(8) **Burial contracts:** If an applicant/recipient has a prepaid burial contract, the [HSS] ISD worker determines whether it is revocable or irrevocable and whether it is paid for. Until all payments are made on a

burial contract, the amounts paid are considered burial funds and no burial space exclusions apply.

(a) An applicant/recipient may have a burial contract which is funded by a life insurance policy. The life insurance may be either revocably or irrevocably assigned to a funeral director or mortuary.

(b) A revocable contract exists if the value can be returned to the applicant/recipient. An irrevocable contract exists when the value cannot be returned. If the contract or insurance policy assignment is revocable, the following apply.

(i) If the burial contract is funded by a life insurance policy, the policy is the resource which must be evaluated. The burial contract itself has no value. It exists only to explain the applicant/recipient's burial arrangements.

(ii) No exclusions can be made for burial space items because the applicant/recipient does not have a right to them if the contract is not paid for or the policy is not paid up.

(c) If the assignment is irrevocable, the life insurance or burial contract ~~are not countable resources~~ is not a countable resource, because the applicant/recipient does not own ~~them~~ it.

(i) The burial space exclusions can apply if the applicant/recipient has the right to the burial space items.

(ii) The value of the irrevocable burial arrangement is applied against the \$1,500 burial fund exclusion only if the applicant/recipient has other liquid resources to designate for burial.

B. Burial space exclusion: A burial space or an agreement which represents the purchase of a burial space held for the burial of an applicant/recipient, his/her spouse, or any other member of his/her immediate family, is an excluded resource regardless of value. Interest and accruals on the value of a burial space are excluded from consideration as countable income or resources.

(1) When calculating the value of resources to be deemed to an applicant/recipient from his/her parent(s) or spouse, the value of spaces held by the parent(s)/spouse which are to be used for the burial of the applicant/recipient, or any member of the applicant/recipient's immediate family, including the deemer parent/spouse, must be excluded.

(2) The burial space exclusion is separate from, and in addition to, the burial fund exclusion.

(3) **Burial space definitions:** “Burial space” is defined as a(n) burial plot, gravesite, crypt, mausoleum, casket, urn, niche, or other repository customarily used for the deceased's bodily remains.

(a) A burial space also includes

necessary and reasonable improvements or additions, such as vaults, headstones, markers, plaques, burial containers (e.g., caskets), arrangements for the opening and closing of a gravesite, and contracts for care and maintenance of the gravesite, sometimes referred to as endowment or perpetual care.

(b) Items that serve the same purpose are excluded once per individual, such as excluding a cemetery lot and a casket, but not a casket and an urn.

(4) **Burial space contract:** An agreement which represents the purchase of a burial space is defined as a contract with a burial provider for a burial space held for the eligible applicant/recipient or a member of his/her immediate family.

(a) Until all payments are made on the contract, the amounts paid are considered burial funds and no burial space exclusions apply.

(b) An eligible applicant/recipient's immediate family includes:

(i) spouse;

(ii) natural or adoptive parents;

(iii) minor or adult children, including adoptive and stepchildren;

(iv) siblings, including adoptive and stepsiblings; and

(v) spouse of any of the above relatives.

(c) If a relative's relationship to an applicant/recipient is by marriage only, the relationship ceases to exist upon the dissolution of the marriage.

(5) **Burial space “held” for an applicant/recipient:** A burial space is considered held for an applicant/recipient if:

(a) someone has title to ~~and/or~~ or possesses a burial space intended for the use of the applicant/recipient or a member of his/her immediate family; or

(b) someone has a contract with a funeral service company for a specified burial space for the applicant/recipient or a member of his/her immediate family, such as an agreement which represents the individual's current right to the use of the items at the amount shown.

(6) Until the purchase price is paid in full, a burial space is not considered “held for” an individual under an installment sales contract or similar device if:

(a) the individual does not currently own the space;

(b) the individual does not currently have the right to use the space; and

(c) the seller is not currently obligated to provide the space.

C. Life estate exclusion: ~~[A life estate gives an applicant/recipient certain rights to real property. These rights determine how the resource is treated in determining eligibility for institutional care~~

~~medicaid.] The value of a life estate interest in the applicant/recipient's own home or in the home of another is excluded if the applicant/recipient has continuously resided in the home for a period of 12 months or more from the date of the life estate purchase. The value of the remainderman's interest when a life estate is retained in one's own home is considered a transfer of resources to be evaluated in accordance with 8.281.500.14 NMAC, *asset transfers*.~~

~~(1) **Possession:** An applicant/recipient has the right to live on the real property for the rest of his/her life. If it is his/her principal place of residence (home), the life estate is evaluated in accordance with 8.281.500.13.E NMAC and following subsections.~~

~~(2) **Use and profit:** An applicant/recipient has the right to use and obtain profit from the real property. If it is income-producing property such as a rental or farm, the life estate is evaluated as income-producing property. See 8.281.500.13.F NMAC and following subsections.~~

~~(3) **Sale of the life estate interest:** An applicant/recipient has the right to sell his/her life estate interest. The value of this interest is less than the fair market value of the property and is similar to a lease because of the time frame involved. The value of the life estate is based on the age and life expectancy of the applicant/recipient.~~

~~(4) **Valuation of life estates:** The "unisex life estate and remainder interest tables" are used to determine the value of a life estate. See 8.200.520.14 NMAC. The value is computed by multiplying the current market value by the percentage reduction on the unisex table under the column for the applicant/recipient's age. If an applicant/recipient feels the value calculated based on this method is overstated, he/she can obtain a valuation of the life estate in the area for use as documentation of lesser value.~~

~~(5) **Legal documentation establishing life estate:** The legal document establishing a life estate may affect one or more of the rights discussed above. Joint ownership of a life estate may require the co-owner's approval for sale. See 8.281.500.12 NMAC and following subsections for criteria to use in evaluating the countability of the resource.]~~

D. Settlement exclusions: Agent orange settlement payments made to veterans or their survivors are excluded from consideration as resources.

(1) Payments made under the Radiation Exposure Compensation Act are excluded from consideration as resources.

(2) Payments received from a state-administered fund established to aid victims of crime are excluded for nine ~~(9)~~ months beginning the month after the

month of receipt.

(3) Payments under the foundation called 'remembrance, responsibility and the future', are excluded from consideration as resources.

E. Exclusions for real property and home: A home is any shelter used by an applicant/recipient ~~(and/or)~~ or his/her spouse as the principal place of residence. To be excluded, a home must have an equity value of \$750,000 or less. An applicant/recipient with home equity of more than \$750,000 shall be placed on restricted coverage for as long as he/she owns the home. The home includes any buildings and contiguous land used in the operation of the home. A home is not considered a countable resource while in use by the applicant/recipient as his/her principal place of residence. The home with an equity value of \$750,000 or less continues to be excluded during periods when the applicant/recipient resides in an acute care or long term care medical facility if the applicant/recipient or his/her representative states that the applicant/recipient intends to return to the home.

~~(4) **Exclusion of home:** If the applicant/recipient or his/her representative states the applicant/recipient does not intend to return to the home, but the home is the residence of the applicant/recipient's spouse or dependent ~~[relative]~~ minor child or adult disabled child, the home is an excluded resource. ~~[For the home to be excluded as the residence of a dependent relative, the basis and consistent pattern of dependency, such as financial or medical, and the relationship between the individuals must be documented.~~~~

~~(2) **The home as a countable resource:** If the applicant/recipient or his/her representative states the applicant/recipient does not intend to return to the home and it is not the residence of the applicant/recipient's spouse or dependent relative, the home is considered a countable resource. If the applicant/recipient or his/her representative puts the home up for sale and it is not the primary residence of the applicant/recipient's spouse or a dependent relative, the home is considered a countable resource.~~

~~(3) **Definitions:** "Relative" is defined as son/daughter; grandson/granddaughter; step son/step daughter; in laws; mother/father; step mother/step father; half sister/half brother; grandmother/grandfather; aunt/uncle; sister/brother; step brother/step sister; and niece/nephew.~~

~~(4) **Value of property:** The ISS determines the fair market value of the home by obtaining the appraised value from a real estate agent, a title company, or mortgage insurance company. An approximation of the fair market value using a calculation based on the tax assessed value may~~

~~be appropriate in some areas of the state. The ISS must develop several reliable sources, such as local newspaper ads or "multiple listing" publications in determining the fair market value of the home.]~~

F. Income-producing property exclusion: To be excluded from consideration as a countable resource, income-producing property that does not qualify as a bona fide business (e.g., rental property or mineral rights) must have an equity value of no more than \$6,000 and an annual rate of return of at least six percent ~~[(6%)]~~ of the equity value. See Subparagraph (b) or Paragraph (1) of Subsection F of 8.281.500.13 NMAC, *determination of rate of return*, below if the equity value exceeds \$6,000 but the rate of return is at least six percent ~~[(6%)]~~ annually. The \$6,000 and six percent ~~[(6%)]~~ limitation does not apply to property used in a trade or bona fide business, or to property used by an applicant/recipient as an employee which is essential to the applicant/recipient's self-support (e.g., tools used in employment as a mechanic, property owned or being purchased in conjunction with operating a business). Existence of a bona fide business can be established by documentation such as business tax returns.

(1) Determination of rate of return: To calculate the annual rate of return for income producing property when the \$6,000 and six percent ~~[(6%)]~~ limits apply, the previous year's income tax statement, or at least three ~~(3)~~ months earnings is used to project the rate of return for the year.

(a) If the income is sporadic or has decreased from that needed to maintain a six percent ~~[(6%)]~~ rate of return for the coming year, the property is reevaluated at appropriate intervals.

(b) If the annual rate of return is at least six percent ~~[(6%)]~~ of the equity value but the equity value exceeds \$6,000, only the excess equity is a countable resource.

(c) If the annual rate of return is less than six percent ~~[(6%)]~~ but the usual rate of return is more, the property is excluded as a countable resource if all the following conditions are met:

(i) unforeseeable circumstances, such as a fire, cause a temporary reduction in the rate of return;

(ii) the previous year's rate of return, as documented by the income tax statement or several months receipts, is at least six percent ~~[(6%)]~~; and

(iii) the property is expected to produce a rate of return of at least six percent ~~[(6%)]~~ within ~~[eighteen (18)]~~ 18 months of the end of the year in which the adverse circumstances occurred; the [ISS] ISD worker records in the case narrative the plan of action which is expected to increase the rate of return.

(d) The [ISS] ISD worker notifies the applicant/recipient in writing that the property is excluded based on its expected increase in return and that it will be reevaluated at the end of the [~~eighteen (18)~~] 18 month grace period. When this period ends, the property must be producing an annual rate of at least six percent [~~(6%)~~] to continue to be excluded as a countable resource.

(2) **Types of income-producing property:** Income-producing property includes:

(a) a business, such as a farm or store, including necessary capital and operating assets such as land and buildings, inventory or livestock; the property must be in current use or have been used with a reasonable expectation of resumed use within a year of its most recent use; the [ISS] ISD worker must account for the cash actually required to operate the business; liquid business assets of any amount are excluded;

(b) non-business property includes rental property, leased property, land leased for its mineral rights, and property producing items for home consumption; property which produces items solely for home use is assumed to be producing an annual rate of return of at least six percent [~~(6%)~~];

(c) employment-related property, such as tools or equipment; the applicant/recipient must provide a statement from his/her employer to establish that tools or equipment are required for continued employment when the applicant/recipient leaves the institution; if the applicant/recipient is self-employed, only those tools normally required to perform the job adequately are excluded; the applicant/recipient must obtain a statement from someone in the same line of self-employment to establish what is excludable.

G. **Vehicle exclusion:** The term "vehicle" includes any mode of transportation such as a passenger car, truck or special vehicle. Included in this definition are vehicles which are unregistered, inoperable, or in need of repair. Vehicles used solely for purposes other than transportation, such as disassembly to resell parts, racing or as an antique, are not included in this definition. Recreational vehicles and boats are classified as personal effects and are evaluated under the household goods and personal effects exclusion. One vehicle is totally excluded if regardless of value if it is used for transportation for the individual or a member of the individual's household. Any other automobiles are considered to be non-liquid resources. Equity in the other automobiles is counted as a resource.

H. **Life insurance exclusion:** The value of life insurance policies is not considered a countable resource if the total cumulative face value of all policies

owned by the applicant/recipient does not exceed \$1,500. A policy is considered to be "owned" by the applicant/recipient if the applicant/recipient is the only one who can surrender the policy for cash.

(1) **Consideration of burial insurance and term insurance:** Burial insurance and term insurance are not considered when computing the cumulative face value because this insurance is redeemable only upon death.

(2) **Calculation when value exceeds limit:** If the total cumulative face value of all countable life insurance policies owned by the applicant/recipient exceeds \$1,500, the [ISS] ISD worker:

(a) verifies the total cash surrender value of all policies and considers the total amount a countable resource;

(b) informs the applicant/recipient that the insurance policies can be converted to term insurance or ordinary life insurance of lower face value at his/her option, if the cash surrender value, alone or in combination with other countable resources, exceeds the resource standard.

I. **Produce for home consumption exclusion:** The value of produce for home consumption is totally excluded.

J. **Exclusion of settlement payments from the department of housing and urban development:** Payments from the department of housing and urban development (HUD) as defined in *Underwood v. Harris* are excluded as income and resources. These one-time payments were made in the spring of 1980 to certain eligible tenants of subsidized housing [Section 236 of the National Housing Act].

(1) **Segregation of payment:** To be excluded as a resource, payments retained by an applicant/recipient must be kept separate. These payments must not be combined with any other countable resources.

(2) **Income from segregated funds:** Interest or dividend income received from segregated payment funds is not excluded from income, or, if retained, is not an excluded resource. This interest or dividend income must be kept separate from excludable payment funds.

K. **Lump sum payments exclusion:** SSI and social security lump sum payments for retroactive periods are excluded as countable resources for [~~six (6)~~] nine months after the month in which they are received. See Subparagraph (4) of Subsection B of 8.281.500.15 NMAC, *treatment of SSI or social security lump sum payments*, for policy regarding SSI and social security lump sums which are placed into the ownership of a medicaid qualifying trust. Social security lump sum payments

are considered infrequent income. [See ~~8.281.500.19.C.(1) NMAC~~] See (vii) of Subparagraph (b) of Paragraph (2) of Subsection C of 8.281.500.19 NMAC, *infrequent or irregular income*, and following subsections.

L. **Home replacement exclusion:** The proceeds from a reverse mortgage from the sale of an excluded home is excluded. Additionally, the value of a promissory note or similar installment sales contract which constitutes proceeds from the sale of an excluded home is excluded from countable resources if all of the following conditions are met:

(1) the note results from the sale of the applicant/recipient's home as described in Subsection E of 8.281.500.13 NMAC, *exclusions for real property and home*, and following subsections;

(2) within three [~~(3)~~] months of receipt (execution) of the note, the applicant/recipient purchases a replacement home which meets the definition of a home in Subsection E of 8.281.500.13 NMAC, *exclusions for real property and home*, and following subsections;

(3) all note-generated proceeds are reinvested in the replacement home within three [~~(3)~~] months of receipt.

(4) **Additional exclusions:** In addition to excluding the value of the note itself, the down payment received from the sale of the former home, as well as that portion of any installment amount constituting payment on the principal are also excluded from countable resources.

(5) **Failure to purchase another excluded home timely:** If the applicant/recipient does not purchase another home which can be excluded under the provisions of Subsection E of 8.281.500.13 NMAC, *exclusions for real property and home*, and following subsections within three [~~(3)~~] months, the value of the promissory note or similar sales contract received from the sale of an excluded home becomes a countable resource as of the first moment of the first day of the month following the month the note is executed. If the applicant/recipient purchases a replacement home after the expiration of the three [~~(3)~~] month period, the value of the promissory note or similar installment sales contract becomes an excluded resource effective the month following the month of purchase of the replacement home provided that all other proceeds are fully and timely reinvested.

(6) **Failure to reinvest proceeds timely:** If the proceeds from the sale of an excluded home under a promissory note or similar installment sales contract are not reinvested fully within three [~~(3)~~] months of receipt in a replacement home, the following resources become countable as of the

first moment of the first day of the month following receipt of the payment:

(a) the fair market value of the note; and

(b) the portion of the proceeds, retained by the individual, which was not timely reinvested;

(c) the fair market value of the note remains a countable resource until the first moment of the first day of the month following the receipt of proceeds that are fully and timely reinvested in the replacement home; failure to reinvest proceeds for a period of time does not permanently preclude exclusion of the promissory note or installment sales contract; however, previously received proceeds that were not timely reinvested remain countable resources to the extent they are retained.

(7) **Interest payments:** If interest is received as part of an installment payment resulting from the sale of an excluded home under a promissory note or similar installment sales contract, the interest payments are considered countable unearned income in accordance with Paragraph (3) of Subsection A of 8.281.500.20 NMAC, *interest on promissory note or sales contract*.

(8) **When the home replacement exclusion does not apply:** If the home replacement exclusion does not apply, the market value of a promissory note or sales contract as well as the portion of the payment received on the principal are considered countable resources.

~~[M. Provisions when one member of a married couple began institutionalization on or after September 30, 1989: The applicant/recipient must meet all of the following hardship criteria:~~

~~(1) The asset must be a non-liquid asset with a fair market value of \$30,000 or less.~~

~~(2) The applicant/recipient or representative must demonstrate that a bona fide effort to sell or liquidate the asset was unsuccessful. Verification usually involves proof that the property was advertised for a period of at least six (6) months at a price considered reasonable by a source knowledgeable in real estate in that area of the state and that any reasonable offer to purchase the property was not refused.~~

~~(3) The applicant/recipient or representative must continue to make a bona fide effort to sell the property for as long as eligibility continues.~~

~~(a) The ISS must verify that the applicant/recipient is unable to obtain admission to a state-run facility.~~

~~(b) The applicant/recipient or representative has thirty (30) days from the date the ISS requests information to provide verification. Good cause for not reporting in a timely manner may apply. See 8.281.500.14.C.(2)(a) NMAC for the defi-~~

~~inition of good cause. The ISS has ten (10) days from the date the applicant/recipient's documentation is received to develop a recommendation. The recommendation of the ISS is submitted to the supervisor and the county director for review. The determination as to the application of these provisions is made jointly in writing by the ISS, the ISS supervisor, and the county director and is filed in the case record.~~

~~(c) If eligibility is approved, the ISS must follow up at least once every six (6) months to verify that a bona fide effort to sell the asset continues.~~

~~[N.] M. Household goods and personal effects exclusion: Household goods and personal effects are excluded if they meet one of the following four criteria. They are:~~

~~(1) items of personal property, found in or near the home, which are used on a regular basis; items may include but are not limited to: furniture, appliances, recreational vehicles (i.e. boats and RVs), electronic equipment (i.e. computers and television sets), and carpeting;~~

~~(2) items needed by the householder for maintenance, use and occupancy of the premises as a home; items may include but are not limited to: cooking and eating utensils, dishes, appliances, tools, and furniture;~~

~~(3) items of personal property ordinarily worn or carried by the individual; items may include but are not limited to: clothing, shoes, bags, luggage, personal jewelry including wedding and engagement rings, and personal care items;~~

~~(4) items otherwise having an intimate relation to the individual; items may include but are not limited to: prosthetic devices, educational or recreational items such as books or musical instruments, items of cultural or religious significance to an individual; or items required because of an individual's impairment.~~

~~[2-1-95; 7-31-97; 8.281.500.13 NMAC - Rn, 8 NMAC 4.ICM.513, 3-1-01; A, 5-1-01; A, 1-1-06; A, 4-1-09]~~

8.281.500.14 ASSET TRANSFERS: The [ISS] ISD worker must determine whether an applicant/recipient or his/her spouse transferred assets within a specified period of time (look back period) before applying for institutional care Medicaid or at any time after approval of the application. Then the ISD worker must determine if the applicant/recipient or his/her spouse received fair market value for the asset. If the applicant/recipient or his/her spouse did not receive fair market value for the asset, then the applicant/recipient may be subject to a penalty. In the case of an asset held by the applicant/recipient in common with another individual or individuals in a joint tenancy, tenancy in common,

or similar arrangement including life estate/remainderman relation, the asset (or the affected portion of such asset) is considered to be transferred by the applicant/recipient when any action is taken, either by the applicant/recipient or by any other individual, [with the applicant/recipient's consent] acting on behalf of the applicant/recipient (including but not limited to a spouse, representative payee, trustee, guardian, conservator, individuals acting pursuant to a power of attorney), that reduces or eliminates the applicant/recipient's ownership or control of such asset. Any asset transferred to a community spouse in excess of the community spouse resource allowance (CSRA) is considered to be totally available to the institutionalized spouse and must be spent down before eligibility can be established.

~~[A. Definitions: "Assets" include all income and resources of an applicant/recipient and his/her spouse, including any income or resources which the applicant/recipient or his/her spouse is entitled to receive, but does not receive because of action taken by one of the following:~~

~~(1) the applicant/recipient or his/her spouse;~~

~~(2) any individual, including a court or administrative body, with legal authority to act in place of or on behalf of the applicant/recipient or his/her spouse; or~~

~~(3) any individual, including any court or administrative body, acting at the direction of, or upon the request of, the applicant/recipient or his/her spouse.~~

~~B. Lookback period: Effective October 1, 1994, the ISS must determine whether any transfer of assets was made by the applicant/recipient or his/her spouse within thirty six (36) months prior to the application as well as at any time subsequent to the approval of an application for institutional care Medicaid.~~

~~B.] A. Lookback period: Any transfer of assets made prior to February 8, 2006 is subject to a 36-month look back period prior to the date of application or at any time subsequent to the approval of an application for institutional care Medicaid. Transfers made on or after February 8, 2006 are subject to a 60-month look back period.~~

~~(1) The lookback period is [sixty (60)] 60 months if the transfer occurred as the result of [the creation of a trust] payments from a trust or portions of a trust that are treated as assets disposed of by the applicant/recipient.~~

~~(2) The lookback period starts on the date the applicant [is institutionalized and applies for institutional care Medicaid] applies for institutional care Medicaid and is in an institution.~~

~~[C.] B. Transfer of assets~~

[with fair return] for less than fair market value: If a transfer of assets occurred within the applicable lookback period, or at any time after approval of the application, the [ISS] ISD worker must determine whether [a fair return was received for the transferred asset(s)] the applicant/recipient or his/her spouse received fair market value for the transferred asset(s).

(1) **Documentation requirement:** The applicant/recipient or his/her spouse must provide documentation of the transfer, the fair market value of the asset(s) transferred, the circumstances surrounding the transfer and the amount, if any, received as compensation for the transferred asset.

(2) If the applicant/recipient fails to provide this information without good cause within [thirty (30)] 30 days from the date requested by the [ISS, the ISS] ISD worker, the ISD worker denies the application or closes the case, as appropriate.

(a) Good cause is considered to exist if the applicant/recipient or representative can show that he/she was effectively precluded from timely reporting because of legal, financial, or other reasons, or because of the existence of a health related problem including death of a family member within the specific degree of relationship (see old AFDC program definition Subsection C of 8.202.400.13 NMAC, relationship) during the period of time in which the applicant/recipient or representative has to report the required information. The health or other problem must have been of such severity and duration as to have effectively precluded the applicant/recipient or representative from reporting in a timely manner.

(b) To document the good cause claim, the applicant/recipient or representative must provide proof of the existence of the health or other problem and must explain the circumstances which precluded provision of the required information.

(c) The [ISS] ISD worker makes the determination of good cause subject to review and approval by the county director or designee.

(3) **Restricted coverage:** If a transfer of assets occurred within the applicable lookback period, or at any time subsequent to approval for institutional care medicare, for which the applicant/recipient or his/her spouse did not receive [a fair return based on the market value of the transferred asset, the ISS] fair market value, the ISD worker determines if a penalty period must be calculated. The penalty for transfers of assets [without fair return] for less than fair market value in the institutional care medicare categories is restricted coverage. "Restricted coverage" means that the applicant/recipient is eligible for all medicare-covered services except services furnished in a nursing facility or services considered

to be long-term care services.

(a) Determine the current average monthly cost of nursing facilities for private patients. See 8.200.510.13 NMAC, resource exclusions.

(b) Divide the total uncompensated value (amount) of the resources transferred for less than fair market value by the current average monthly cost of nursing facilities for private patients.

(c) The result is the number of months and partial months for which the applicant/recipient will be on restricted coverage.

(4) **Calculating restricted coverage when the transferred asset is income:** If income has been transferred as a lump sum, the period of restricted coverage is calculated based on the lump sum value. For transfers of the right to an income stream, the period of restricted coverage is calculated using the actuarial value of all payments transferred. See 8.200.520.19 NMAC, life expectancy tables.

~~[D.] C. Transfer [policies]~~ **rules based on date of transfer:** ~~[Three (3) sets of policies govern the calculation of penalty periods if a transfer of assets without fair return]~~ Two sets of rules govern the calculation of penalty periods if a transfer of assets for less than fair market value has occurred. The date of transfer and approval date for institutional care medicare governs which set of [policies] rules is used to calculate the penalty period. ~~[The lookback period for all non-trust asset transfers is thirty six (36) months. The lookback period is sixty (60) months in certain situations involving trusts.]~~

~~(1) Transfers which occurred from September 1, 1981 through June 30, 1988:~~ If a transfer without fair return was made during this period, the ISS first considers whether the uncompensated value exceeded the resource standard. If so, the ISS evaluates the purpose of the transfer. If the uncompensated value did not exceed the resource standard, there is no need to consider the purpose of the transfer.

(2) The resources of an applicant/recipient or couple which were transferred (given away, sold, or otherwise converted) within twenty-four (24) months preceding the date of application or any time thereafter, are included as countable resources if they meet either of the following standards:

(a) resources were transferred at less than fair market value and the uncompensated value alone or in combination with other countable resources exceeds the resource standard.

(i) Uncompensated value is the difference between the amount received by the individual (couple) and the fair market value of the resource, minus a

disregard of \$5,000 for an otherwise eligible individual or \$7,500 for an otherwise eligible couple.

(ii) If the resource was transferred on or after July 1, 1987 from one spouse to another, the disregard is \$30,000.

(b) resources were transferred for the purpose of establishing medicare eligibility, which is assumed to be the case unless the applicant/recipient or couple can show clear and convincing evidence of both the following:

(i) the transfer was exclusively for some other purpose; and

(ii) at the time of transfer, the applicant/recipient had a reasonable plan for future support and maintenance using other resources of his/her own.

(c) if the resource could have been excluded at the time of transfer, it is not considered to be a transfer affecting eligibility. For example, if the home is transferred while it is the principal place of residence or while a spouse or dependent relative is living there, it is not a countable resource and therefore is not a transfer affecting eligibility.

(d) if the transferred resource is included as a countable resource, the applicant/recipient or couple is found ineligible for a period of twenty-four (24) months from the date of transfer. If the countable value of the transferred resource exceeds \$12,000, the applicant/recipient or couple is ineligible for an additional twelve (12) months for each \$6,000 of countable value. The amount in excess of \$12,000 is prorated at the rate of \$500 per month to determine the period of ineligibility.

(e) the effective dates of this provision are outside the thirty-six (36) month lookback period for current initial applications. If, however, during this period an applicant/recipient or couple transferred resources without receiving a fair return, applied for institutional care medicare, and was assessed a penalty of ineligibility which has not yet expired, this section applies and the applicant/recipient or couple is totally ineligible for institutional care medicare until the penalty period expires.

(3) ~~Transfers which occurred between July 1, 1988 and August 10, 1993:~~ Otherwise eligible institutionalized recipients who transferred assets without fair return during this period were no longer totally ineligible for medicare, but only ineligible for coverage of nursing facility services, i.e. restricted coverage [Medicare Catastrophic Coverage Act of 1988 (MCCA)]. The MCCA required a lookback period of thirty (30) months before the date of application and removed penalties for the transfer of assets in the supplemental security income (SSI) program effective July 1, 1988. Transfers of assets for less than fair

market value by an SSI recipient are considered in determining medicaid eligibility if and when the applicant/recipient is institutionalized. The social security administration (SSA) explains these provisions to all applicants/recipients at each certification and provides transfer information, if any, to the state. The MCCA was subsequently amended to penalize transfers of assets without fair return made by a community spouse to another individual. Prior to the amendment, transfers without fair return by a community spouse to another individual did not affect the eligibility of the institutionalized spouse. Effective October 1, 1990, transfers without fair return made by the community spouse became subject to the same treatment as transfers made by the institutionalized spouse.

(a) Transfers of assets without fair return made by an institutionalized individual on or after July 1, 1988 and transfers without fair return made by the community spouse of an institutionalized individual on or after October 1, 1990 could result in a period of restricted coverage for the institutionalized individual.

(b) The period of restricted coverage begins the month the resources were transferred and equals the lesser of the following:

(i) thirty (30) months;

or

(ii) the total uncompensated value of the transferred assets divided by the average cost to a private patient of nursing facility services in the state at the time of application. Drop any fraction of a month remaining once the calculation is completed.

(c) If the community spouse subsequently becomes eligible for institutional care medicaid, any remaining months in the restricted coverage period must be divided equally between the spouses.

(d) Periods of restricted coverage for multiple transfers occurring during this period are concurrent.

(4) (1) **For transfers made on or after August 11, 1993:** Periods of restricted coverage are calculated as follows [Omnibus Budget Reconciliation Act of 1993]:

(a) [the length of the period of restricted coverage is no longer limited to a maximum of thirty (30) months. The period of restricted coverage begins the month the resources were transferred. See 8.281.500.14.D.(3)(b)(ii) NMAC for] The period of restricted coverage begins the month the resources were transferred. The total uncompensated value of the transferred assets divided by the average cost to a private patient of nursing facility services in the state at the time of application is the methodology used to calculate a period of restricted coverage.

(b) transfers [without fair return] for less than fair market value made by institutionalized SSI recipients or community spouses of institutionalized individuals may subject the institutionalized individual to a period of restricted coverage.

(c) sanction periods are now consecutive rather than concurrent. If multiple transfers occur in different months, the periods of restricted coverage begin with the month of the initial transfer and run consecutively:

(i) If an applicant/recipient transfers an asset without receiving a fair return in February causing four (4) months of restricted coverage (i.e., February through May) and transfers another asset in April causing three (3) months of restricted coverage, the second period of restricted coverage begins in June and lasts through August.]

(ii) Before OBRA 93, the second sanction period would have begun in April (overlapping the first sanction in April and May) and ended in June.

(d) interim transfers made between August 11, 1993 and September 30, 1993 are considered to have had the penalty applied for the appropriate month(s), although restricted coverage provisions do not actually begin until October 1, 1993; and]

(c) penalty periods are now consecutive rather than concurrent; if multiple transfers occur in different months, the periods of restricted coverage begin with the month of the initial transfer and run consecutively: for example, if an applicant/recipient transfers an asset for less than fair market value in February causing four months of restricted coverage (i.e., February through May) and transfers another asset in April causing three months of restricted coverage, the second period of restricted coverage begins in June and lasts through August; and.

(e) (d) if an institutionalized individual with a community spouse is placed on restricted coverage as the result of a transfer of assets [without fair return] for less than fair market value and the community spouse subsequently becomes eligible for institutional care medicaid, any remaining months in the restricted coverage period must be divided equally between the spouses.

(2) **For transfers made on or after February 08, 2006:** Pursuant to the Deficit Reduction Act of 2005, otherwise eligible institutionalized recipients who transfer assets for less than fair market value after this date are penalized as follows:

(a) the period of restricted coverage begins the first day of the month in which the resources were transferred, or the date on which the individual becomes eligi-

ble for medicaid, and would otherwise be receiving institutional level care but for the application of the penalty period, whichever is later, and does not occur during any other period of ineligibility as a result of an asset transfer; see Paragraph (3) of Subsection B of 8.281.500.14 NMAC, *restricted coverage*, for the methodology used to calculate a period of restricted coverage;

(b) once eligibility has been determined and a penalty period has begun to run, it continues until expiration, whether or not there is a break in the institutionalized recipient's eligibility;

(c) the beginning date of restricted coverage is the first day of the month in which the resources were transferred provided the applicant/recipient is institutionalized and eligible for medicaid; for current recipients who fail to report a transfer, the recipients will continue to receive benefits until the adverse action notice date, but the state may seek to recover any medicaid costs paid for long term care services during what should have been a period of restricted coverage; federal law does not provide a basis to impose a transfer penalty based on date of discovery;

(d) for non-institutionalized individuals, the date restricted coverage begins is the month in which the individual becomes institutionalized;

(e) transfers for less than fair market value made by institutionalized SSI recipients or community spouses of institutionalized individuals may subject the institutionalized individual to a period of restricted coverage; and

(f) multiple transfers occurring in different months are added together and calculated as a single period of ineligibility, that begins on the earliest date that would otherwise apply if the transfer had been made in a single lump sum.

D. Non-excludable transfers: Certain financial instruments must be evaluated before they can be considered a transfer of assets.

(1) **Annuities:** Annuities belonging to the applicant/recipient or to the spouse of the applicant/recipient must be declared. Annuities must be actuarially sound with no deferral and no balloon payments. Annuities purchased or issued after February 8, 2006 must meet the following additional requirements for exclusion as a transfer of assets:

(a) the state is named as the remainder beneficiary in the first position for at least the total amount of medicaid expenditures paid on behalf of the institutionalized individual; the state may be named the remainder beneficiary in the second position if there is a community spouse or a minor or a disabled child and is named in the first position if the community spouse

or representative of the child disposes of any such remainder for less than fair market value;

(b) when medicaid is a beneficiary of an annuity, issuers of annuities are required to notify medicaid of any changes in the disbursement of income or principal from the annuity as well as any changes to the state's position as remainder beneficiary; and

(c) it is non-assignable and irrevocable.

(2) **Life estates:** If an applicant/recipient purchases a life estate in another individual's home, the applicant/recipient must live in that home for a period of at least 12 months after the date of purchase or the transaction will be treated as a transfer of assets for less than fair market value.

(3) **Promissory notes:** If an applicant/recipient uses funds to purchase a promissory note, the repayment terms must be actuarially sound, provide for equal payment amounts with no deferral or balloon payments, and it must contain a provision that prohibits cancellation of the balance upon the death of the lender. A promissory note not meeting these requirements shall be treated as a transfer of assets for less than fair market value.

E. **Excludable transfers:** If certain conditions are met, an applicant/recipient is not placed on restricted coverage for transferring assets [without fair return] for less than fair market value.

(1) **Transferred asset was home:** The asset transferred was a home and title to the home was transferred to:

(a) the spouse of the applicant/recipient;

(b) the son/daughter of the applicant/recipient who is under [twenty-one (21)] 21 years of age or who meets the social security administration's definition of disability or blindness. If the child is receiving benefits based on disability or blindness from a program other than social security or SSI, or is not receiving benefits based on disability or blindness from any program, the [ISS] ISD worker must request a determination of disability or blindness from disability determination services;

(c) sibling of the applicant/recipient who has an equity interest in the home and who was residing in the home for a period of at least one year immediately before the applicant/recipient was institutionalized; or

(d) son/daughter of the applicant/recipient who was residing in the home for a period of at least two [(2)] years immediately before the applicant/recipient was institutionalized. For this exclusion to apply, the [ISS] ISD worker must determine that the son/daughter provided care to the

applicant/recipient which permitted the applicant/recipient to reside at home rather than in a medical facility or nursing home.

(2) **Other asset transfers:** Sufficient information must be given to the [ISS] ISD worker to establish that either:

(a) the applicant/recipient intended to dispose of the asset at fair market value; or

(b) at the time of the transfer the applicant/recipient had no expectation of applying for medicaid and the resources were transferred exclusively for a purpose other than to qualify for medicaid as demonstrated [with] by a preponderance of evidence; unless these conditions are met, the transfer is presumed to have been for the purpose of qualifying for medicaid; or

(c) the state determines that the denial of eligibility would work an undue hardship. [In order for undue hardship to exist, the following criteria must be met:

(i) the transfer was made to someone other than a family member. "family member" includes son, daughter, grandson, granddaughter, step son, step daughter, in laws, mother, father, step mother, step father, half brother, half sister, niece, nephew, grandmother, grandfather, aunt, uncle, sister, brother, step sister, step brother.

(ii) the applicant (or representative) can present convincing evidence that every effort was made to recover the transferred asset and;

(iii) it is verified that the applicant/recipient is unable to obtain care in any long term care facility in the state without medicaid coverage, including state run facilities (meadows and ponderosa in Las Vegas and Fort Bayard) and, where applicable, the veterans center in Truth or Consequences.

(d) the applicant is required to verify only that he/she cannot obtain admission to the state run facilities.

(e) the ISS must submit documentation regarding the circumstances of the transfer to the supervisor and the county director for review. The determination of the excludability of the transfer based on (a), (b) or (c) above is made jointly in writing by the ISS, the ISS supervisor and the county director and is filed in the case record.]

(3) **Asset transferred to or for the sole benefit of the community spouse:** No transfer penalty is assessed when assets are transferred from one spouse to another (e.g., assets are transferred from an institutionalized spouse to a community spouse). Any asset transferred to a community spouse or to another individual for the sole benefit of the community spouse in excess of the community spouse resource allowance (CSRA) is considered to be total-

ly available to the institutionalized spouse and must be spent down before eligibility can be established. No transfer penalty is assessed when assets are transferred to another for the sole benefit of the community spouse if all of the conditions listed in (a) through (c) below are met. [No transfer penalty is assessed when assets are transferred from the community spouse to another individual for the sole benefit of the community spouse if all of the conditions listed in (a) through (c) below are met.]

(a) A transfer is considered to be for the sole benefit of the community spouse if it is arranged in such a way that no individual or entity except the community spouse can benefit from the assets transferred in any way, whether at the time of the transfer or at any time in the future.

(b) A transfer, or transfer instrument, that provides for funds or property to pass to a beneficiary who is not the community spouse is not considered to be established for the sole benefit of the community spouse. For a transfer to be considered to be for the sole benefit of the community spouse, the instrument or document must provide for the spending of the funds involved for the benefit of the community spouse on a basis that is actuarially sound based on the life expectancy of the community spouse. When the instrument or document does not so provide, any potential exemption from penalty or consideration for eligibility purposes is void.

(c) To determine whether an asset was transferred for the sole benefit of the community spouse, ensure that the transfer was accomplished via a written instrument of transfer (e.g., a trust document) which legally binds the parties to a specified course of action and which clearly sets out the conditions under which the transfer was made, as well as who can benefit from the transfer. A transfer without such a document cannot be said to have been made for the sole benefit of the community spouse since there is no way to establish, without a document, that only the community spouse will benefit from the transfer.

(4) **Asset transfers to or for the sole benefit of a blind or disabled child of the institutionalized individual:** No transfer penalty is assessed when assets are transferred to a blind or disabled child of the institutionalized individual, or to a trust established solely for the benefit of a blind or disabled child of the institutionalized individual. For this exemption to apply, the child must meet the social security administration's definition of blindness or disability. See 8.281.500.15 NMAC, trusts, and following subsections for [policy] rules regarding trusts. The transfer must meet all of the conditions listed in (a) through (c) below to be excluded in the eligibility deter-

mination process.

(a) A transfer to such a blind or disabled child is considered to be for the sole benefit of that child if the transfer is arranged in such a way that no individual or entity, except the blind or disabled child, can benefit from the assets transferred in any way, whether at the time of the transfer or at any time in the future.

(b) A transfer, or transfer instrument, that provides for funds or property to pass to a beneficiary who is not the blind or disabled child of the institutionalized individual is not considered to be established for the sole benefit of the blind or disabled child. For a transfer or trust to be considered to be for the sole benefit of a blind or disabled child, the instrument or document must provide for the spending of the funds involved for the benefit of the blind or disabled child on a basis that is actuarially sound based on the life expectancy of the child. When the instrument or document does not so provide, any potential exemption from penalty or consideration for eligibility purposes is void.

(c) To determine whether an asset was transferred for the sole benefit of the blind or disabled child of the institutionalized individual, ensure that the transfer was accomplished via a written instrument of transfer (e.g., a trust document) which legally binds the parties to a specified course of action and which clearly sets out the conditions under which the transfer was made, as well as who can benefit from the transfer. A transfer without such a document cannot be said to have been made for the sole benefit of the blind or disabled child since there is no way to establish, without a document, that only the blind or disabled child will benefit from the transfer. See 8.281.500.15 NMAC, *trusts*, and following subsections for policy regarding trusts.

(5) Asset transfers to a trust for the sole benefit of a disabled individual under age 65: No transfer penalty is assessed when assets are transferred to a trust established for the sole benefit of an individual under age ~~[sixty five (65)]~~ 65 who meets the social security administration's definition of disability. See 8.281.500.15 NMAC, *trusts*, and following subsections for policy regarding trusts. The transfer must meet all of the conditions listed in (a) through (c) below to be excluded in the eligibility determination process.

(a) A transfer is considered to be for the sole benefit of a disabled individual under age 65 as described above if the transfer is arranged in such a way that no individual or entity except the disabled individual can benefit from the assets transferred in any way, whether at the time of the transfer or at any time in the future.

(b) A transfer, transfer instrument,

or trust that provides for funds or property to pass to a beneficiary who is not a disabled individual under age 65 as described above, is not considered to be established for the sole benefit of the disabled individual. For a transfer or trust to be considered to be for the sole benefit of the disabled individual, the instrument or document must provide for the spending of the funds involved for the benefit of the disabled individual on a basis that is actuarially sound based on the life expectancy of the disabled individual. When the instrument or document does not so provide, any potential exemption from penalty or consideration for eligibility purposes is void.

(c) To determine whether an asset was transferred for the sole benefit of the disabled individual, ensure that the transfer was accomplished via a written instrument of transfer (e.g., a trust document) which legally binds the parties to a specified course of action and which clearly sets out the conditions under which the transfer was made, as well as who can benefit from the transfer. A transfer without such a document cannot be said to have been made for the sole benefit of the disabled individual since there is no way to establish, without a document, that only the disabled individual will benefit from the transfer. See 8.281.500.15 NMAC, *trusts*, and following subsections for policy regarding trusts.

F. Re-establishing eligibility: If an asset is transferred ~~[without fair return]~~ for less than fair market value and the applicant/recipient is placed on restricted coverage, he/she has options to re-establish full medicaid coverage.

(1) Reimbursement by transferee: The individual to whom the asset was transferred can reimburse the applicant/recipient for the asset at fair market value or liquidate/sell the asset and spend an amount equal to the uncompensated fair market value on the applicant/recipient's care or other exempt assets as listed in 8.281.500.13 NMAC, *resource exclusions*, and following subsections.

(2) Return asset to applicant: The asset can be transferred back to the applicant/recipient, liquidated, or sold and then spent down to the resource limit on the applicant/recipient's care or other exempt assets as listed in 8.281.500.13 NMAC, *resource exclusions*, and following subsections.

(3) If the transferred asset is restored to an applicant/recipient, he/she may become totally ineligible for medicaid due to excess resources. The [ISS] ISD worker must verify that the applicant/recipient's countable assets do not exceed the standard for institutional care medicaid. [2-1-95, 7-31-97; 8.281.500.14 NMAC - Rn, 8 NMAC 4.ICM.515, 3-1-01; A, 4-1-09]

8.281.500.15 TRUSTS: A trust is a legal device in which property or other assets are held by one or more individuals for the benefit of others. The one who holds the assets is called the trustee. The trustee usually has legal title to the assets held in the trust and is considered the owner of the trust assets in most dealings with third parties. The individual for whose benefit the assets are held by the trustee is called the beneficiary. A trust is usually created by a transfer of assets to the trustee from the owner, who is referred to as the settlor, trustor, or grantor. The transfer may be made while the settlor is alive or it may be made by will. The transfer of assets into a trust divests the original owner of legal title or restricts access to those assets.

A. Definitions applicable to trust provisions:

(1) "Assets" includes all income and resources of the applicant/recipient and his/her spouse, including any income or resources which the applicant/recipient or his/her spouse is entitled to but does not receive because of action by:

(a) applicant/recipient or his/her spouse;

(b) any individual, including a court or administrative body, with legal authority to act in place of or on behalf of the applicant/recipient or his/her spouse; or

(c) any individual, including any court or administrative body, acting at the direction or upon the request of the applicant/recipient or his/her spouse.

(2) "Institutionalized individual" is an individual who is a resident in a nursing facility or who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing facility.

(3) "Revocable trust" is created when the grantor reserves the right to cancel any provision of the trust.

(4) "Irrevocable trust" is created when the grantor does not reserve the right to cancel any provision of the trust.

B. Medicaid qualifying trusts (MQTs): This policy applies to trusts created prior to August 11, 1993. A "medicaid qualifying trust" (MQT) is a trust or similar legal device established, other than by will, by an applicant/recipient or his/her spouse, under which the applicant/recipient may be the beneficiary of all or part of the payments from the trust. The distribution of such payments is determined by one or more trustees who are permitted to exercise any discretion with respect to the distribution to the applicant/recipient. When the use of an attorney is solicited to establish a trust, the beneficiary of that trust is not exempt from the requirements of MQT provisions. Legal instruments such as trusts are almost always

drafted by an attorney. It is the grantor him/herself who actually establishes or creates the trust when he/she signs or executes it.

(1) **Amount deemed available from an MQT:** The amount from an MQT that is deemed available to an applicant/recipient of institutional care medicaid is the maximum amount that could be distributed to the applicant/recipient or for the care of the applicant/recipient, regardless of restrictions imposed by the trust on the allowable use of the funds. This provision applies regardless of whether the MQT was set up for the purpose of qualifying for medicaid or whether the trust is irrevocable.

(2) **Revocable trusts:** Revocable trusts that limit access to the assets held in trust must be dissolved and the assets spent down before eligibility can be established. If the ~~[HSS]~~ ISD worker determines that all or part of the assets held in a trust are not accessible or available to the applicant/recipient, or the trustees have limited discretion over distribution of the assets held in trust, transfer provisions must be applied. Under transfer of resource policy, an applicant/recipient who transfers resources without fair return may incur a penalty for a specified period of time. See 8.281.500.14 NMAC, asset transfers, and following subsections.

(3) **Beneficiary of trust lives in an ICF-MR:** If the beneficiary of a trust is an applicant/recipient who is mentally retarded and resides in an intermediate care facility for the mentally retarded (ICF-MR), that applicant/recipient's trust is not considered an MQT if the trust or trust decree was established prior to April 7, 1986, and is solely for the benefit of that applicant/recipient.

(4) **Treatment of SSI or social security lump sum payments:** SSI or social security lump sum payments for retroactive periods which are placed in an MQT do not qualify for the ~~[six (6)]~~ nine month exclusion from countable resources. The trust is evaluated as an MQT for purposes of medicaid eligibility.

C. **Trusts established on or after August 11, 1993:** Trusts established on or after August 11, 1993 are evaluated using the provisions of OBRA 93. The term "medicaid qualifying trust" is no longer used after that date. Most trusts are considered when determining eligibility for medicaid. Depending on how the trust is structured, the amounts in the trust may count as resources, income, or transfer of assets.

(1) **Trust establishment:** An applicant/recipient is considered to have established a trust and that trust is considered to belong to that applicant/recipient if

his/her assets were used to form all or part of the corpus (body) of the trust. The trust must have been established, other than by will, by any of the following individuals:

(a) applicant/recipient;
 (b) applicant/recipient's spouse;
 (c) an individual, including a court or administrative body, with legal authority to act in place of, or on behalf of, the applicant/recipient or his/her spouse; or
 (d) an individual, including a court or administrative body, acting at the direction of, or upon the request of, the applicant/recipient or his/her spouse;

(e) if the corpus of a trust includes assets of an applicant/recipient and assets of any other individual or individuals, the portion of the trust representing the assets of the applicant/recipient is considered in determining his/her eligibility for medicaid;

(f) income ~~[and/or]~~ or resources from the trust must be considered available to the applicant/recipient without regard to any of the following:

(i) the purposes for which a trust is established;

(ii) whether the trustees have or exercise any discretion under the trust;

(iii) any restrictions on when or whether distribution may be made from the trust; or

(iv) any restrictions on the use of distributions from the trust.

(2) **Revocable trusts:** Assets in a revocable trust may be counted as income, resources, or transfer of assets based on the following rules:

(a) the corpus of the trust is considered as a resource available to the applicant/recipient;

(b) payments from the trust to or for the benefit of the applicant/recipient are considered income of the applicant/recipient; and

(c) any other payments from the trust are considered assets transferred by the applicant/recipient in accordance with the provisions on transfers; see 8.281.500.14 NMAC, asset transfers, and following subsections.

(3) **Irrevocable trusts:** Assets in an irrevocable trust may be counted as income, resources, or transfer of assets based on the following rules:

(a) if payments from the trust could be made to or for the benefit of the applicant/recipient, the portion of the corpus from which the payment is made or the corpus income from which payments to the applicant/recipient could be made, are considered resources available to the applicant/recipient; and

(i) payments from that portion of the corpus or income to or for the benefit of the applicant/recipient are consid-

ered income of the applicant/recipient;

(ii) payments for any other purpose are considered a transfer of assets by the applicant/recipient which are subject to transfer of asset provisions;

(b) any portion of the trust from which, or any income on the corpus from which, payments could not under any circumstances be made to the applicant/recipient is considered, as of the date of establishment of the trust (or, if later, the date on which payment to the applicant/recipient was foreclosed), to be assets disposed of by the applicant/recipient and the value of the trust is determined by including the amount of any payments made from such portion of the trust after such date.

(4) **Value of the irrevocable trust:** The value of the trust is determined by including the amount of any payments made from portions of the trust after the date of establishment or, if later, the date on which payments to the applicant/recipient were foreclosed.

D. **Other trusts:** The following types of trusts are not subject to the conditions specified under revocable and irrevocable trusts noted above. Only income and resources distributed directly to the applicant/recipient ~~[and/or]~~ or to a third party on the applicant/recipient's behalf by the trustee are considered available to the applicant/recipient in determining medicaid eligibility if the applicant/recipient could use the payment for food, clothing or shelter for him/herself. The trusts described in this section are reversionary trusts meaning the trust must provide that, upon the death of the applicant/recipient, any funds remaining in the trust revert to the state medicaid agency, up to the amount paid in medicaid benefits on the applicant/recipient's behalf. If the applicant/recipient has resided in more than one state, the trust must provide that the funds remaining in the trust are distributed to each state in which the applicant/recipient received medicaid, based on the state's proportionate share of the total amount of medicaid benefits paid by all of the states on the applicant/recipient's behalf. The trustee may, upon the death of the beneficiary, pay the expenses of the beneficiary's burial or cremation up to the amount then authorized for burial expenses under federal and state medicaid law and regulations, to the extent other resources are not so designated.

(1) **Reversionary trust for certain disabled individuals:** This trust contains the assets of an applicant/recipient who is under ~~[sixty five (65)]~~ 65 years of age at the time the trust is established and who meets the social security administration's definition of disability. A reversionary trust must be established for the sole benefit of the applicant/recipient by a par-

ent, grandparent, legal guardian, or a court. Upon the death of the applicant/recipient, the state receives all amounts remaining in the trust up to the amount of the total medicaid benefits paid on behalf of the applicant/recipient.

(2) **Income diversion trusts:** To be considered an income diversion trust, a trust must meet the following requirements:

(a) the trust is composed only of pension, social security, and other income to the applicant/recipient, including accumulated income in the trust; and

(b) the state receives all amounts remaining in the trust upon the death of the applicant/recipient up to an amount equal to the total medicaid benefits paid on behalf of the applicant/recipient;

(c) the trusts described in this section are also known in New Mexico as *Maxwell v. Heim* income diversion trusts; those trusts executed on or after August 11, 1993 no longer have to be court ordered or approved.

(3) **Non-profit trusts for certain disabled individuals:** Trusts containing the assets of applicants/recipients who meet the social security administration's definition of disability and which meet all the following criteria are considered non-profit trusts for certain disabled individuals:

(a) the trust is established and managed by a non-profit association;

(b) a separate account is maintained for each beneficiary of the trust but, for purposes of investment and management of funds, the trust pools these accounts;

(c) accounts in the trust are established solely for the benefit of applicants/recipients who meet the social security administration's definition of disability and are established by the parent, grandparent, or legal guardian of such applicants/recipients, by such applicants/recipients themselves, or by a court; and

(d) amounts remaining in the applicant/recipient's account upon his/her death will first be used to pay the state an amount equal to the total amount of medicaid benefits paid on behalf of the applicant/recipient.

E. **Undue hardship:** An institutionalized spouse who (or whose spouse) has excess resources and is unable to access resources from an existing trust will not be found ineligible for medicaid under Section 1924(c)(3)(C) of the Social Security Act, where the state determines, on a case by case basis, that denial of eligibility on the basis of excess resources would work an undue hardship. Undue hardship is considered to exist if denial of medicaid would deprive the applicant/recipient of food, shelter, or medical care. Cases of undue hardship will be reviewed every six

~~(6)~~ months to monitor changes in circumstances.

F. **Documentation of trusts:** Upon learning of the existence of a trust, the ~~[ISS]~~ ISD worker must obtain a copy of the trust document, including all attachments, and forward it to the MAD eligibility unit ~~[so that it may be submitted to the HSD office of general counsel]~~ for review.

[2-1-95, 7-31-97; 8.281.500.15 NMAC - Rn, 8 NMAC 4.ICM.517, 3-1-01; A, 4-1-09]

8.281.500.16 RESOURCE STANDARDS FOR MARRIED COUPLES

A. **Community property resource determination methodology:**

Community property resource determination methodology is used in the eligibility determination for married applicants/recipients who began institutionalization for a continuous period prior to September 30, 1989.

(1) To determine the countable value of resources, the ~~[ISS]~~ ISD worker must:

(a) add the total value of all resources owned by both spouses;

(b) exclude the separate property of the non-applicant/recipient spouse; and

(c) attribute one-half of the total value of the community property to the applicant/recipient spouse plus the value of his/her separate property;

(d) the resulting figure must be less than \$2,000.

(2) **Application of community property rules:**

Under community property rules, all property held by either spouse is presumed to be community property unless successfully rebutted by the applicant/recipient or representative. To rebut community property status, the applicant/recipient or representative must document that the property was:

(a) acquired before marriage or after a divorce or legal separation;

(b) designated as separate property by a judgment or decree of any court;

(c) acquired by either spouse as a gift or inheritance; or

(d) designated as separate property by a written agreement between the spouses, including a deed or other written agreement concerning property held by either or both spouses in which the property is designated as separate property.

(i) If one of the parties to this written agreement is incompetent, legal counsel must execute the agreement on behalf of the incompetent spouse.

(ii) Property designated as separate by written agreement is evaluated according to current ~~[policy]~~ rules regarding transfer of resources.

(iii) Income cannot be

designated as separate by an agreement between spouses. Income is considered separate only if it is derived from a resource that has been determined separate.

B. **Spousal impoverishment:** Spousal impoverishment provisions apply if one member of a married couple is institutionalized for a continuous period of at least ~~[thirty (30)]~~ 30 consecutive days beginning on or after September 30, 1989. See spousal impoverishment provisions of the Medicare Catastrophic Coverage Act of 1988 (MCCA). No comparable treatment of resources and income is required for non-institutionalized individuals or individuals who do not have a spouse remaining in the community. These provisions cease to apply as of the month following the month an individual is no longer institutionalized or no longer has a community spouse. If a community spouse or other dependents apply for medicaid, they are subject to the rules governing treatment of income and resources for individual applicants/recipients.

(1) **Resource assessment:** A resource assessment must be completed to evaluate a couple's resources as of the first moment of the first day of the month one member of the married couple is institutionalized for a continuous period of at least 30 consecutive days beginning on or after September 30, 1989. This process is used to determine the amount of resources which may be protected for the community spouse. See (f) below for resources which must be included in the resource assessment. The resource assessment and computation of spousal shares occurs only once, at the beginning of the first continuous period of institutionalization beginning on or after September 30, 1989. A new resource assessment may be completed if it is later determined that the original resource assessment was inaccurate. Upon the death of the community spouse, the ISD worker may review the applicant/recipient's resources.

(a) A medicaid application does not need to be submitted at the time the assessment is requested. A reasonable fee may be charged for completing assessments which are not made in conjunction with medicaid applications. Applications for assessments are available at the ISD offices which determine eligibility for institutional care medicaid. Either member of the couple or their representative may request an assessment application.

(b) The ~~[ISS]~~ ISD worker must complete a resource assessment using the following criteria:

(i) one member of a married couple became institutionalized on or after September 30, 1989 in an acute care hospital or nursing facility for a continuous period of at least ~~[thirty (30)]~~ 30 consecu-

tive days;

(ii) the institutionalized individual has a spouse who remains in the community in a non-institutionalized setting; and

(iii) the institutionalized spouse remains, or is likely to remain, institutionalized for a period of at least [~~thirty (30)~~] 30 consecutive days based on a written statement from his/her physician and supporting medical documentation; the institutionalized individual is considered "likely to remain" even if he/she does not actually remain in an institution for [~~thirty (30)~~] 30 consecutive days if he/she met this condition at the beginning of the period of institutionalization.

(c) The [~~ISS~~] ISD worker explains exactly what verification is required to complete the assessment. If the [~~ISS~~] ISD worker requires further information, the individual requesting the assessment is notified in writing and given a reasonable time period of at least [~~ten (10)~~] 10 working days to provide the additional information.

(d) The institutionalized individual [~~and/or~~] or his/her spouse/representative is responsible for providing all verification necessary to complete the assessment.

(e) The [~~ISS~~] ISD worker completes the resource assessment within [~~forty five (45)~~] 45 days of the date of receipt of the completed and signed assessment application unless verification is still pending by the 45th day. In that case, the assessment is not completed until all necessary information is provided by the institutionalized individual [~~and/or~~] or his/her spouse/representative.

(f) Assessments include the total value of the couple's countable resources held jointly or separately as of the first moment of the first day of the month one spouse became institutionalized for a continuous period of at least [~~thirty (30)~~] 30 consecutive days beginning on or after September 30, 1989. The assessment form identifies the spousal shares and the community spouse resource allowance. The couple is entitled to all resource exclusions allowed in 8.281.500.13 NMAC, *resource exclusions*, and the following subsections except that value limits for the exempt vehicle and household goods of the community spouse do not apply.

(g) When the assessment is complete, the [~~ISS~~] ISD worker copies all documentation used to make the determination of countable resources and retains the documents in the case record. The [~~ISS~~] ISD worker also provides complete copies of the assessment forms to the following parties:

(i) institutionalized individual;

(ii) community spouse;

and

(iii) representative(s) if any.

(h) When the amount of the couple's total countable resources has been determined, the resulting amount is divided by two [~~(2)~~] to determine the spousal shares. The community spouse is entitled to his/her spousal share or the state minimum resource allowance, whichever is greater, up to the applicable federal maximum standard [~~This protected amount is called the community spouse resource allowance (CSRA).~~] or an amount determined at a fair hearing or an amount transferred pursuant to a court order. The community spouse resource allowance (CSRA) is the amount by which the greatest of the spousal shares or state minimum resource allowance exceeds the amount of resources otherwise available to the community spouse without regard to such an allowance. The CSRA remains in effect until one of the spouses dies. The remainder of the couple's total countable resources in excess of the CSRA is considered available to the institutionalized spouse. If either the institutionalized spouse or the community spouse is dissatisfied with the computation of the spousal share of the resources, the attribution of resources or the determination of the community spouse resource allowance, he/she can request a fair hearing pursuant to 8.352.2 NMAC, Recipient Hearing Policies. A hearing regarding the determination of the community spouse resource allowance shall be held within 30 days of the date of the request for the hearing.

(2) **CSRA standards:** The [~~CSRA~~] state minimum resource allowance and the federal maximum standards vary based on when the applicant/recipient became institutionalized for a continuous period of at least 30 consecutive days. See 8.200.510.10 NMAC, *resource standards*, for [~~CSRA~~] the applicable standards.

(3) **CSRA revision:** The CSRA can be revised if either of the following occurs:

(a) [~~the initial determination was erroneous as determined during an administrative hearing~~] a different amount is determined at an administrative or court hearing; or

(b) inaccurate information was provided to the [~~ISS~~] ISD worker at the time the spousal share was calculated.

(4) **Resource availability after computation of CSRA:** Resources of a couple remaining after the computation of the CSRA are considered available to the institutionalized spouse. These remaining resources are compared to the resource limit.

(a) From the time of the initial determination of eligibility until the first

regularly scheduled redetermination, the CSRA is not considered available to the institutionalized spouse.

(b) The CSRA [~~is~~] may be applied retroactively for the three [~~(3)~~] months prior to the month of application and is not considered available to the institutionalized spouse until the first periodic review following initial approval.

(5) **Resource transfer after computation of the CSRA:** When eligibility has been approved for an institutionalized spouse, resources equal to the amount of the CSRA may be transferred to the community spouse. This transfer is intended to assist the community spouse in meeting his/her needs in the community. Couples should transfer resources in the amount of the CSRA to the community spouse as soon as possible after approval for institutional care medicaid. The institutionalized spouse or representative can complete this transfer at any time between the date of the assessment and the first periodic review [~~twelve (12)~~] 12 months after approval.

(6) **Resource transfers which exceed the CSRA:** Resources transferred to a community spouse at less than fair market value are not subject to transfer penalties. Resources transferred to the community spouse in excess of the computed CSRA are considered available to the institutionalized spouse and must be spent down to below the resource standard before eligibility can be established. Resources transferred to the community spouse may exceed the CSRA if an increased amount is ordered by any court having jurisdiction or by a state administrative hearing officer.

(7) **Transfer deadlines:** If the resource transfer is not completed by the institutionalized spouse by the end of the initial period of eligibility, the resources are considered completely available to the institutionalized spouse beginning with the first periodic review after the initial determination of eligibility.

(8) **Newly acquired assets:** After a continuous period of institutionalization begins, newly acquired resources or increases in the value of resources owned by the institutionalized spouse are countable. Recalculations of eligibility for the institutionalized spouse based on countable resources are effective at the beginning of the month following the month in which new resources were received or an increase occurred in the value of resources already owned.

(a) The institutionalized spouse may transfer newly acquired resources to the community spouse without a penalty up to the difference between the CSRA and the state minimum resource standard in effect as of the date of institutionalization.

(b) After a continuous period

begins, new resources acquired by the community spouse or increases in the value of resources which are part of the CSRA are not considered available to the institutionalized spouse.

[2-1-95; 7-31-97; 8.281.500.16 NMAC - Rn, 8 NMAC 4.ICM.518, 3-1-01; A, 4-1-09]

8.281.500.17 D E E M I N G RESOURCES: Deeming of resources applies only during periods when an eligible applicant/recipient under [~~age eighteen (18)~~] 18 years of age lives at home and during the month the eligible applicant/recipient enters an institution. After the initial month of entry into the institution, only those resources directly attributable to or available to the applicant/recipient are counted and compared to the \$2,000 resource limit.

A. **Deeming of resources for children who are blind or have a disability:** If an applicant/recipient under [~~eighteen (18)~~] 18 years of age who is blind or disabled enters an institution, the resources of the parent(s) are deemed to the applicant/recipient if the parent(s) live in the same household. If an ineligible parent receives [~~aid to families to dependent children (AFDC)~~] temporary assistance to needy families (TANF), resources are not deemed to the applicant/recipient.

B. To determine the amount of resources deemed to the applicant/recipient, the following computation is made:

(1) determine parent(s) resources;
(2) allow parent(s) all the resource exclusions that an eligible applicant/recipient would receive;

(3) the remaining resources in excess of \$2,000 for one parent or \$3,000 for two parents are deemed to the applicant/recipient child; if there is more than one applicant child, the deemed resources are divided equally; and

(4) the deemed resources are added to whatever countable resources the applicant/recipient child has in his/her own right; the applicant/recipient child is eligible for institutional care medicaid on the factor of resources if countable resources do not exceed \$2,000.

[2-1-95; 7-31-97; 8.281.500.17 NMAC - Rn, 8 NMAC 4.ICM.519, 3-1-01; A, 4-1-09]

8.281.500.18 INCOME: An applicant/recipient's gross countable monthly income must be less than the maximum allowable monthly income standard. If an applicant/recipient's monthly gross countable income is below \$50, the application can still be processed; however, the applicant must be referred to the social security administration to apply for SSI. Income

may be in the form of cash, checks, and money orders, or in-kind, including personal property or food. If income is not received in the form of cash, the cash value of the item is determined and counted as income. The [~~ISS~~] ISD worker verifies all income and obtains appropriate documentation. Income is counted in the month received. Income is considered available throughout the month regardless of the date received.

A. **Types of income:** Countable income is the sum of unearned income [~~and/or~~] or earned income, less disregards [~~and/or~~] or exclusions, plus deemed income.

B. **Earned income:** Earned income consists of the total gross income received by an individual for services performed as an employee or as a result of self-employment.

(1) Royalties earned in connection with the publication of an applicant/recipient's work and any honorarium/fee received for services rendered are considered earned income.

(2) The self-employed applicant/recipient must provide an estimate of his/her current income based on the tax return filed for the previous year [~~and/or~~] or current records maintained in the regular course of business. The estimate of net earnings for the entire previous taxable year is prorated equally among all months of the current year, even if the business is seasonal.

(a) Consideration is given to the applicant/recipient's explanation as to why he/she believes the estimated net earnings for the current year vary substantially from the information shown on his/her tax return for past years.

(b) A satisfactory explanation is that the business suffered heavy loss or damage from fire, flood, burglary, serious illness or disability of the owner, or other such catastrophic events. Documentation must include copies of newspaper accounts or medical reports and must be filed in the case record to substantiate the need for a reduced estimate of current self-employment income.

C. **Unearned income:** Unearned income consists of all other income (minus exclusions and disregards) that is not earned in the course of employment or self-employment.

D. **Deemed income:** Deemed income is income considered available to a minor applicant/recipient from his/her parents.

E. **Community property income methodology:** If an applicant/recipient is married, community property income methodology [~~may~~] shall be used in the eligibility determination, regardless of the living arrangements, if the

one spouse has less income than the other spouse or if using the community property methodology would benefit both spouses. Under this methodology, one-half of the community property income is attributed to each spouse. Income is considered separate if it is earned in and is paid from a non-community property state. Proof of separate income is the burden of the applicant/recipient, spouse, or representative.

[2-1-95, 7-31-97; 8.281.500.18 NMAC - Rn, 8 NMAC 4.ICM.520, 3-1-01; A, 4-1-09]

8.281.500.19 INCOME STANDARDS: The applicable income standard used in the determination of institutional care medicaid eligibility for an applicant/recipient who has not been institutionalized for a period of [~~thirty (30)~~] 30 consecutive days is the SSI federal benefit rate (FBR) for a non-institutionalized individual. Participation in the medicaid home and community based waiver program is considered institutionalization and counts toward the calculation of the [~~thirty (30)~~] 30 day period. All income, whether in cash or in-kind, shall be considered in the eligibility determination, unless such income is specifically excluded or disregarded.

A. **Institutionalization period of [~~thirty (30)~~] 30 consecutive days:** After the applicant/recipient has been institutionalized for [~~thirty (30)~~] 30 consecutive days, the application can be approved as of the first day of the [~~thirty (30)~~] 30-day period. Once an applicant/recipient has been institutionalized for [~~thirty (30)~~] 30 consecutive days, the higher income maximum as specified in 8.200.520.16 NMAC, maximum countable income for institutional care medicaid and home and community based waiver categories, is used.

B. **Institutionalization period less than [~~thirty (30)~~] 30 consecutive days:** If the applicant/recipient leaves the facility before [~~thirty (30)~~] 30 consecutive days, the lower income standard (SSI FBR) is used to establish eligibility.

C. **Transfer or death:** If an applicant/recipient transfers to another institution or dies prior to completing [~~thirty (30)~~] 30 consecutive days of institutionalization, the higher income maximum is used. See 8.200.520.16 NMAC, maximum countable income for institutional care medicaid and home and community based waiver categories.

(1) **Income exclusions:** Income exclusions are applied before income disregards. Exclusions are applied in determining eligibility whether the income belongs to the applicant/recipient or to an individual from whom income is deemed.

(2) **Infrequent or irregular income:** [~~Infrequent or irregular income is excludable in the month received if it~~]

~~amounts to no more than \$10 of earned income and/or \$20 of unearned income.] Excluded the first \$30 per calendar quarter of earned income; and the first \$60 per calendar quarter of unearned income.~~ The following definitions apply:

(a) "Irregular income" is income received on an unscheduled or unpredictable basis.

(b) "Infrequent income" is income received only once during a calendar quarter from a single source and includes:

- (i) proceeds of life insurance policies;
- (ii) prizes and awards;
- (iii) gifts;
- (iv) support and alimony;
- (v) inheritances;
- (vi) interest and royalties; and
- (vii) one-time lump sum payments, such as social security.

(c) "Frequency" is evaluated for the calendar quarter (i.e. January - March, April - June, July - September, October - December) but the dollar amount is considered in the month received.

(3) **Foster care:** Foster care payments are totally excluded if:

- (a) the foster child is not eligible for SSI; and
- (b) the child was placed in the applicant/ recipient's home by a public or private nonprofit child placement or child care agency.

(4) **Domestic volunteer services exclusions:** Payments to volunteers under domestic volunteer services (ACTION) programs are excluded from consideration as income in the eligibility determination process. These programs include the following:

- (a) volunteers in service to America (VISTA);
- (b) university year for action (UYA);
- (c) special demonstration and volunteer programs;
- (d) retired senior volunteer program (RSVP);
- (e) foster grandparent program; and
- (f) senior companion program.

(5) **Census bureau employment:** Wages paid by the census bureau for temporary employment related to the census bureau are excluded from consideration as income in the eligibility determination process.

[2-1-95, 7-31-97; 8.281.500.19 NMAC - Rn, 8 NMAC 4.ICM.521 & A, 3-1-01; A, 4-1-09]

8.281.500.20 U N E A R N E D

INCOME: Unearned income includes all income not earned in the course of employment or self-employment. If payment is made in the name of either or both spouses and another party, only the applicant/recipient's proportionate share is considered available to him/her. If income is derived from property for which ownership is not established, such as unprobated property, one-half of the income is considered available to each member of a married couple.

A. **Standards for unearned income:** Unearned income is computed on a monthly basis. If there are no expenses incurred with the receipt of unearned income, such as annuities, pensions, retirement payments or disability benefits, the gross amount is considered countable unearned income.

(1) **Social security overpayments:** If the social security administration withholds an amount because of an overpayment, the gross social security payment amount is used to determine eligibility. See Subsection B of 8.281.500.23 NMAC, *computing the medical care credit*, for instructions regarding calculation of the medical care credit.

(2) **Rental income:** If an applicant/recipient has rental property, the ~~[HSS]~~ ISD worker allows the cost of real estate taxes, maintenance and repairs, advertising, mortgage insurance and interest payments on the mortgage as deductions from the amount received as rent.

(3) **Interest on promissory note or sales contract:** The portion of the payment representing interest received from a promissory note or sales contract is considered unearned income. The market value of promissory notes or sales contracts and the portion of the payment representing payment of the principal are considered resources. See also Subsection L of 8.281.500.13 NMAC, *home replacement exclusion*.

(4) **Income from annuities, pensions and other periodic payments:** Payments from annuities, pensions, social security benefits, disability, veterans benefits, worker compensation, railroad retirement annuities and unemployment insurance benefits and other periodic payments are counted as unearned income.

B. **Unearned income exclusions:**

(1) **Interest from an excluded burial fund:** Interest from an excluded burial fund is not considered unearned income if the interest is applied toward the fund balance. If the interest is paid to the applicant/recipient, it is considered unearned income.

(2) **Tax refunds and earned income tax credit:** Tax refunds from any public agency for property taxes or taxes on

food purchases are totally excluded. Any portion of a federal income tax return which constitutes an earned income tax credit is excluded.

(3) **Grants, scholarships and fellowships:** All grants, scholarships and fellowships used to pay tuition and fees at an educational institution, including vocational and technical schools, are totally excluded. Any portion of a grant, scholarship or fellowship used to pay any other expenses, such as food, clothing or shelter, is not excluded.

(4) **Veteran's pensions:** Allowances for aid and attendance (A&A) and unusual medical expenses (UME) are excluded from unearned income for determination of eligibility. If an applicant/recipient receives an augmented VA pension as a veteran or veteran's widow or widower, the pension amount may include an increment for a dependent. If so, the VA must be contacted to provide documentation of the portion of the pension which represents the dependent's increment. When verified, this amount of the VA pension is considered the dependent's income.

(5) **Payments by a third party:** Third party payments are excluded as income if made directly to the applicant/recipient's creditor.

(a) Third party payments may include mortgage payments by credit life or credit disability insurance and installment payments by a family member on a burial plot or prepaid burial contract.

(b) Interest from a burial contract that is automatically applied to the outstanding balance is excluded from unearned income. If the payment or interest is sent to the individual, it is counted as unearned income regardless of the sender's (third party's) intentions. This applies even if the sender specifies the purpose of the payment on the check. This provision does not apply if the signature of the creditor and the individual must both be present in order to negotiate the check (two-party check).

(6) **Indian tribe per capita payments:** Funds held in trust by the secretary of the interior for an Indian tribe and distributed on a per capita basis and any interest and investment income from these funds, are excluded as income and resources in the eligibility determination process and the computation of the medical care credit.

(7) **Plans for achieving self-support:** Income derived from, or necessary to, an approved plan for achieving self-support for a blind or disabled applicant/recipient under ~~[sixty five (65)]~~ 65 years of age is excluded.

(a) For an applicant/recipient who is blind or disabled and over ~~[sixty five~~

~~(65)~~ 65 years of age, this exclusion applies only if he/she received medicaid for the month preceding his/her 65th birthday.

(b) The self-support plan must be in writing and contain the following:

(i) designated occupational objective;

(ii) specification of any savings (resource) or earnings needed to complete the plan, such as amounts needed for purchase of equipment or for financial independence;

(iii) identification and segregation of any income saved to meet the occupational goal;

(iv) designation of a time period for completing the plan and achieving the occupational goal.

(c) Plans for achieving self-support are developed by vocational rehabilitation counselors. If a self-support plan is not in place, the ~~[ISS]~~ ISD worker makes a referral to the division of vocational rehabilitation (DVR).

(d) The ~~[ISS]~~ ISD worker forwards the written plan and documentation to the MAD eligibility unit. The plan must be approved by that unit.

(e) An approved plan is valid for the following specified time periods:

(i) initial period of no more than ~~[eighteen (18)]~~ 18 months;

(ii) extension period of no more than ~~[eighteen (18)]~~ 18 months;

(iii) final period of no more than ~~[twelve (12)]~~ 12 months; and

(iv) total period of no more than ~~[forty-eight (48)]~~ 48 months.

(8) **Agent orange settlement payments:** Agent orange settlement payments made to veterans or their survivors are excluded from consideration as income in determining eligibility.

(9) **Radiation Exposure Compensation Act payments:** Payments made under the Radiation Exposure Compensation Act are excluded from consideration as income in determining eligibility.

(10) **Victims compensation payments:** Payments made by a state-administered fund established to aid victims of crime are excluded from consideration as income in determining eligibility. These payments are included as countable income when calculating the medical care credit.

(11) **Lump sums for retroactive periods:** Supplemental security income (SSI) lump sum payments for retroactive periods are excluded from consideration as countable income in the month received.

(12) **Life insurance and other burial benefits:** Life insurance and other burial benefits are unearned income to the beneficiary (not the owner). The ~~[ISS]~~ ISD worker must subtract the amount spent on the insured individual's last illness ~~[and/or]~~

or burial up to \$1,500. Any excess is counted as unearned income.

(13) **100% state funded assistance payment:** Any 100%-state-funded assistance payment based on need, such as general assistance (GA) is excluded. Any interim payments made by a state or municipality from all state or local funds while an SSI application is pending are excluded.

(14) **National vaccine injury compensation program (NVICP) payment:** The NVICP funds are excluded as income or a resource until they are actually disbursed by the issuing agent. However, they are counted as income in the month in which they are received and counted as a resource in the following months, provided that the funds in question are not specifically earmarked for medical expenses. If the payment is designated for both living expenses and medical care, a determination must be made to identify how much of the payment is for living expenses, and how much is for medical care. The only portion actually counted then is that amount which is for living expenses. Therefore, a determination must be made as to how the payment is apportioned before making an eligibility determination.

(15) **Remembrance, responsibility and the future payments:** Payments by the remembrance, responsibility and the future foundation to individual survivors forced into slave labor by the Nazis are excluded as income in determining eligibility.

[2-1-95; 7-31-97; 7-1-00; 8.281.500.20 NMAC - Rn, 8 NMAC 4.ICM.522, 3-1-01; A, 5-1-01; A, 4-1-09]

8.281.500.21 DEEMED INCOME

A. **Availability:** Deemed income is income considered available to a minor applicant/recipient from his/her parents. Deeming of resources and income applies only during periods when an applicant/recipient under ~~[eighteen (18)]~~ 18 years of age is living with his/her parents and during the month of entry into an institution.

B. **Situations in which deeming occurs:** Deeming of income occurs:

(1) from ineligible parent to eligible child; or

(2) if there is both a medicaid-eligible parent and a medicaid-eligible child in the home.

C. **Computing deemed income:** The ~~[ISS]~~ ISD worker computes the total monthly amount of parental unearned and earned income and then computes the deemed income available to the applicant/recipient child. If the deemed income plus the child's separate income exceeds the applicable maximum, the child is not eligible for institutional care medicaid

for that month.

(1) **Parents and children receiving aid:** If one of the applicant/recipient child's parents is receiving any benefit or assistance paid by a governmental agency on the basis of economic need, that benefit plus all the income of that parent is excluded from the deeming process. This exclusion applies only to the income of the parent who receives the benefit. Even if the income of one parent is excluded, that parent is still considered a member of the household for purposes of determining the parental allocation. Provisions for deeming income do not apply to benefits under ~~[aid to families with dependent children (AFDC)]~~ temporary assistance to needy families (TANF). No income is deemed to a parent or child(ren) if that parent or child(ren) is (are) receiving ~~[AFDC]~~ TANF assistance.

(2) **Applicant/recipient parent and applicant/recipient child(ren):** If a household is composed of an applicant/recipient parent and an applicant/recipient child(ren), the parent's income is determined according to the methodology appropriate to the category of medicaid which he/she receives.

(a) If there is enough income to make the applicant/recipient parent ineligible, the remainder of the income is carried over to be deemed to the child(ren).

(b) If there is more than one potentially eligible child, the deemed income is divided equally among them. If total countable income is less than the applicable maximum, the applicant/recipient is eligible for institutional care medicaid on the factor of income.

(c) If an applicant/recipient is determined to be eligible for institutional care medicaid for the month of entry based on deemed income, the ~~[ISS]~~ ISD worker must recompute available income for the following month based on separate income to establish the correct medical care credit. ~~[See 8.281.500.23 NMAC MEDICAL CARE CREDIT]~~ See 8.281.500.23 NMAC, *post-eligibility/medical care credit*.

[2-1-95; 7-31-97; 8.281.500.21 NMAC - Rn, 8 NMAC 4.ICM.523, 3-1-01; A, 4-1-09]

8.281.500.22 DISREGARDS:

Income disregards are determined on an individual basis. Disregards may be applied to any appropriate month of assistance, regardless of which income maximum is used.

A. **Twenty dollar disregard:** The first \$20 of unearned or earned income received in a month is disregarded. This disregard is applied first to unearned income and, if any amount remains, to earned income. If there is no unearned income, the entire \$20 disregard is applied

to earned income. This disregard is not applied to any payment made to the applicant/recipient through government assistance programs or private charitable organizations, where payments are based on need. These payments include financial assistance, [AFDC] TANF, assistance from catholic charities, salvation army, bureau of Indian affairs, and veteran's administration pension (not compensation) payments.

B. Additional earned income disregard: After applying the \$20 disregard as specified in Subsection A of 8.281.500.22 NMAC, *twenty dollar disregard*, above, if appropriate, the first \$65 of monthly earned income plus one-half of the remainder is also disregarded.

C. Work-related expenses of the blind: Work-related expenses of an employed applicant/recipient or couple who is/are legally blind are disregarded. The dollar amount of expenses which may be disregarded must be reasonable. Expenses are disregarded when paid and must be verified.

(1) This disregard does not apply to an applicant/recipient who is blind and is ~~sixty five (65)~~ 65 years or age or older, unless he/she was receiving SSI payments due to blindness in the month before turning ~~sixty five (65)~~ 65 or received payments under a state aid to the blind program.

(2) Types of work-related expenses which may be disregarded include:

- (a) federal, state, and local income taxes;
- (b) social security contributions;
- (c) union dues;
- (d) transportation costs, including actual cost of bus/taxi cab fare, or ~~fifteen (15)~~ 15 cents per mile for private automobile;
- (e) lunches;
- (f) child care costs, if not otherwise provided;
- (g) uniforms, tools and other necessary equipment; and
- (h) special expenses necessary to enable an applicant/recipient who is blind to engage in employment, such as a seeing-eye dog or Braille instructions.

D. Student earned income disregard: Up to \$1,200 per quarter or a maximum of \$1,620 per calendar year of the earned income of certain students may be disregarded. To qualify for this disregard, the applicant/recipient must meet all of the following requirements:

- (1) under ~~twenty two (22)~~ 22 years of age;
- (2) unmarried;
- (3) not head of a household; and
- (4) in regular attendance at a college or university, for at least ~~twelve (12)~~ 12 semester hours or vocational or technical training course for at least ~~twenty (20)~~ 20

hours per week.

(a) This disregard applies only to a student's own earned income and includes all payments made as compensation for services, such as wages from employment or self-employment, or payments from programs such as neighborhood youth corps or work-study.

(b) This disregard is available in addition to any exclusions applied to grants, scholarships or fellowships and in addition to any other allowable disregards.

E. Child support payments: One third (1/3) of the amount of child support payments made to a child applying for institutional care medicaid is disregarded. The remainder is considered unearned income, subject to the appropriate disregards outlined below.

[2-1-95; 7-31-97; 7-1-00; 8.281.500.22 NMAC - Rn, 8 NMAC 4.ICM.525, 3-1-01; A, 4-1-09]

8.281.500.23 [MEDICAL] POST ELIGIBILITY/MEDICAL CARE CREDIT: ~~The medical care credit is the amount of the applicant/recipient's income used to reduce the medicaid payment to the institution where he/she resides. An applicant/recipient must make this payment directly to the institution. Applicants/recipients eligible for institutional care medicaid due to institutionalization in an acute care hospital or an in-state in-patient rehabilitation center are not charged a medical care credit.~~ Once financial eligibility for institutional care medicaid has been established, the ISD worker must determine the following.

A. Medical care credit [determination]: The medical care credit is the amount of the applicant/recipient's income used to reduce the medicaid payment to the institution where they reside. An applicant/recipient must make this payment directly to the institution. Applicants/recipients eligible for institutional care medicaid due to institutionalization in an acute care hospital or an in-state in-patient rehabilitation center are not charged a medical care credit. The amount of the medical care credit is always determined prospectively. The [HSS] ISD worker computes a medical care credit starting with the first full month of institutional care. No medical care credit is required for the month the recipient enters the institution if he/she is admitted after the first moment of the first day of the month.

(1) **No medical care credit for the month of discharge or death:** A recipient is not required to pay a medical care credit for the month of discharge from the institution. The medical care credit must be paid if the applicant/recipient is transferred to another institution or makes a short visit

outside the institution. No medical care credit is charged for the month in which a recipient of institutional care medicaid dies. This will prevent a deficit for the institution when a benefit, such as social security, must be returned due to the death of a beneficiary.

(2) **Application delay:** If there is a delay between application and approval, an applicant/recipient incurs a liability for a medical care credit. The [HSS] ISD worker notifies the applicant/recipient of this liability during the application process and informs him/her of the amount of the medical care credit he/she should pay. The applicant/recipient is encouraged to pay the medical care credit to the institution before approval of the application.

(3) **Medical care credit during retroactive months:** No medical care credits are applied for any period of retroactive eligibility under this provision.

B. Computing the medical care credit: ~~[Beginning July 1, 2000, the first forty five dollars (\$45)]~~ The current personal needs amount (PNA) of an applicant/recipient's monthly income is protected for his/her personal ~~[needs] use~~ in a nursing facility. Each year thereafter, the amount of an applicant/recipient's monthly income shall be adjusted according to the consumer price index and indicated in 8.200.510.12 NMAC, *post-eligibility calculation (medical care credit)*. The excess over the amount protected, subject to other deductions, is applied toward payment for care in the nursing facility as a medical care credit.

(1) See Paragraph (6) of Subsection B of 8.281.500.23 NMAC, *veterans administration (VA) benefits*, for personal needs allowance for veterans or surviving spouses.

(2) An applicant/recipient's total income, including amounts disregarded in determining eligibility, is used to compute the medical care credit with the following exceptions:

(a) Indian tribe per capita payments (see Paragraph (6) of Subsection B of 8.281.500.20 NMAC, *Indian tribe per capita payments*);

(b) German reparation payments; and

(c) social security administration overpayments.

(i) When the social security administration withholds an amount due to an overpayment, the social security gross payment amount is used to determine eligibility per Paragraph (1) of Subsection A of 8.281.500.20 NMAC, *social security overpayments*. To determine the amount used in calculating the medical care credit, the [HSS] ISD worker ascertains whether a social security (Title II) overpayment is being recouped or whether an SSI

overpayment is being recouped from a social security benefit check (a cross-program recoupment). Cross-program recoupments are at the recipient's option so the gross benefit amount is used to calculate the medical care credit.

(ii) Recoupment of a social security overpayment from a social security benefit check is mandatory. In such cases, the net social security benefit amount is used to calculate the medical care credit.

(d) payments from the Radiation Exposure Compensation Act.

(e) 'remembrance, responsibility and the future' payments.

(3) **Dependent children at home:** If an institutionalized applicant/recipient with no spouse has dependent children at home who are ineligible for ~~[AFDC]~~ TANF or assistance from any other program, or are eligible for an amount less than the ~~[AFDC]~~ TANF need standard, an allowance for each child of up to the current ~~[AFDC]~~ TANF standard of need may be deducted from the institutionalized applicant/recipient's income which is in excess of the applicant/recipient's personal allowance.

(4) **Health insurance premiums and non-covered medical expenses:** An applicant/recipient is allowed a deduction in the medical care credit computation for the full amount of any health insurance premiums paid by the applicant/recipient. A deduction of up to the medicare part B premium amount is allowed for medical expenses currently being paid by an applicant/recipient which are not covered by institutional care medicaid. This includes other medical care recognized under state law but not covered by institutional care medicaid. The deduction for medical and remedial care expenses that were incurred as the result of imposition of a transfer of assets penalty period is limited to zero.

(5) **Personal needs allowance for recipients in an ICF-MR:** If an applicant/recipient who is institutionalized in an intermediate care facility for the mentally retarded (ICF-MR) has a monthly income from employment in a sheltered workshop or other work activity program, up to the first \$100 of this earned income is protected for the applicant/recipient's personal needs. This amount is in addition to the applicant/recipient's personal needs allowance protected from income from any source. If the applicant/recipient's income is from any other source, the personal needs allowance is set at the amount as set forth in 8.200.510.12 NMAC, post-eligibility calculation (medical care credit).

(6) **Veterans administration (VA) benefits:** The ~~[ISS]~~ ISD worker must contact the VA on each veterans case to verify how much of the benefit is for pension, aid and attendance (A&A) ~~[and/or]~~ or

unusual medical expenses (UME).

(a) For medicaid eligible veterans with no spouse or dependent children, and for surviving spouses of ~~[veterans]~~ veterans without dependent children who do not reside in a state veteran's home (Fort Bayard or Truth or Consequences):

(i) exclude the A&A and UME in the medical care credit computation;

(ii) allow the personal needs allowance as set forth in 8.200.510.12 NMAC, post-eligibility calculation (medical care credit);

(iii) the benefit for these individuals will be reduced to \$90 per month effective the latest of the following;

(iv) the last day of the calendar month in which medicaid coverage begins;

(v) the last date of the month following ~~[sixty (60)]~~ 60 days after issuance of a reduction notice; or

(vi) the earliest date on which payment may be reduced without creating an overpayment;

(vii) when the benefit is reduced to \$90, recomputed the medical care credit to allow \$90 for personal needs.

(b) For medicaid eligible veterans with no spouse or dependent children, and for surviving spouses of veterans without dependent children who do reside in a state veteran's home (Fort Bayard or Truth or Consequences):

(i) include the A&A and UME in the medical care credit computation;

(ii) allow \$90 for his/her personal needs;

(iii) the benefit for these individuals is not reduced to \$90.

(c) Benefits for the following individuals are not reduced to \$90 a month, regardless of whether or not they reside in a state veteran's home:

(i) veterans who have a spouse or dependent child(ren);

(ii) surviving spouses of veterans who have dependent child(ren).

(d) The ~~[ISS]~~ ISD worker allows these individuals the allowance as set forth in 8.200.510.12 NMAC, post-eligibility calculation (medical care credit). for personal needs.

C. **Computing medical care credits for married institutionalized recipients:** To calculate the medical care credit for a married institutionalized applicant/recipient, the "name-on-the-check" rule applies. The ~~[ISS]~~ ISD worker uses only the income belonging to the institutionalized applicant/recipient to compute his/her medical care credit. Total gross income before any deductions is used in this process.

(1) **Treatment of VA aid and**

attendance (A&A) and unusual medical expenses (UME): Allowances for A&A and UME are considered when computing the medical credit in accordance with Paragraph (6) of Subsection B of 8.281.500.23 NMAC, computing the medical care credit.

(2) **Court-ordered support:** An institutionalized applicant/recipient's gross income is not reduced by amounts of court-ordered child or spousal support.

D. **Computing medical care credits for an institutionalized couple:** To compute medical care credits for the members of an eligible institutionalized couple, the ~~[ISS]~~ ISD worker totals the couple's gross income and divides by two. The personal needs allowance as set forth in Subsection B of 8.281.500.23 NMAC, computing the medical care credit. is subtracted from each amount for each member's personal needs and added to any allowable amount(s) paid by that recipient for noncovered medical expenses.

E. **Medical care credit deductions:** ~~[Deductions for maintenance allowances from the income of an institutionalized spouse are permitted only to the extent that the income is available and is actually contributed to and accepted by the community spouse and/or other dependent family member(s).]~~ The ~~[ISS]~~ ISD worker applies the deductions listed below in the following order when determining the medical care credit:

(1) institutionalized spouse's personal needs allowance as set forth in 8.200.510.12 NMAC, post-eligibility calculation (medical care credit);

(2) ~~[basic]~~ community spouse monthly income allowance (CSMIA) ~~[standard reduced by the total gross income of the community spouse];~~ the CSMIA deduction is permitted only to the extent that the income is available and is actually contributed to and accepted by the community spouse or other dependent family members:

(a) the CSMIA is calculated by starting with the minimum monthly maintenance needs allowance (MMMNA) and subtracting the community spouse's total gross income;

(b) both spouses shall be given notice of the amount of the CSMIA;

(c) if either spouse is dissatisfied with the amount of the CSMIA, he/she can request a fair hearing pursuant to 8.352.2 NMAC, Recipient Hearings, to establish that the community spouse needs income above the minimum monthly maintenance needs allowance; the spouse must demonstrate that the community spouse needs the additional income above the level otherwise provided by the minimum monthly maintenance needs allowance due to exceptional circumstances resulting in significant finan-

cial duress; if the spouse establishes that the community spouse needs additional income due to exceptional circumstances resulting in significant financial duress, there shall be substituted for the CSMIA such amount as is necessary to alleviate the financial duress and for so long as the exceptional circumstances exist; if as a result of a fair hearing or court hearing, additional income is granted to the community spouse for a specified period of time, when that time expires, the original CSMIA, as calculated by the ISD worker is reinstated; the exceptional circumstances can include medical, remedial or other support expenses that jeopardize the ability of the community spouse to remain self-sufficient in the community;

(d) if as a result of a court hearing or administrative fair hearing, a request for a revision of the CSMIA is granted, the revised amount shall be substituted for the CSMIA calculated by the ISD worker; and

(e) when the institutionalized applicant/recipient's income is insufficient to provide the minimum authorized deduction for the community spouse, either spouse can request a fair hearing pursuant to 8.352.2.NMAC; *Recipient Hearings*, if either spouse establishes that the CSRA (in relation to the amount of income generated by such an allowance) is inadequate to raise the community spouse's income to the MMMNA, there shall be substituted, for the CSRA, an amount adequate to provide the MMMNA;

(3) an excess shelter allowance for allowable expenses of the community spouse which exceed ~~[thirty percent (30%)]~~ 30 percent of the ~~[CSMIA]~~ MMMNA standard up to a specified maximum. The following expenses are allowed for the primary residence of the community spouse:

(a) rent or mortgage payment, including interest or principal;

(b) home taxes and insurance;

(c) maintenance charges for a condominium or cooperative; and

(d) amount equal to the standard utility allowance used by the food stamp program if the community spouse incurs a heating or cooling expense; utility expenses included in the rent or the basic maintenance fee for a condominium or cooperative, are not allowed.

~~[(4) extra maintenance allowance for the community spouse if ordered by a court of jurisdiction or a state administrative hearings officer. The community spouse must demonstrate, with a preponderance of evidence, that he/she incurred non-reimbursable expenses for medical, remedial and other support services and that these expenses jeopardize his/her ability to remain self-sufficient in the community. The community spouse must also successfully demonstrate that these expenses~~

~~exceed income, including the CSMIA and excess shelter allowance.~~

~~(a) When an extra maintenance allowance is ordered for the community spouse, the ISS monitors the case to ensure that the exceptional circumstances still exist and adjusts the medical care credit when it is verified that the special conditions no longer exist.~~

~~(b) The community spouse must report within ten (10) days when the exceptional circumstances have changed or no longer exist.~~

~~(c) The ISS may request that a hearing officer reopen and review a case if he/she believes that the exceptional circumstances no longer exist, even if the community spouse has not reported the change and/or fails or refuses to provide verification of the suspected change.~~

~~[(4)] (4) The total CSMIA and excess shelter allowance combined may not exceed the standard amount per month, unless a state administrative hearings officer or a court [of jurisdiction] orders the institutionalized spouse to pay an increased amount.~~

(5) An allowance for each eligible family member equal to one-third of the balance obtained after deducting the family member's gross income from the ~~[CSMIA standard amount]~~ MMMNA. Family members include the couple's minor child(ren) under the age of ~~[eighteen (18)]~~ 18 years, disabled adult child(ren) of the couple who meet the social security administration's definition of disability and dependent sibling(s) or parent(s) of ~~[either member of]~~ the couple. These family members must reside with the community spouse. The dependency requirements are met if either member of the couple could claim the family member as a dependent for tax purposes.

~~(6) The deductions for the community spouse and dependent family members apply only so long as there is a community spouse. Deductions for the community spouse and other family members shall cease in the first full calendar month after the community spouse dies, becomes divorced, or is institutionalized.~~

~~[(6)] (7) Health insurance premiums and non-covered medical expense deduction.~~

F. Reporting requirements: An applicant/recipient, spouse, or representative is required to report to the ~~[ISS]~~ ISD worker any change in circumstances which may affect eligibility or the medical care credit amount within ~~[ten (10)]~~ 10 days after the date the change occurs. Changes which cause adjustments in an applicant/recipient's medical care credit amount are effective the month after the change occurs. Family members receiving allowances must also report all changes of

gross income and residence within ~~[ten (10)]~~ 10 days after the date the change occurs. Changes must be reported when the institutionalized spouse stops making all or part of a maintenance allowance available to the community spouse or other family member(s), or when the recipient of a maintenance allowance begins to refuse all or part of the income.

G. Changes in income and recipient medical care credit: Payments received by a recipient, such as social security, VA, retirement or other benefits, are applied to billing for services for the same month in which the payment is received. If the income increases, the institution must continue to collect the amount indicated on the medical care credit report in the recipient's file and immediately advise the ~~[ISS]~~ ISD worker of the change. The ~~[ISS]~~ ISD worker processes the change, notifies the institution and the recipient of the new medical care credit amount and indicates the month in which the higher amount is to be collected. The difference between the medical care credit amounts is deposited in the recipient's personal fund account until the change is effective.

[2-1-95, 7-31-97, 7-1-00; 8.281.500.23 NMAC - Rn, 8 NMAC 4.ICM.530, 3-1-01, A, 5-1-01; A, 4-1-09]

8.281.500.24 UNDUE HARDSHIP:

An applicant/recipient subject to a penalty for transfer of assets for less than fair market value may apply for a waiver of the regulation regarding transfer of assets as constituting an undue hardship. The facility where an institutionalized applicant/recipient resides may file an application for waiver of the regulation on behalf of the applicant/recipient with the applicant/recipient's or personal representative's consent.

A. The transfer must have been made to someone other than a family member. "Family member" includes son, daughter, grandson, granddaughter, stepson, step-daughter, in-laws, mother, father, step-mother, step-father, half brother, half sister, niece, nephew, grandmother, grandfather, aunt, uncle, sister, brother, step-sister, step-brother.

B. The applicant/recipient must demonstrate that the application of the transfer of assets regulation would deprive the applicant/recipient of:

(1) medical care such that the applicant/recipient's health or life would be endangered; or

(2) food, clothing, shelter or other necessities of life.

C. The applicant/recipient or the facility where the applicant/recipient resides must submit any documentation to support the claim that application of the transfer of assets regulation would consti-

tute an undue hardship within 30 days of the date of the notice regarding the penalty to the ISD county office.

D. Undue hardship does not exist when the application of a transfer penalty causes an applicant/recipient or his/her family members inconvenience or restricts their lifestyle.

E. The county director of the ISD office will make a decision regarding an application for waiver of the transfer of assets regulation within 30 days of receipt of the application.

(1) Notice of the decision shall be mailed to the applicant/recipient or his/her representative.

(2) The department may make payments to the nursing facility for an applicant/recipient who is a resident of the facility while an application for waiver of the regulation is pending to hold the bed for the applicant/recipient. The department may make payments for no more than 30 days.

F. If the applicant/recipient's application for waiver of the transfer of assets regulation is granted, the department shall pay for long term care services prospective from the date of the application. The department shall pay for long term care services as long as the circumstances constituting the basis for waiver of the application of the regulation exist. If the applicant/recipient's application for waiver of the transfer of assets regulation is denied, the applicant/recipient can request a fair hearing pursuant to 8.352.2 NMAC, *Recipient Hearings*, within 90 days of the date of the notice of denial.

G. The applicant/recipient or his/her representative must notify the ISD worker of any change in circumstances which affects the application of the undue hardship waiver exception within 10 days of the change in circumstances. The department will review the change of circumstances and determine the next appropriate action, which may include withdrawal of the waiver.

[8.281.500.24 NMAC - N, 4-1-09]

End of Adopted Rules Section

Other Material Related to Administrative Law

**NEW MEXICO HUMAN
SERVICES DEPARTMENT
INCOME SUPPORT DIVISION**NOTICE OF PUBLIC COMMENT

A hearing was held to receive public comment on March 2, 2009. The Department is not pursuing the proposed regulations as published in New Mexico Register Vol. XX, No. 2.

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

You may send comments electronically to:
vida.tapia-sanchez@state.nm.us

**NEW MEXICO
COMMISSION OF PUBLIC
RECORDS
HISTORICAL RECORDS
ADVISORY BOARD**

Commission of Public Records
New Mexico State Records Center &
Archives
1205 Camino Carlos Rey
Santa Fe, New Mexico 87507

NOTICE OF SPECIAL MEETING

The New Mexico Historical Records Advisory Board has scheduled a special meeting for Tuesday, April 21, 2009 from 10:00 a.m. to 12:00 noon. The meeting will be held in the Commission Room of the New Mexico State Records Center & Archives, which is an accessible facility, at 1209 Camino Carlos Rey, Santa Fe, NM, 87507. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the meeting, please contact Randy Forrester at 505-476-7936 of the State Records Center and Archives at least one week prior to the meeting. Public documents, including the agenda and minutes will be available 24 hours before the meeting.

**End of Other Related
Material Section**

SUBMITTAL DEADLINES AND PUBLICATION DATES

2009

Volume XX	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 30
Issue Number 3	February 2	February 13
Issue Number 4	February 16	February 27
Issue Number 5	March 2	March 16
Issue Number 6	March 17	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 1	May 14
Issue Number 10	May 15	May 29
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 16
Issue Number 14	July 17	July 31
Issue Number 15	August 3	August 14
Issue Number 16	August 17	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 30
Issue Number 21	November 2	November 13
Issue Number 22	November 16	December 1
Issue Number 23	December 2	December 15
Issue Number 24	December 16	December 31

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rule making, proposed rules, adopted rules, emergency rules, and other similar material. The Commission of Public Records, Administrative Law Division publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978. For further subscription information, call 505-476-7907.