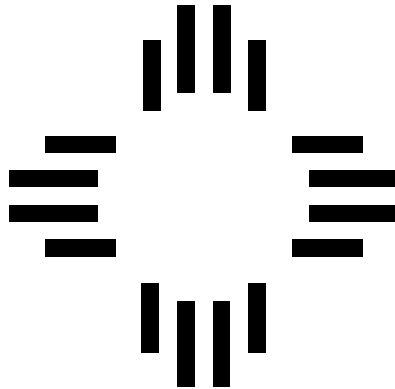


New Mexico Register

Volume XIII, Issue Number 1
January 15, 2002



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
2002

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New Mexico Register

Volume XIII, Number 1

January 15, 2002

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Effective Date and Validity of Rule Filings

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

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

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The *New Mexico Register* is available free at
<http://www.nmcpr.state.nm.us/nmregister>

Notices of Rulemaking and Proposed Rules

STATE OF NEW MEXICO INFORMATION TECHNOLOGY COMMISSION

IN THE MATTER OF ADOPTING 1.12.8
NMAC,
NOTIFICATION OF INTERNET PROTO-
COL ADDRESSES

NOTICE OF PROPOSED RULEMAKING AND PROCEDURAL ORDER

I. SOLICITATION OF COMMENTS

The Information Technology Commission (Commission) issues this Notice of Proposed Rulemaking to provide an opportunity for public comment and to create a record for a decision on a proposed new rule: 1.12.8 NMAC, Notice of Internet Protocol Addresses. The Commission requests written comments from all interested persons and entities on the proposed new rule.

All relevant and timely comments, including data, views, or arguments, will be considered by the Commission. In reaching its decision, the Commission may take into account information and ideas not contained in the comments, providing that such information or a writing containing the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Order issued by the Commission.

II. ORDER

IT IS THEREFORE ORDERED that this Notice of Proposed Rulemaking and Procedural Order be issued.

IT IS FURTHER ORDERED that all interested parties may file written comments on the proposed rule on or before January 31, 2002. All relevant and timely comments, including data, views, or arguments will be considered by the Commission before final action is taken in this proceeding. Written comments must be filed prior to the deadline for receipt of comments either in hard copy with the Deputy Chief Information Officer, Information Technology Management Office, 404 Montezuma, Santa Fe, NM 87501 or by electronic mail to the Deputy Chief Information Officer at

cio@state.nm.us. The rule number must appear on each submittal. Comments will be available for public inspection during regular business hours in the Information Technology Management Office, 404 Montezuma, Santa Fe, NM 87501.

PLEASE BE ADVISED THAT the New Mexico Lobbyist Regulation Act, NMSA 1978, §§2-11-1 *et seq.*, regulates lobbying activities before state agencies, officers, boards and commissions in rulemaking and other policy-making proceedings. A person is a lobbyist and must register with the Secretary of State if the person is paid or employed to do lobbying or the person represents an interest group and attempts to influence a state agency, officer, board or commission while it is engaged in any formal process to adopt a rule, regulation, standard or policy of general application. An individual who appears for himself or herself is not a lobbyist and does not need to register. The law provides penalties for violations of its provisions. For more information and registration forms, contact the Secretary of State's Office, State Capitol Building, Room 420, Santa Fe, NM 87503, (505) 827-3600.

IT IS FURTHER ORDERED that the Commission may require the submission of additional information, make further inquiries, and modify the dates and procedures if necessary to provide for a fuller record and a more efficient proceeding.

IT IS FURTHER ORDERED that staff of the Information Technology Management Office shall cause a copy of this Notice to be published once in the *New Mexico Register*, once in the *Albuquerque Journal*, and to be posted to the Internet at <http://www.cio.state.nm.us> all on or before January 15, 2002. To obtain a copy of the proposed rule: (1) send the rule name, rule number, and a self-addressed envelope to the Information Technology Management Office, 404 Montezuma, Santa Fe, NM 87501; (2) call the Information Technology Management Office at 505-476-0400 with the rule name and rule number; e-mail the Deputy Chief Information Officer at cio@state.nm.us with the rule name and rule number (you will receive a copy of the rule in Microsoft WORD format by return e-mail); or download the proposed rule from the Internet at <http://www.cio.state.nm.us>. The proposed rule is also available for inspection and copying during regular business hours in the Information Technology Management

Office, 404 Montezuma, Santa Fe, NM 87501.

PLEASE BE ADVISED THAT individuals with a disability who are in need of summaries or other types of accessible forms of the proposed rule or comments may contact the Deputy Chief Information Officer at (505)476-0400.

DONE, this 18th day of
December, 2001.

INFORMATION TECHNOLOGY
COMMISSION

By: Robert Tacker, Chair

NEW MEXICO BOARD OF MEDICAL EXAMINERS

Notice

The New Mexico Board of Medical Examiners will convene a Public Rule Hearing on Friday, February 22, 2002 at 8:30 p.m. at the Board office, 491 Old Santa Fe Trail, 2nd floor, Lamy Building, Santa Fe, New Mexico. The purpose of the Rule Hearing is to repeal and replace the following parts of the rules: 16 NMAC 10.2 Licensure as a Medical Practitioner will be replaced with 16.10.2 NMAC Physicians: Licensure Requirements; 16 NMAC 10.3 Interim and Temporary Licenses will be replaced with 16.10.3 NMAC Examinations; 16 NMAC 10.4 Continuing Medical Education; 16 NMAC 10.5 Disciplinary Power of the Board; 16 NMAC 10.6 Complaint Procedure and Institution of Disciplinary Action will be replaced with 16.10.6 NMAC Complaint Procedure and Disciplinary Action; and 16 NMAC 10.13 Devices and Procedures: Use by Medical and Non-Medical Personnel will be replaced by 16.10.13 NMAC Use of Devices and Procedures by Unlicensed Personnel. The Board will also be considering proposed revisions to the following parts: 16.10.8 NMAC Medical Ethics; 16.10.9 NMAC Fees, and 16.10.10 NMAC Report of Settlements, Judgments, Adverse Actions and Credentialing Discrepancies, and addition of a new part 16.10.7 NMAC License Expiration, Renewal, and Reinstatement.

A board meeting will precede the hearing on February 21, 2002 and continue following the hearing. The board may go into executive session to discuss pending

litigation, personnel or licensee matters. A final agenda for the board meeting will be available at the board office on February 20, 2002. Persons desiring to present their views on the proposed amendment may appear in person at said time and place or may submit written comments no later than 5:00 p.m., February 15, 2002, to the board office, 491 Old Santa Fe Trail, 2nd floor, Lamy Building, Santa Fe, NM, 87501. Copies of the proposed rules are available on request from the Board office at the address listed above, by phone (505) 827-5022, or on the internet at www.state.nm.us/nmbme/whatsnew.html.

Individuals with a disability who are in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service in order to attend or participate in the hearing or meeting, should contact the Executive Director at 491 Old Santa Fe Trail, Santa Fe, NM prior to the meeting. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Executive Director if a summary or other type of accessible format is needed.

NEW MEXICO BOARD OF NURSING

4206 LOUISIANA NE SUITE A
ALBUQUERQUE NM 87109

NOTICE OF PUBLIC HEARING

Notice is hereby given that the New Mexico Board of Nursing will convene a Rules Hearing to amend:

- 16.12.2. NMAC Nurse Licensure
- 16.12.4. NMAC Certification of Hemodialysis Technicians and Training Programs
- 16.12.5. Medication Aides in Intermediate Care Facilities for the Mentally and Developmentally Disabled Medicaid Waiver Programs

These Hearings will be held at the Board of Nursing Conference Room, 4206 Louisiana NE, Suite A, Albuquerque NM 87109, on Friday, February 22, 2002 at 8:30 a.m.

Any person wishing to present testimony at the Hearings is requested to submit, to the Board of Nursing Office, a written statement of intent (10 copies) to be received no later than February 8, 2002

The Statement shall provide:

- ✓ Name of Witness:

- ✓ Who Witness represents:
- ✓ Brief statement of subject matter of testimony; &
- ✓ Anticipated length of presentation.

Notice: Any person presenting testimony, who is representing a client, employer or group, must be registered as a lobbyist through the Secretary of State's Office (505) 827-3600 or do so within 10 days of the Public Hearings.

Persons requiring special accommodations at the hearings are asked to call the Board office (841-8340) no later than February 8, 2002 so that arrangements can be made. Hearing impaired persons call TDD 1-800-659-8331.

Drafts of proposed changes may be requested through the Board of Nursing office.

STATE OF NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

IN THE MATTER OF THE
AMENDMENT OF 13.4.7 NMAC,
CONTINUING EDUCATION REQUIREMENTS
DOCKET NO. 01-315-IN

NOTICE OF HEARING ON PROPOSED RULEMAKING AND PROCEDURAL ORDER

The purpose of this hearing is to obtain input on proposed amendments to 13.4.7 NMAC, Continuing Education Requirements.

I. SOLICITATION OF COMMENTS

The Superintendent of Insurance is issuing this Notice to provide an opportunity for public comment and to create a record for a decision on a proposed amendment to 13.4.7 NMAC, Continuing Education Requirements. The Superintendent requests written and oral comments from all interested persons and entities on the proposed amendments.

All relevant and timely comments, including data, views, or arguments, will be considered by the Superintendent. In reaching his decision, the Superintendent may take into account information and ideas not contained in the comments, providing that such information or a writing containing the nature and source of such information is placed in the public file, and provided that the fact of the Superintendent's

reliance on such information is noted in the Order the Superintendent ultimately issues.

II. ORDER

IT IS THEREFORE ORDERED that this Notice of Hearing on Proposed Rulemaking and Procedural Order be issued.

IT IS FURTHER ORDERED that an informal public hearing be held on February 21, 2002, at 9:30 a.m. in the Fourth Floor Hearing Room of the P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico for the purpose of receiving oral public comments including data, views, or arguments on the proposed rule. All interested persons wishing to present testimony may do so at the hearing. Interested persons should contact the Insurance Division ahead of time to confirm the hearing date, time, and place since hearings are occasionally rescheduled.

IT IS FURTHER ORDERED that all interested parties may file written comments on the proposed rule on or before February 14, 2002. All relevant and timely comments, including data, views, or arguments will be considered by the Superintendent before final action is taken in this proceeding. An original and two copies of written comments must be filed prior to the hearing with the Chief Clerk, Public Regulation Commission, P.O. Box 1269, Santa Fe, NM 87504-1269. The docket number must appear on each submittal. If possible, please also submit a diskette copy of written comments to the Chief Clerk or e-mail a copy of written comments to elizabeth.bustos@state.nm.us. Comments will be available for public inspection during regular business hours in the office of the Chief Clerk, Room 406, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, NM.

IT IS FURTHER ORDERED that the Superintendent may require the submission of additional information, make further inquiries, and modify the dates and procedures if necessary to provide for a fuller record and a more efficient proceeding.

IT IS FURTHER ORDERED that staff of the Superintendent of Insurance's Office shall cause a copy of this Notice to be published once in the *New Mexico Register* and once in the *Albuquerque Journal*, both on or before January 15, 2002. To obtain a copy of the proposed rule: (1) send the docket number, rule name, and rule number to the Chief Clerk, P.O. Box 1269, Santa Fe, NM 87504-1269 along with a self-addressed envelope and a check for \$5.00 made payable to the Public Regulation Commission to cover the cost of

copying and postage; (2) call the Chief Clerk at 505-827-4526 with the docket number, rule name, and rule number (you will be billed \$5.00 to cover the cost of copying and postage); or e-mail Elizabeth Bustos at elizabeth.bustos@state.nm.us with the docket number, rule name, and rule number (you will receive a copy of the rule in Microsoft WORD format by return e-mail at no charge). The proposed rule is also available for inspection and copying during regular business hours in the office of the Chief Clerk, Room 406, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, NM.

III. ADVISEMENTS

PLEASE BE ADVISED THAT the New Mexico Lobbyist Regulation Act, NMSA 1978, §§2-11-1 *et seq.*, regulates lobbying activities before state agencies, officers, boards and commissions in rule-making and other policy-making proceedings. A person is a lobbyist and must register with the Secretary of State if the person is paid or employed to do lobbying or the person represents an interest group and attempts to influence a state agency, officer, board or commission while it is engaged in any formal process to adopt a rule, regulation, standard or policy of general application. An individual who appears for himself or herself is not a lobbyist and does not need to register. The law provides penalties for violations of its provisions. For more information and registration forms, contact the Secretary of State's Office, State Capitol Building, Room 420, Santa Fe, NM 87503, (505) 827-3600.

PLEASE BE ADVISED THAT individuals with a disability who are in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, may contact Ms. Ann Echols, on or before February 14, 2002, at (505) 827-4559. Public documents associated with the hearing can be provided in various accessible forms for disabled individuals. Requests for summaries or other types of accessible forms should also be addressed to Ms. Echols.

DONE, this 27th day of December, 2001.

NEW MEXICO PUBLIC REGULATION
COMMISSION
INSURANCE DIVISION

ERIC P. SERNA,
Superintendent of Insurance

NEW MEXICO DEPARTMENT OF PUBLIC SAFETY

NEW MEXICO LAW ENFORCE-
MENT ACADEMY
TRAINING & RECRUITING DIVISION

4491 CERRILLOS ROAD
SANTA FE, NM 87507-9721

NOTICE OF NMLEA BOARD MEET- ING AND PUBLIC HEARING

The New Mexico Law Enforcement Academy Board will hold a regularly scheduled Board meeting on Thursday, February 28, 2002, at the New Mexico Law Enforcement Academy, Santa Fe, New Mexico.

In conjunction with the Board meeting, there will be a Public Hearing amending 10.29.9.16 NMAC (RENEWAL OF CERTIFICATION AFTER ABSENCE) to include certifications of officers called into the military.

Copies of proposed plans, [RTF bookmark start: QuickMark][RTF bookmark end: QuickMark]standards, requirements, or rules may be obtained by calling (505) 827-9255.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Darrel Hart, (505) 827-9255, as soon as possible. Public documents can be provided in various accessible formats.

Please contact Darrel Hart if additional information is needed.

End of Notices and Proposed Rules Section

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Adopted Rules and Regulations

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT MINING AND MINERALS DIVISION

TITLE 19 N A T U R A L RESOURCES AND WILDLIFE CHAPTER 8 COAL MINING PART 35 VALID EXISTING RIGHTS

19.8.35.1 Issuing Director: New Mexico Coal Surface Mining Commission.
[19.8.35.1 NMAC - N, 1-15-2002]

19.8.35.2 Scope: All persons subject to the New Mexico Surface Mining Act, NMSA 1978, Sections 69-25A-1 et. seq. (1979).
[19.8.35.2 NMAC - N, 1-15-2002]

19.8.35.3 Statutory Authority: NMSA 1978, Sections 69-25A-1 et. seq. (1979).
[19.8.35.3 NMAC - N, 1-15-2002]

19.8.35.4 Duration: Permanent.
[19.8.35.4 NMAC - N, 1-15-2002]

19.8.35.5 Effective Date: January 15, 2002, unless a later date is cited at the end of a section.
[19.8.35.5 NMAC - N, 1-15-2002]

19.8.35.6 Objective: The objective of parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.
[19.8.35.6 NMAC - N, 1-15-2002]

19.8.35.7 Definitions:

A. VALID EXISTING RIGHTS (VER)- means a set of circumstances under which a person may, subject to regulatory authority approval, conduct surface coal mining operations on lands where 19.8.2.201 NMAC would otherwise prohibit such operations. Possession of **valid existing rights** only confers an exception from the prohibitions of 19.8.2.201 NMAC. A person seeking to exercise **valid existing rights** must comply with all other pertinent requirements of the Act, 19.8 NMAC and SMCRA.

(1) Property **rights** demonstration. Except as provided in 19.8.35.7.D

NMAC, a person claiming **valid existing rights** must demonstrate that a legally binding conveyance, lease, deed, contract, or other document vests that person, or a predecessor in interest, with the right to conduct the type of surface coal mining operations intended. This right must exist at the time that the land came under the protection of 19.8.2.201 NMAC. Other applicable State statutory or case law will govern interpretation of documents relied upon to establish property **rights**, unless Federal law provides otherwise.

(2) Except as provided in 19.8.35.7.D NMAC, a person claiming **valid existing rights** also must demonstrate compliance with one of the following standards:

B. GOOD FAITH/ALL PERMITS STANDARD. All permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith effort to obtain all necessary permits and authorizations had been made, before the land came under the protection of 19.8.2.201 NMAC. At a minimum, an application must have been submitted for any permit required under 19.8 NMAC.

C. NEED FOR AND ADJACENT STANDARD. The land is needed for and immediately adjacent to a surface coal mining operation for which all permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith attempt to obtain all permits and authorizations had been made, before the land came under the protection of 19.8.2.201 NMAC. To meet this standard, a person must demonstrate that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of 19.8.2.201 NMAC. Except for operations in existence before August 3, 1977, or for which a good faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of 19.8.2.201 NMAC when the permit for the original operation was issued by the Director or when the good faith effort to obtain all necessary permits for the original operation was made. The Director may consider the following factors when evaluating whether a person meets this standard:

(1) The extent to which coal supply contracts or other legal and business commitments that predate the time that the land came under the protection of 19.8.2.201 NMAC depend upon use of that land for surface coal mining operations.

(2) The extent to which plans used to obtain financing for the operation before the land came under the protection of 19.8.2.201 NMAC rely upon use of that land for surface coal mining operations.

(3) The extent to which investments in the operation before the land came under the protection of 19.8.2.201 NMAC rely upon use of that land for surface coal mining operations.

(4) Whether the land lies within the area identified on the life-of-mine map submitted under 19.8.8.812.C NMAC before the land came under the protection of 19.8.2.201 NMAC.

D. ROADS. A person who claims **valid existing rights** to use or construct a road across the surface of lands protected by 19.8.2.201 NMAC must demonstrate that one or more of the following circumstances exist if the road is included within the definition of "surface coal mining operations" in 19.8.1.7.S(20) NMAC:

(1) The road existed when the land upon which it is located came under the protection of 19.8.2.201 NMAC, and the person has a legal right to use the road for surface coal mining operations.

(2) A properly recorded right of way or easement for a road in that location existed when the land came under the protection of 19.8.2.201 NMAC, and, under the document creating the right of way or easement, and under subsequent conveyances, the person has a legal right to use or construct a road across the right of way or easement for surface coal mining operations.

(3) A **valid** permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of 19.8.2.201 NMAC.

(4) A **valid existing right** exists under 19.8.35.7.A (1) and (2) NMAC.
[19.8.35.7 NMAC - N, 1-15-2002]

19.8.35.8 Submission and Processing of Requests for VER Determinations

A. The Director will be responsible for making a determination on valid and existing rights for lands protected under 19.8.2.201 NMAC, with the exception of federal lands in protected features listed in 19.8.2.201.F NMAC. A determination on valid existing rights not subject to the review of the Director would be the responsibility of OSM.

B. A request for a valid and existing right must be submitted to the Director, consistent with the provisions of 19.8.35.8.A NMAC, if the request concerns the operation of a surface coal mine on the

basis of **valid existing rights** under 19.8.2.201 NMAC or wish to confirm the right to do so. This request may be submitted before preparing and submitting an application for a permit or boundary revision for the land.

[19.8.35.8 NMAC - N, 1-15-2002]

19.8.35.9 Requirements for a VER Property Rights Demonstration

A. A demonstration of property **rights** under the definition of **valid existing rights** in 19.8.35.7.A(1) NMAC must be provided to the Director if the request relies upon the good faith/all permits standard or the needed for and adjacent standard identified in 19.8.35.7.A(2) NMAC. This demonstration must include the following:

(1) A legal description of the land to which the request pertains.

(2) Complete documentation of the character and extent of the current interests in the surface and mineral estates of the land to which the request pertains.

(3) A complete chain of title for the surface and mineral estates of the land to which the request pertains.

(4) A description of the nature and effect of each title instrument that forms the basis for the request, including any provision pertaining to the type or method of mining or mining-related surface disturbances and facilities.

(5) A description of the type and extent of surface coal mining operations that the requester claim the right to conduct, including the method of mining, any mining-related surface activities and facilities, and an explanation of how those operations would be consistent with New Mexico property law.

(6) Complete documentation of the nature and ownership, as of the date that the land came under the protection of 19.8.2.201 NMAC, of all property **rights** for the surface and mineral estates of the land to which the request pertains.

(7) Names and addresses of the current owners of the surface and mineral estates of the land to which the request pertains.

(8) If the coal interests have been severed from other property interests, it must be documented that the owners of other property interests in the land to which the request pertains have been notified and provided reasonable opportunity to comment on the validity of the property **rights** claims.

(9) Any comments received in response to the notification provided under 19.8.35.9.A(8) NMAC.

B. Requirements for good faith/all permits standard. If a request relies

upon the good faith/all permits standard in 19.8.35.7.B NMAC, a submittal must include information required by 19.8.35.8.A NMAC. The following information about permits, licenses, and authorizations for surface coal mining operations on the land to which the request pertains must also be submitted:

(1) Approval and issuance dates and identification numbers for any permits, licenses, and authorizations that the requester for VER or a predecessor in interest obtained before the land came under the protection of 19.8.2.201 NMAC.

(2) Application dates and identification numbers for any permits, licenses, and authorizations for which the requester or a predecessor in interest submitted a request before the land came under the protection of 19.8.2.201 NMAC.

(3) An explanation of any other good faith effort that the person making the VER or a predecessor in interest made to obtain the necessary permits, licenses, and authorizations as of the date that the land came under the protection of 19.8.2.201 NMAC.

C. Requirements for needed for and adjacent standard. If a request relies upon the needed for and adjacent standard in 19.8.35.7.C NMAC, the information required under 19.8.35.9.A NMAC must be submitted. In addition, the requester must explain how and why the land is needed for and immediately adjacent to the operation upon which the request is based, including a demonstration that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of 19.8.2.201 NMAC.

D. Requirements for standards for mine roads. If a request relies upon one of the standards for roads in 19.8.35.7.D(1) NMAC through 19.8.35.7.D(3) NMAC, the requester must submit satisfactory documentation that:

(1) The road existed when the land upon which it is located came under the protection of 19.8.2.201 NMAC, and the person making the VER request has a legal right to use the road for surface coal mining operations;

(2) A properly recorded right of way or easement for a road in that location existed when the land came under the protection of 19.8.2.201 NMAC, and, under the document creating the right of way or easement, and under any subsequent conveyances, the person making the VER request has a legal right to use or construct a road across that right of way or easement to conduct surface coal mining operations; or

(3) A **valid** permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of 19.8.2.201 NMAC.

[19.8.35.9 NMAC - N, 1-15-2002]

19.8.35.10 Initial Review of a VER Request

A. The Director must conduct an initial review to determine whether a VER request includes all applicable components of the submission requirements of 19.8.35.9 NMAC. This review pertains only to the completeness of the request, not the legal or technical adequacy of the materials submitted.

B. If a request does not include all applicable components of the submission requirements of 19.8.35.9 NMAC, the Director must notify the applicant and establish a reasonable time for submission of the missing information.

C. When a request includes all applicable components of the submission requirements of 19.8.35.9 NMAC, the Director must implement the notice and comment requirements of 19.8.35.11 NMAC.

D. If the person making the VER does not provide information that the Director requests under 19.8.35.10.B NMAC within the time specified or as subsequently extended, the Director must issue a determination that the requester has not demonstrated **valid existing rights**, as provided in 19.8.35.12.D NMAC.

[19.8.35.10 NMAC - N, 1-15-2002]

19.8.35.11 Notice and Comment Requirements and Procedures VER Request

A. When the person making the VER request satisfies the completeness requirements of 19.8.35.10 NMAC, the person requesting the VER must publish a notice for two consecutive weeks in a newspaper of general circulation in the county in which the land is located. An affidavit of publication will be provided to the Director after the notice has been published. Each notice must include:

(1) The location of the land to which the request pertains.

(2) A description of the type of surface coal mining operations planned.

(3) A reference to and brief description of the applicable standard(s) under the definition of **valid existing rights** in 19.8.2.102 NMAC.

(a) If the request relies upon the good faith/all permits standard or the needed for and adjacent standard in 19.8.35.7.A(2) NMAC, the notice also must include a description of the property **rights**

that the person making the VER claims and the basis for the claim.

(b) If a request relies upon the standard in 19.8.35.7.D(1), the notice also must include a description of the basis by which the person making the VER request claims that the road existed when the land came under the protection of 19.8.2.201 NMAC. In addition, the notice must include a description of the basis of the claim by which the person making the VER request has a legal right to use that road for surface coal mining operations.

(c) If a request relies upon the standard in 19.8.35.7.D(2) NMAC, the notice also must include a description of the basis for the claim that a properly recorded right of way or easement for a road in that location existed when the land came under the protection of 19.8.2.201 NMAC. In addition, the notice must include a description of the basis for the claim that, under the document creating the right of way or easement, and under any subsequent conveyances, the person making the VER request has a legal right to use or construct a road across the right of way or easement to conduct surface coal mining operations.

(4) If a request relies upon one or more of the standards in 19.8.35.7.A(2) NMAC, 19.8.35.7.D(1) NMAC and 19.8.35.7.D(2) NMAC, a statement that the Director will not make a decision on the merits of a request if, by the close of the comment period under this notice or the notice required by 19.8.35.12.C NMAC, a person with a legal interest in the land initiates appropriate legal action in the proper venue to resolve any differences concerning the validity or interpretation of the deed, lease, easement, or other documents that form the basis of a claim.

(5) A description of the procedures that the Director will follow in processing a request.

(6) The closing date of the comment period, which must be a minimum of 30 days after the publication date of the notice.

(7) A statement that interested persons may obtain a 30-day extension of the comment period upon request.

(8) The name and address of the Director's office where a copy of the request is available for public inspection and to which comments and requests for extension of the comment period should be sent.

B. The Director must promptly provide a copy of the notice required under 19.8.35.11.A NMAC to:

(1) All reasonably locatable owners of surface and mineral estates in the land included in a request.

(2) The owner of the feature

causing the land to come under the protection of 19.8.2.201 NMAC, and, when applicable, the agency with primary jurisdiction over the feature with respect to the values causing the land to come under the protection of 19.8.2.201 NMAC. For example, both the landowner and the State Historic Preservation Officer must be notified if surface coal mining operations would adversely impact any site listed on the National Register of Historic Places. As another example, both the surface owner and the National Park Service must be notified if the request includes non-Federal lands within the authorized boundaries of a unit of the National Park System.

C. The letter transmitting the notice required under 19.8.35.11.B NMAC must provide a 30-day comment period, starting from the date of service of the letter, and specify that another 30 days are available upon request. The Director may grant additional time for good cause upon request. The Director need not consider comments received after the closing date of the comment period.

[19.8.35.11 NMAC - N, 1-15-2002]

19.8.35.12 How a Decision on a VER Request Will be Made.

A. The Director must review the materials submitted under 19.8.35.8 NMAC, comments received under 19.8.35.11 NMAC, and any other relevant, reasonably available information to determine whether the record is sufficiently complete and adequate to support a decision on the merits of the request. If not, the Director must notify the requester in writing, explaining the inadequacy of the record and requesting submittal, within a specified reasonable time, of any additional information that the Director deems necessary to remedy the inadequacy.

B. Once the record is complete and adequate, the Director must determine whether the requester has demonstrated valid existing rights. The decision document must explain how the requester has satisfied or has not satisfied all applicable elements of the definition of valid existing rights in 19.8.35.7 NMAC. It must contain findings of fact and conclusions, and it must specify the reasons for the conclusions.

C. Impact of property rights disagreements. This paragraph applies only when a request relies upon one or more of the standards in 19.8.35.7.A(2) NMAC, 19.8.35.7.D(1) NMAC and 19.8.35.7.D(2) NMAC.

(1) The Director must issue a determination that the requester has not demonstrated valid existing rights if the requester's property rights claims are the subject of pending litigation in a court or

administrative body with jurisdiction over the property rights in question. The Director will make this determination without prejudice, meaning that the requester may resubmit the request once the property rights dispute is finally adjudicated. This paragraph applies only to situations in which legal action has been initiated as of the closing date of the comment period under 19.8.35.11.A NMAC or 19.8.35.11.B NMAC.

(2) If the record indicates disagreement as to the accuracy of the requester's property rights claims, but this disagreement is not the subject of pending litigation in a court or administrative agency of competent jurisdiction, the agency must evaluate the merits of the information in the record and determine whether the requester has demonstrated that the requisite property rights exist under 19.8.35.7.A(1) NMAC, 19.8.35.7.D(1) NMAC or 19.8.35.7.D(2) NMAC of the definition of valid existing rights as appropriate. The Director must then proceed with the decision process under 19.8.35.12 NMAC.

D. The Director must issue a determination that the requester has not demonstrated valid existing rights if the requester does not submit information that the Director requests under 19.8.35.10.B NMAC or 19.8.35.12.A NMAC within the time specified or as subsequently extended. The Director will make this determination without prejudice, meaning that the requester may file a revised request at any time.

E. After making a determination, the Director must:

(1) Provide a copy of the determination, together with an explanation of appeal rights and procedures, to the requester, to the owner or owners of the land to which the determination applies, to the owner of the feature causing the land to come under the protection of 19.8.2.201 NMAC, and, when applicable, to the Director with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of 19.8.2.201 NMAC.

(2) The Director will publish a notice of the determination in a newspaper of general circulation in the county in which the land is located. OSM will publish the determination, together with an explanation of appeal rights and procedures, in the Federal Register if the determination includes Federal lands within an area listed in 19.8.2.201 NMAC.

[19.8.35.12 NMAC - N, 1-15-2002]

19.8.35.13 Administrative and Judicial Review of a VER Determination
A determination that the requester has or

does not have valid existing rights is subject to administrative and judicial review under 19.8.12.1200 NMAC, 19.8.12.1201 NMAC and 19.8.12.1202 NMAC.
[19.8.35.13 NMAC - N, 1-15-2002]

19.8.35.14 Availability of Records for VER Requests and Determinations

The Director must make a copy of the VER request available to the public under 19.8.11.1100.D NMAC. In addition, the Director must make records associated with the VER request, and any subsequent determination under paragraph 19.8.35.12 NMAC, available to the public in accordance with the requirements and procedures of New Mexico Inspection of Public Records Act NMSA 1978 14-2 et seq.
[19.8.35.14 NMAC - N, 1-15-2002]

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

MINING AND MINERALS DIVISION

Explanatory paragraph:

The purpose of these changes are to ensure that the State Coal Surface Mining Commission rules are no less effective than the Office of Surface Mining, U.S. Department of the Interior, permanent program regulations (30 CFR) by amending the language at 19.8.1.6 NMAC, 19.8.1.7 NMAC, 19.8.1.108 NMAC, 19.8.1.109 NMAC, 19.8.1.110 NMAC and 19.8.1.111 NMAC.

19.8.1.6 Objective: ~~[The objective of parts 1 - 36 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).]~~ The objective of parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.
[11-29-97; 19.8.1.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.1.7 Definitions

A. Definitions beginning with the letter "A"

(1) ACCELERATED EROSION - means washing away or blowing away of overburden, spoil, soil or topdressing material in excess of normal erosion resulting from changes in the vegetative

cover or ground conditions.

(2) ACID DRAINAGE - means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from an active, inactive or abandoned surface coal mining and reclamation operations or from an area affected by surface coal mining and reclamation operations.

(3) ACID FORMING MATERIALS - means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

(4) ACID-TEST RATIO - means the relation of quick assets to current liabilities.

(5) ACT - is the State of New Mexico Surface Mining Act (Sections 69-25A-1 et. seq. NMSA 1978)

(6) ADJACENT AREA - means land located outside the affected area, permit area, or mine plan area, depending on the context in which adjacent area is used where air, surface or ground water, fish, wildlife, vegetation or other resources protected by the Act may be adversely impacted by surface coal mining and reclamation operations.

(7) AFFECTED AREA - means, with respect to surface coal mining activities, any land or water upon or in which those activities are conducted or located. With respect to underground coal mining activities, affected area means:

(a) any water or surface land upon or in which those activities are conducted or located; and

(b) land or water which is located above underground mine workings.

(8) AGRICULTURAL ACTIVITIES - means with respect to alluvial valley floors, the use of any tract of land for the production of animal or vegetable life, where the use is enhanced or facilitated by subirrigation or flood irrigation associated with alluvial valley floors. These uses include, but are not limited to, the pasturing, grazing, or watering of livestock, and the cropping, cultivation, or harvesting of plants whose production is aided by the availability of water from subirrigation or flood irrigation. These uses do not include agricultural practices which do not benefit from the availability of water from subirrigation or flood irrigation.

(9) AGRICULTURAL USE - means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation and harvesting of plants.

(10) ALLUVIAL VALLEY FLOORS - means the unconsolidated

stream-laid deposits holding streams with water availability sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits formed by unconcentrated runoff or slope wash, together with talus, or other mass movement accumulations, and windblown deposits. Ephemeral or dry streams incapable of supporting agricultural activities by natural means, and without artificial means, are not alluvial valley floors.

(11) ANTHRACITE - means coal classified as anthracite in ASTM Standard D 388-77. Coal classifications are published by the American Society of Testing and Materials under the title, Standard Specification for Classification of Coals by Rank, ASTM D 388-77, on pages 220 through 224. Table 1 which classifies the coals by rank is presented on page 223. ~~This publication is hereby incorporated by reference as it exists on the date of adoption of 19.8 NMAC Parts 1-34.] This publication is hereby incorporated by reference as it exists on the date of adoption of 19.8 NMAC Parts 1-35.~~

(12) APPLICANT - ~~[means any person seeking a permit from the Director to conduct surface coal mining and reclamation operations or coal exploration pursuant to the Act and 19.8 NMAC Parts 1-34.]~~ means any person seeking a permit from the Director to conduct surface coal mining and reclamation operations or coal exploration pursuant to the Act and 19.8 NMAC Parts 1-35.

(13) APPLICATION - ~~[means the documents and other information filed with the Director under the Act and 19.8 NMAC Parts 1-34 for the issuance of exploration approval or a permit as the context requires.]~~ means the documents and other information filed with the Director under the Act and 19.8 NMAC Parts 1-35 for the issuance of exploration approval or a permit as the context requires.

(14) APPLICANT/VIOLATOR SYSTEM or AVS - means the computer system maintained by OSM to identify ownership or control links involving permit applicants, permittees, and persons cited in violation notices.

(15) APPROXIMATE ORIGINAL CONTOUR - means the surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain with all spoil piles and refuse piles eliminated. Highwalls will also be elimi-

nated except as provided for in 19.8.20.2055.A(2) NMAC. Permanent water impoundments may be permitted where the Director has determined that they comply with 19.8.20.2017, 2024, and 2075 NMAC.

(16) **AQUIFER** - means a zone, stratum or group of strata that can store and transmit water in sufficient quantities for a specific use.

(17) **ARID AND SEMIARID AREA** - includes, in the context of alluvial valley floors, all coal fields in the State.

(18) **ASPECTION** - means the variability of blooming, fruiting, foliation and defoliation of vegetation during the various seasons of the year.

(19) **AUGER MINING** - means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface.

(20) **AUGMENTED SEEDING** - means seeding in excess of the normal husbandry practices approved in the Director's *Coal Mine Reclamation Program Vegetation Standards*, or reseeding with fertilization or irrigation, or reseeding in response to unsuccessful revegetation in terms of adequate germination or establishment or permanence.

B. Definitions beginning with the letter "B"

(1) **BASAL AREA** - means that portion of the sampling unit covered by the crosssectional area of the individual plants taken at or near the ground surface for the herb and shrub strata and at "breast height" (1.3 m; 4.5 ft.) for tree species.

(2) **BEST TECHNOLOGY CURRENTLY AVAILABLE** - means equipment, devices, systems, methods or techniques which will:

(a) prevent to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable State or Federal laws; and

(b) minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of these resources where practicable. The term includes equipment, devices, systems, methods or techniques which are currently available anywhere as determined by the Director, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedi-

mentation ponds in accordance with 19.8.20 NMAC. ~~[Within the constraints of the permanent program, the Director shall have the discretion to determine the best technology currently available on a case-by-case basis as authorized by the Act and 19.8 NMAC Parts 1-34.]~~ Within the constraints of the permanent program, the Director shall have the discretion to determine the best technology currently available on a case-by-case basis as authorized by the Act and 19.8 NMAC Parts 1-35.

(3) **BLASTER** - means a person directly responsible for the use of explosives in surface coal mining operations who is certified pursuant to these regulations.

C. Definitions beginning with the letter "C"

(1) **CEMETERY** - means a place dedicated to, used and maintained for the interment of the human dead.

(2) **COAL** - means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77, referred to and incorporated by reference in the definition of Anthracite.

(3) **COAL EXPLORATION** - means the field gathering of:

(a) surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) ~~[environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of the Act and 19.8 NMAC Parts 1-34.]~~ environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of the Act and 19.8 NMAC Parts 1-35.

(4) **COAL MINING OPERATION** - means the business of developing, producing, preparing or loading bituminous coal, subbituminous coal, anthracite, or lignite, or of reclaiming the areas upon which such activities occur.

(5) **COAL PREPARATION PLANT** - means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, or other processing or preparation. It includes facilities associated with coal preparation activities, including, but not limited to the following: loading facilities; storage and stockpile facilities; sheds; shops, and other buildings; water-treatment and water-storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

(6) **COAL PROCESSING**

PLANT - means (a) a collection of facilities where run-of-the-mine coal is subjected to chemical or physical processing and separated from its impurities. The processing plant may consist of, but need not be limited to, the following facilities: loading facilities; storage and stockpile facilities; sheds, shops and other buildings; water treatment and water storage facilities; settling basins and impoundments; coal processing and other waste disposal areas; roads, railroads and other transport facilities; or (b) underground development waste.

(7) **COAL PROCESSING WASTE** - means (a) earth materials which are combustible, physically unstable, or acid-forming or toxic-forming, which are wasted or otherwise separated from product coal, and slurried or otherwise transported from coal preparation plants, after physical or chemical processing, cleaning, or concentrating of coal, (b) underground development waste.

(8) **COAL PROCESSING WASTE BANK** - means a surface deposit of coal processing waste that does not impound water, slurry or other liquid or semi-liquid material.

(9) **COLLATERAL BOND** - means an indemnity agreement in a sum certain executed by the permittee as principal which is supported by the deposit with the State of New Mexico of one or more of the following:

(a) a cash account, which shall be the deposit of cash in one or more federally-insured or equivalently protected accounts, payable only to the State of New Mexico upon demand, or the deposit of cash directly with the Director;

(b) negotiable bonds of the United States, a State, or a municipality, endorsed to the order of the State of New Mexico, and placed in the possession of, the Director;

(c) negotiable certificates of deposit, made payable or assigned to the State of New Mexico and placed in its possession or held by a federally-insured bank;

(d) an irrevocable letter of credit of any bank organized or authorized to transact business in the United States, payable only to the State of New Mexico upon presentation;

(e) a perfected, first-lien security interest in real property in favor of the State of New Mexico only; or

(f) other investment-grade rated securities having a rating of AAA, AA, or A or an equivalent rating issued by a nationally recognized securities rating service, endorsed to the order of the State of New Mexico, and placed in the possession of, the Director.

(10) COMBUSTIBLE MATERIAL - means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

(11) COMMUNITY OR INSTITUTIONAL BUILDING - means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental-health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

(12) COMPACTION - means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled placement and mechanical effect such as from repeated application of wheel, track, or roller loads from heavy equipment.

(13) COMPLETE APPLICATION - ~~[means an application for exploration approval or a surface coal mining and reclamation permit, which contains all information required under the Act and 19.8 NMAC Parts 1-34.]~~ means an application for exploration approval or a surface coal mining and reclamation permit, which contains all information required under the Act and 19.8 NMAC Parts 1-35.

(14) CONSTANCY - means the percentage of sampling areas of the same vegetative type in which an individual species occurs.

(15) CROPLAND - means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included for purposes of these land use categories.

(16) CUMULATIVE IMPACT AREA - means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and ground-water systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

- (a) the proposed operation;
- (b) all existing operations;
- (c) any operation for which a permit application has been submitted to the Director; and
- (d) all operations required to

meet diligent development requirements for leased Federal coal for which there is actual mine development information available.

(17) CURRENT ASSETS - means cash or other assets or resources which are reasonably expected to be converted to cash or sold or consumed within one year or within the normal operating cycle of the business.

(18) CURRENT LIABILITIES - means obligations which are reasonably expected to be paid or liquidated within one year or within the normal operating cycle of the business.

D. Definitions beginning with the letter "D"

(1) DENSITY - means the number of individuals of a species per unit area.

(2) DEVELOPED WATER RESOURCES - is meant to include land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(3) DIRECT FINANCIAL INTEREST - means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings and also any other arrangements where the employee may benefit from his or her holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property and other financial relationships.

(4) DIRECTOR - means the Director of Mining and Minerals Division, or his authorized representative.

(5) DISTURBED AREA - means any area where vegetation, topsoil, or overburden is removed or upon which topdressing, spoil, coal processing waste, underground development waste, or non-coal waste is placed by surface coal mining operations. Those areas are classified as disturbed until reclamation is complete and the performance bond or other assurance of performance required by 19.8.14 NMAC is released.

(6) DIVERSION - means a channel, embankment, or other manmade structure constructed to divert water from one area to another.

(7) DOWNSLOPE - means the land surface between the projected outcrop of the lowest coal bed being mined along each highwall and a valley floor.

(8) DRAINAGE GRADE CROSSING - means the point at which a road crosses a drainage channel at the elevation of the base of that channel.

(9) DRINKING, DOMESTIC OR RESIDENTIAL WATER SUPPLY - means water received from a well or spring and any appurtenant delivery system that

provides water for direct human consumption or household use. Wells and springs that serve only agricultural, commercial or industrial enterprises are not included except to the extent the water supply is for direct human consumption or human sanitation, or domestic use.

E. Definitions beginning with the letter "E"

(1) EMBANKMENT - means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

(2) EMPLOYEE - means:

- (a) any person employed by the Director who performs any function or duty under the Act; and

- (b) advisory board or commission members and consultants who perform any function or duty under the Act, if they perform decision-making functions under the authority of State law or regulations. However, members of advisory boards or commissions established in accordance with State law or regulations to represent multiple interests are not considered to be employees.

(3) EPHEMERAL STREAM - means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

(4) ESSENTIAL HYDROLOGIC FUNCTIONS - means the role of an alluvial valley floor in collecting, storing, regulating, and making the natural flow of surface or ground water, or both, usefully available for agricultural activities by reason of the valley floor's topographic position, the landscape and the physical properties of its underlying materials. A combination of these functions provides a water supply during extended periods of low precipitation. The role of the alluvial valley floor in making water usefully available for agricultural activities results from:

- (a) the existence of flood plains and terraces where surface and ground water can be provided in sufficient quantities to support the growth of agriculturally useful plants;

- (b) the presence of earth materials suitable for the growth of agriculturally useful plants;

- (c) the temporal and physical distribution of water making it accessible to plants throughout the critical phases of the growth cycle either by flood irrigation or by subirrigation;

- (d) the natural control of alluvial valley floors in limiting destructive

extremes of stream discharge; and

(e) the erosional stability of earth materials suitable for the growth of agriculturally useful plants.

(5) **EXCESS SPOIL** - means spoil material disposed of in a location other than the mined-out area; provided that spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain in accordance with 19.8.20.2055.A(5) NMAC in non-steep slope areas shall not be considered excess spoil.

(6) **EXISTING STRUCTURE** - means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction begins prior to the approval of a State program.

(7) **EXPERIMENTAL PRACTICE** - means the use of alternative surface coal mining and reclamation operation practices for experimental or research purposes. ~~[Experimental practices need not comply with specific environmental protection performance standards of 19.8.20 NMAC, the Act, and 19.8 NMAC Parts 1-34.] Experimental practices need not comply with specific environmental protection performance standards of 19.8.20 NMAC, the Act, and 19.8 NMAC Parts 1-35.~~

(8) **EXTRACTION OF COAL AS INCIDENTAL PART** - means the extraction of coal which is necessary to enable the construction to be accomplished. ~~[For purposes of 19.8 NMAC Parts 1-34, only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of the Act and 19.8 NMAC Parts 1-34.] For purposes of 19.8 NMAC Parts 1-35, only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of the Act and 19.8 NMAC Parts 1-35.~~

F. Definitions beginning with the letter "F"

(1) **FEDERAL LANDS** - means any land, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages

the lands. It does not include Indian lands.

(2) **FEDERAL LANDS PROGRAM** - means a program established by the Secretary of the U.S. Department of Interior, pursuant to Section 523 of the Surface Mining Control and Reclamation Act of 1977 to regulate surface coal mining and reclamation operations on Federal lands.

(3) **FEDERAL VIOLATION NOTICE** - means a violation notice issued by OSM or by another agency or instrumentality of the United States.

(4) **FISH AND WILDLIFE HABITAT** - means land dedicated wholly or partially to the production, protection or management of species of fish or wildlife.

(5) **FIXED ASSETS** - ~~[means plants and equipment, but does not include land or coal in place], means plants, facilities and equipment, not used for the production, transportation or processing of coal, and does not include land or coal in place.~~

(6) **FLOOD IRRIGATION** - means, with respect to alluvial valley floors, supplying water to plants by natural overflow or the diversion of flows, so that the irrigated surface is largely covered by a sheet of water.

(7) **FOLIAGE COVER** - means that portion of the sampling unit covered by the vertical projection of an individual plant's aerial parts.

(8) **FORESTRY** - means land used or managed for the long-term production of wood, wood fiber, or wood derived products. Land used for facilities in support of forest, harvest and management operations which is adjacent to or an integral part of these operations is also included. ~~[For purposes of 19.8 NMAC Parts 1-34, Pinon-Juniper type trees shall not be deemed forest trees managed for such long term production.] For purposes of 19.8 NMAC Parts 1-35, Pinon-Juniper type trees shall not be deemed forest trees managed for such long term production.~~

(9) **FRAGILE LANDS** - means unique or valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants and uncommon geologic formations. National Natural Landmark sites, areas where mining may cause flooding, areas containing a concentration of unique ecological and aesthetic features, areas of recreational value due to high environmental quality, and buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under Section 69-25A-26 NMSA 1978 of the Act and 19.8.2, 3, and 4 NMAC, that could be damaged or destroyed by surface coal mining operations.

(10) **FREQUENCY** - means the percentage of plots or subplots occupied

by each individual species in one sampling unit or area.

(11) **FUGITIVE DUST** - means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both. During surface coal mining and reclamation operations it may include emissions from haul roads, wind erosion of exposed surfaces, storage piles, and spoil piles, reclamation operations and other activities in which material is either removed, stored, transported, or redistributed.

G. Definitions beginning with the letter "G"

(1) **GOVERNMENT FINANCED CONSTRUCTION** - means construction funded 50 percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments.

(2) **GRAZING LAND** - includes both grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing or occasional hay production. Land used for facilities in support of ranching operations which are adjacent to or an integral part of these operations is also included.

(3) **GROUND COVER** - means either foliage or basal area cover of living plant material.

(4) **GROUND WATER** - means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

H. Definitions beginning with the letter "H"

(1) **HALF-SHRUB** - means a perennial plant with a woody base whose annually produced stems die back each year.

(2) **HEAD-OF-HOLLOW FILL** - means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow measured at the steepest point are greater than 20 degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than 10 degrees. In fills with less than 250,000 cubic yards of material, associated with contour mining, the top surface of the fill will be at the elevation of the coal seam. In all other head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line,

and no significant area of natural drainage occurs above the fill draining into the fill area.

(3) **HIGHWALL** - means the face of exposed overburden and coal in an open cut of a surface coal mining activity or for entry to underground mining activities.

(4) **HISTORIC LANDS** - means historic or cultural districts, places, structures or objects, including archaeological and Natural Historic Landmark sites, sites listed on or eligible for listing on a State or National Register of Historic Places, or sites for which historic designation is pending.

(5) **HISTORICALLY USED FOR CROPLAND** - means:

(a) lands that have been used for cropland for any 5 years or more out of the 10 years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease or option the conduct of surface coal mining and reclamation operations;

(b) lands that the Director determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific 5-years-in-10 criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or

(c) lands that would likely have been used as cropland for any 5 out of the last 10 years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

(6) **HYDROLOGIC BALANCE** - means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

(7) **HYDROLOGIC REGIME** - means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

I. Definitions beginning with the letter "I"

(1) **IMMINENT DANGER TO THE HEALTH AND SAFETY OF**

THE PUBLIC - ~~[means the existence of any condition or practice, or any violation of a permit, 19.8 NMAC Parts 1-34 or other requirements of the Act in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated.]~~ means the existence of any condition or practice, or any violation of a permit, 19.8 NMAC Parts 1-35 or other requirements of the Act in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

(2) **IMPOUNDMENT** - means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water or sediment.

(3) **INDIGENOUS** - means an organism that is native, not introduced, or immigrates under its own power into an area.

(4) **INDIRECT FINANCIAL INTEREST** - means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests including interests held by his or her spouse, minor child and other relatives, including in-laws residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, minor children or other resident relatives hold a financial interest.

(5) **INDUSTRIAL/COMMERCIAL** - means land used for:

(a) extraction or transformation of materials for fabrication or products, wholesaling of products or for long-term storage of products. This includes all heavy and light manufacturing facilities such as lumber and wood processing, chemical manufacturing, petroleum refining and fabricated metal products manufacture. Land used for facilities in support of these operations which is adjacent to or an integral part of that operation is also included. Support facilities include, but are not limited to, all rail, road, and other transportation facilities.

(b) retail or trade of goods or services, including hotels, motels, stores, restaurants and other commercial establishments. Land used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also

included. Support facilities include, but are not limited to, parking, storage or shipping facilities.

(6) **IN SITU PROCESSES** - means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining and fluid recovery mining.

(7) **INTERMITTENT STREAM** - means a stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

(8) **INTERSEEDING** - means a secondary seeding practice into established vegetation cover in order to take advantage of climatic conditions that favor species requiring special conditions for germination and establishment, or to improve or alter the composition between forage species and shrubs, or between warm and cool season grasses.

(9) **IRREPARABLE DAMAGE TO THE ENVIRONMENT** - means any damage to the environment that cannot be corrected by actions of the applicant.

L. Definitions beginning with the letter "L"

(1) **LAND USE** - means specific uses or management related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur. Changes of land use or uses from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by the Director. ~~[Land use categories identified in 19.8 NMAC Parts 1-34 are:]~~ Land use categories identified in 19.8 NMAC Parts 1-35 are:

(a) cropland
(b) pasture land or land occasionally cut for hay
(c) grazing land
(d) forestry
(e) residential
(f) industrial/commercial
(g) recreation
(h) fish and wildlife habitat
(i) developed water resources
(j) undeveloped land or no current use or land management

(2) **LIABILITIES** - means obligations to transfer assets or provide services to other entities in the future as a result of past transactions.

(3) **LITTER COVER** - means that portion of the sampling unit covered by dead parts of plants.

M. Definitions beginning

with the letter "M"

(1) **MATERIAL DAMAGE**, in the context of 19.8.9.918 and 19.8.20.2067, 2069 through 2072 NMAC, means:

(a) Any functional impairment of surface lands, features, structures or facilities;

(b) Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

(c) Any significant change in the condition, appearance or utility of any structure or facility from its pre-subsidence condition.

(2) **MATERIALLY DAMAGE THE QUANTITY OR QUALITY OF WATER** - means, with respect to alluvial valley floors, changes in the quality or quantity of the water supply to any portion of an alluvial valley floor where such changes are caused by surface coal mining and reclamation operations and result in changes that significantly and adversely affect the composition, diversity, or productivity of vegetation dependent on subirrigation, or which result in changes that would limit the adequacy of the water for flood irrigation of the irrigable land acreage existing prior to mining.

(3) **MINE PLAN AREA** - means the area of land and water within the boundaries of all permit areas during the entire life of the surface coal mining and reclamation operations as anticipated by the applicant at the time of submission of a permit application. ~~[Other terms defined in 19.8 NMAC Parts 1-34 which relate closely to mine plan area are:]~~ Other terms defined in 19.8 NMAC Parts 1-35 which relate closely to mine plan area are:

(a) permit area, which will always be within or the same as the mine plan area;

(b) affected area, which will always be within or the same as the permit area; and

(c) adjacent area, which may surround or extend beyond the affected area, permit area, or mine plan area.

(4) **MINING PLAN** - ~~[means a complete mining and reclamation operations plan that complies with the requirements of the Act, 19.8 NMAC Parts 1-34 and all other applicable laws and regulations.]~~ means a complete mining and reclamation operations plan that complies with the requirements of the Act, 19.8 NMAC Parts 1-35 and all other applicable laws and regulations.

(5) **MOIST BULK DENSITY** - means the weight of soil (oven dry) per unit volume. Volume is measured when the

soil is at field moisture capacity (1/3 bar moisture tension). Weight is determined after drying the soil at 105 degrees C.

(6) **MULCH** - means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for germination and growth.

N. Definitions beginning with the letter "N"

(1) **NATURAL HAZARD LANDS** - means geographic areas in which natural conditions exist which pose or, as a result of surface coal mining operations, may pose a threat to the health, safety or welfare of people, property or the environment.

(2) **NET WORTH** - means total assets minus total liabilities and is equivalent to owners' equity. For the purposes of 19.8.14.1410.A(3)(b) NMAC plants, facilities and equipment used for the production, transportation or processing of coal, and land or coal in place shall not be considered assets in a calculation of net worth.

(3) **NONCOMMERCIAL BUILDING** - means any building, other than an occupied residential dwelling, that, at the time the subsidence occurs, is used on a regular or temporary basis as a public building or community or institutional building as those terms are also defined in 19.8.1.7 NMAC. Any building used only for commercial agricultural, industrial, retail or other commercial enterprises are excluded.

(4) **NO SIGNIFICANT RECREATIONAL, TIMBER, ECONOMIC OR OTHER VALUES INCOMPATIBLE WITH SURFACE COAL MINING OPERATIONS** - means those significant values which could be damaged by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on off-site areas which could be affected by mining. Those values to be evaluated for their importance include:

(a) recreation, including hiking, boating, camping, skiing or other related outdoor activities;

(b) timber management and silviculture;

(c) agriculture, aquaculture or production of other natural, processed or manufactured products which enter commerce;

(d) scenic, historic, archaeological, aesthetic, fish, wildlife, plants or cultural interests.

(5) **NORMAL EROSION** - means the erosion that occurs on land under

natural environmental conditions not disturbed by human activity.

(6) **NOXIOUS PLANTS** - means species that have been included on the official State lists of noxious plants.

O. Definitions beginning with the letter "O"

(1) **OCCUPIED DWELLING** - means any building that is currently being used on a regular or temporary basis for human habitation.

(2) **OCCUPIED RESIDENTIAL DWELLING AND ASSOCIATED STRUCTURES** - means, for purposes of 19.8.9.918 and 19.8.20.2067, 2069 through 2072 NMAC, any building or other structure that, at the time the subsidence occurs, is used either temporarily, occasionally, seasonally, or permanently for human habitation. This term also includes any building, structure or facility installed on, above or below, or a combination thereof, the land surface if that building, structure or facility is adjunct to or used in connection with an occupied residential dwelling. Examples of such structures include, but are not limited to, garages; storage sheds and barns; greenhouses and related buildings; utilities and cables; fences and other enclosures; retaining walls; paved or improved patios, walks and driveways; septic sewage treatment facilities; and lot drainage and lawn and garden irrigation systems. Any structure used only for commercial agricultural, industrial, retail or other commercial purposes are excluded.

(3) **OPERATOR** - means any person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth or from coal refuse piles by mining within 12 consecutive calendar months in any one location.

(4) **OSM** - means Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior.

(5) **OTHER TREATMENT FACILITIES** - means any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point-source discharge and that are utilized to prevent additional contribution of suspended solids to streamflow or runoff outside the permit area, and to comply with all applicable State and Federal water-quality laws and regulations.

(6) **OUTSLOPE** - means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

(7) **OVERBURDEN** - means material of any nature, consolidated or unconsolidated that overlies a coal deposit, excluding topsoil.

(8) **OWNED OR CON-**

TROLLED AND OWNS OR CONTROLS - means any one or a combination of the relationships specified in 19.8.1.7.O(8)(a) and (b) NMAC:

- (a)
 - (i) being a permittee of a surface coal mining operation;
 - (ii) based on instruments of ownership or voting securities, owning of record in excess of 50 percent of an entity; or
 - (iii) having any other relationship which gives one person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations.

(b) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:

- (i) being an officer or director of an entity;
- (ii) being the operator of a surface coal mining operation;
- (iii) having the ability to commit the financial or real property assets or working resources of an entity;
- (iv) being a general partner in a partnership;
- (v) based on the instruments of ownership or the voting securities of a corporate entity, owning of record 10 through 50 percent of the entity; or
- (vi) owning or controlling coal to be mined by another person under a lease, sublease or other contract and having the right to receive such coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

(9) **OWNERSHIP or CONTROL LINK** - means any relationship included in the definition of "owned or controlled" or "owns or controls" in 19.8.1.7.O NMAC or in the violations review provisions of 19.8.11.1105.C NMAC. It includes any relationship presumed to constitute ownership or control under the definition of "owned or controlled" or "owns or controls" in this section, unless such presumption has been successfully rebutted under the provisions of 19.8.11.1117 and 1118 NMAC or under the provisions of 19.8.12 and 19.8.11.1118 NMAC.

P. Definitions beginning with the letter "P"

(1) **PARENT CORPORATION** - means a corporation which owns or

controls the applicant.

(2) **PASTURELAND OR LAND OCCASIONALLY CUT FOR HAY** - means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock of occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland or land occasionally cut for hay which is adjacent to or an integral part of these operations is also included.

(3) **PERENNIAL STREAM** - means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground water discharge or surface runoff. The term does not include intermittent stream or ephemeral stream.

(4) **PERFORMING ANY FUNCTION OR DUTY UNDER THIS ACT** - means those decisions or actions, which if performed or not performed by an employee, affect the programs under the Act.

(5) **PERMANENT DIVERSION** - means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the Director and other appropriate State and Federal agencies.

(6) **PERMIT** - means a permit to conduct surface coal mining and reclamation operations issued pursuant to Laws 1972, Chapter 68, as amended, or by the Director pursuant to the Act.

(7) **PERMIT AREA** - means the area of land and water within the boundaries of the permit which are designated on the permit application maps, as approved by the Director. This area shall include, at a minimum, all areas which are or will be affected by the surface coal mining and reclamation operations during the term of the permit. The permit area shall not include roads, not otherwise within the permit boundary, infrequently used to monitor remote facilities or environmental resources, or for exploration or surveying purposes, if the Director approves such use of such roads, after determining that such use will not result in a significant adverse affect upon the environment.

(8) **PERMITTEE** - ~~[means a person holding or required by the Act and 19.8 NMAC Parts 1-34 to hold a permit to conduct surface coal mining and reclamation operations issued by the Director pursuant to the Act and 19.8 NMAC Parts 1-34.]~~ means a person holding or required by the Act and 19.8 NMAC Parts 1-35 to hold a permit to conduct surface coal mining and reclamation operations issued by the Director pursuant to the Act and 19.8 NMAC Parts 1-35.

(9) **PERSON** - means an individual,

Indian tribe when conducting surface coal mining and reclamation operations on non-Indian lands, partnership, association, society, joint venture, joint stock company, firm, company, corporation, cooperative or other business organization and any agency, unit, or instrumentality of Federal, State or local government including any publicly owned utility or publicly owned corporation of Federal, State or local government.

(10) **PERSON HAVING AN INTEREST WHICH IS OR MAY BE ADVERSELY AFFECTED OR PERSON WITH A VALID LEGAL INTEREST** - shall include any person:

(a) who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the Secretary of the U.S. Department of Interior or the Director or,

(b) whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the Secretary of the U.S. Department of Interior or the Director.

(11) **PRECIPITATION EVENT** - means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. ~~As used in 19.8 NMAC Parts 1-34, a precipitation event also includes that quantity of water emanating from snow cover as snowmelt in a limited period of time.~~ As used in 19.8 NMAC Parts 1-35, a precipitation event also includes that quantity of water emanating from snow cover as snowmelt in a limited period of time.

(12) **PREVIOUSLY MINED AREA** - ~~[means land previously mined before the date of enactment of SMCRA, August 3, 1977, which has not been fully and satisfactorily reclaimed to the standards of the Act.]~~ means land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the performance standards of SMCRA, the Act, and the New Mexico regulatory program.

(13) **PRIME FARMLAND** - ~~[means those lands which are defined by the Secretary of the U.S. Department of Agriculture in 7 CFR 657 (Federal Register Vol. 4 No. 21) and which have historically been used for cropland as that phrase is defined in 19.8 NMAC Parts 1-34.]~~ means those lands which are defined by the Secretary of the U.S. Department of Agriculture in 7 CFR 657 (Federal Register Vol. 4 No. 21) and which have historically been used for cropland as that phrase is defined in 19.8 NMAC Parts 1-35.

(14) **PROHIBITED FINANCIAL INTEREST** - means any direct or

indirect financial interest in any coal mining operation.

(15) PROPERTY TO BE MINED - means both the surface and mineral estates on and underneath lands which are within the permit area.

(16) PUBLIC BUILDING - means any structure that is owned by a public agency or used principally for public business, meetings or other group gatherings.

(17) PUBLIC OFFICE - means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

(18) PUBLIC PARK - means an area dedicated or designated by any Federal, State, or local agency for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved or held open to the public because of that use.

(19) PUBLIC ROAD - means all roads and highways except private roads, established pursuant to any law of the United States or the State of New Mexico, and roads dedicated to the public use, that have not been vacated or abandoned, and such other roads as are recognized by the corporate authorities of any county in New Mexico.

Q. Definitions beginning with the letter "Q"

(1) QUALIFIED LABORATORY - means a designated public agency, private firm, institution, or analytical laboratory which can prepare the required determination of probable hydrologic consequences or statement of results of test borings or core sampling, or other services as specified at 19.8.32.3203 NMAC under the Small Operator Assistance Program and which meets the standards of 19.8.32.3204 NMAC.

R. Definitions beginning with the letter "R"

(1) RANGELAND - means land on which the natural potential (climax) plant cover is principally native grasses, forbs and shrubs valuable for forage. Except for brush control, management is primarily achieved by regulating the intensity of grazing and season of use.

(2) RECHARGE CAPACITY - means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

(3) RECLAMATION - means those actions taken to restore mined land as required by the Act and 19.8 NMAC Parts 1-34 to a postmining land use approved by the Director.

(4) RECREATION - means

land used for public or private leisure time use, including developed recreation facilities such as parks, camps and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(5) RECURRENCE INTERVAL - means the interval of time in which a precipitation event is expected to occur once, on the average. For example, the 10 year 24 hour precipitation event would be that 24 hour precipitation event expected to occur on the average once in 10 years.

(6) REFERENCE AREA - means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species composition that are produced naturally or by crop production methods approved by the Director. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

(7) REPLACEMENT OF WATER SUPPLY means, with respect to protected water supplies contaminated, diminished, or interrupted by coal mining operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies. Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner. If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

(8) RENEWABLE RESOURCE LANDS - means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.

(9) RESIDENTIAL - includes single and multiple family housing, mobile home parks and other residential lodgings. Land used for facilities in support of residential operations which is adjacent to or an integral part of these oper-

ations is also included. Support facilities include, but are not limited to, vehicle parking and open space that directly relate to the residential use.

(10) ROAD - means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches and surface. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or within the affected area or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

S. Definitions beginning with the letter "S"

(1) SAFETY FACTOR - means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

(2) SEDIMENTATION POND - means a primary sediment control structure designed, constructed and maintained in accordance with 19.8.20.2014 NMAC and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow sediment to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts and other measures that reduce overland flow velocity, reduce runoff volume or trap sediment, to the extent that such secondary sedimentation structures drain to a sedimentation pond.

(3) SELF-BOND - means an indemnity agreement in a sum certain executed by the applicant or by the applicant and any corporate guarantor and made payable to the State of New Mexico, with or without separate surety.

(4) SIGNIFICANT FOREST COVER - means an existing plant community consisting predominantly of trees and other woody vegetation. The Secretary of the U.S. Department of Agriculture shall decide on a case-by-case basis whether the forest cover is significant within national forests of New Mexico.

(5) SIGNIFICANT, IMMINENT ENVIRONMENTAL HARM TO LAND, AIR OR WATER RESOURCES - means:

(a) An environmental harm is

an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life.

(b) An environmental harm is imminent, if a condition, practice, or violation exists which:

(i) is causing harm; or,

(ii) may reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under Section 69-25A-25(B) NMSA 1978 of the Act.

(c) An environmental harm is significant if that harm is appreciable and not immediately repairable.

(6) **SLOPE** - means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g. 1v:5h). It may also be expressed as a percent or in degrees.

(7) **SMCRA** - means the Surface Mining Control and Reclamation Act of 1977, as amended, its implementing regulations at 30 CFR Chapter VII, and any State or Federal law, rule, regulation or program enacted or promulgated pursuant to it.

(8) **SOIL HORIZONS** - means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three major soil horizons are:

(a) "A" HORIZON - the uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant and leaching of soluble or suspended particles are typically the greatest.

(b) "B" HORIZON - the layer that typically is immediately beneath the "A" horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the "A" or "C" horizons.

(c) "C" HORIZON - the deepest layer of a soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(9) **SOIL SURVEY** - means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey.

(10) **SPOIL** - means overburden that has been removed during surface coal mining operations, or underground development waste material.

(11) **STABILIZE** - means to control movement of soil, spoil piles, or

areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

(12) **STATE VIOLATION NOTICE** - ~~[means any written notification from the Director of a violation of the Act or 19.8 NMAC Parts 1-34, whether by letter, memorandum, legal or administrative pleading or other written communication, or by another agency or instrumentality of State government.]~~ means any written notification from the Director of a violation of the Act or 19.8 NMAC Parts 1-35, whether by letter, memorandum, legal or administrative pleading or other written communication, or by another agency or instrumentality of State government.

(13) **STEEP SLOPE** - means any slope with an average inclination of 20 degrees or more from the horizontal or such lesser slope as may be designated by the Director after consideration of soil, climate and other characteristics of a region within the State.

(14) **SUBIRRIGATION** - means with respect to alluvial valley floors, the supplying of water to plants from underneath or from a semi-saturated or saturated subsurface zone where water is available for use by vegetation. Subirrigation may be identified by:

(a) diurnal fluctuation of the water table, due to the differences in nighttime and daytime evapotranspiration rates;

(b) increasing soil moisture from a portion of the root zone down to the saturated zone, due to capillary action;

(c) mottling of the soils due to iron in the root zone;

(d) existence of an important part of the root zone within the capillary fringe or water table of an alluvial aquifer; or

(e) increase in stream flow or a rise in ground water levels, shortly after the first killing frost on the valley floor.

(15) **SUBSTANTIAL LEGAL AND FINANCIAL COMMITMENTS IN A SURFACE COAL MINING OPERATION** - means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities and capital-intensive activities.

(16) **SUBSTANTIALLY DISTURB** - means for purposes of coal exploration, to impact significantly upon land, air or water resources by such activities as blasting, mechanical excavation, drilling or altering coal or water exploratory holes or wells, construction of roads and other access routes, and the placement of structures, excavated earth, or other debris on the

surface of land.

(17) **SUCCESSOR IN INTEREST** - means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

(18) **SUITABLE MATERIAL** - means subsoil or geologic material that can be manipulated to form a sufficient amount of soil size particles with the nutrient capability for supporting desirable vegetation in compliance with the postmining land use.

(19) **SURETY BOND** - means an indemnity agreement in a sum certain payable to the State of New Mexico, executed by the permittee as principal and which is supported by the performance guarantee of a corporation licensed to do business as a surety in the State.

(20) **SURFACE COAL MINING OPERATIONS** - means:

(a) activities conducted on the surface lands in connection with a surface coal mine or, subject to the requirements of Section 69-25A-20 NMSA 1978 of the Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site, provided, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16 2/3 per centum of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to Section 69-25A-16 NMSA 1978 of the Act; and provided, further, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and

(b) areas upon which the activities described in 19.8.1.7.S(20)(a) NMAC occur or where those activities disturb the natural land surface. These areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas,

storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incident to those activities.

(21) SURFACE COAL MINING AND RECLAMATION OPERATIONS WHICH EXIST ON THE DATE OF ENACTMENT - means all surface coal mining and reclamation operations which were being conducted on August 3, 1977.

(22) SURFACE COAL MINING AND RECLAMATION OPERATIONS - means surface coal mining operations and all activities necessary or incidental to the reclamation of such operations. This term includes the term surface coal mining operations.

(23) SURFACE MINING ACTIVITIES - means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam, before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location.

(24) SURFACE OPERATIONS AND IMPACTS INCIDENT TO AN UNDERGROUND COAL MINE - means all activities involved in or related to underground coal mining which are either conducted on the surface of the land, produce changes in the land surface or disturb the surface, air or water resources of the area, including all activities listed in Section 69-25A-3(P) NMSA 1978 of the Act and the definition of surface coal mining operations appearing in 19.8.1.7 NMAC.

(25) SUSPENDED SOLIDS OR NONFILTERABLE RESIDUE, EXPRESSED AS MILLIGRAMS PER LITER - means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analysis (40 CFR 136).

T. Definitions beginning with the letter "T"

(1) TANGIBLE NET WORTH - means net worth minus intangibles such as goodwill and rights to patents or royalties.

(2) TEMPORARY DIVERSION - means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the Director to remain after reclamation as part of the approved postmining land use.

(3) TON - means 2000 pounds avoirdupois (.90718 metric tons).

(4) TOPDRESSING - means

topsoil or other suitable material that has the capability of sustaining desirable vegetation for the approved postmining land use.

(5) TOPSOIL - means the "A" soil horizon layer of the three major soil horizons or other surface soil material of suitable texture and pH, and lacking concentrations of elements toxic to plants.

(6) TOXIC-FORMING MATERIALS - means earth materials or wastes which if acted upon by air, water, weathering or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

(7) TOXIC MINE DRAINAGE - means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(8) TRANSFER, ASSIGNMENT, OR SALE OF RIGHTS - means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the Director.

U. Definitions beginning with the letter "U"

(1) UNCONSOLIDATED STREAMLAID DEPOSITS HOLDING STREAMS - means, with respect to alluvial valley floors, all flood plains and terraces located in the lower portions of topographic valleys which contain perennial or other streams with channels that are greater than 3 feet in bankfull width and greater than 0.5 feet in bankfull depth.

(2) UNDERGROUND DEVELOPMENT WASTE - means waste rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved and disposed of during development and preparation of areas incident to underground mining activities.

(3) UNDERGROUND MINING ACTIVITIES - means a combination of:

(a) surface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance and reclamation of roads, above ground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste and areas on which materials incident to underground mining operations are placed; and

(b) underground operations such as underground construction, opera-

tion and reclamation of shafts, adits, underground support facilities, in situ processing and underground mining, hauling, storage, and blasting.

(4) UNDEVELOPED LAND OR NO CURRENT USE OR LAND MANAGEMENT - means land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

(5) UNDEVELOPED RANGELAND - means, for purposes of alluvial valley floors, lands where the use is not specifically controlled and managed.

(6) UPLAND AREAS - means with respect to alluvial valley floors, those geomorphic features located outside the floodplain and terrace complex, such as isolated higher terraces, alluvial fans, pediment surfaces, landslide deposits and surfaces covered with residuum, mud flows or debris flows, as well as highland areas underlain by bedrock and covered by residual weathered material or debris deposited by sheetwash, rillwash, or windblown material.

V. Definitions beginning with the letter "V"

(1) VALLEY FILL - means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than 20 degrees or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than 10 degrees.

(2) VIOLATION NOTICE - means any written notification from a governmental entity, whether by letter, memorandum, judicial or administrative pleading, or other written communication, of a violation of the Act, SMCRA, a State program, or any Federal law, rule, or regulation pertaining to air or water environmental protection in connection with a surface coal mining operation. It includes, but is not limited to, a notice of violation; an imminent harm cessation order; a failure-to-abate cessation order; a final order, bill, or demand letter pertaining to a delinquent civil penalty; a bill or demand letter pertaining to delinquent abandoned mine reclamation fees; and a notice of bond forfeiture, where one or more violations upon which the forfeiture was based have not been corrected.

(3) VOLUME WHEN USED IN REFERENCE TO TIMBER - means the board foot volume per square foot of basal area for each height class of commercial timber trees or volume per acre in cords for firewood producing trees.

W. Definitions beginning with the letter "W"

(1) **WATER TABLE** - means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

(2) **WILLFUL VIOLATION** - ~~[means an act of omission which violates the Act, 19.8 NMAC Parts 1-34 or any permit conditions, committed by a person who intends the result which actually occurs.]~~ means an act of omission which violates the Act, 19.8 NMAC Parts 1-35 or any permit conditions, committed by a person who intends the result which actually occurs.

(3) **WORKING CAPITAL** - means the excess of the operator's current assets over its current liabilities.

[11-29-97; A, 12-15-99; 19 NMAC 8.2.107 - Rn, 19 NMAC 8.2.1.107 & A, 9-29-2000; A, 1-15-2002]

19.8.1.108 Suspension of Rules or Regulations (None) ~~[Section 1-11 CSMC Rule 80-1, as adopted May 15, 1980, is hereby repealed, provided, however, that such repeal shall not be deemed to affect the authority of persons to engage in or carry out any surface coal mining operations if he has a permit under Laws 1972, Chapter 68, and such permit has not expired pursuant to the Act or 19.8 NMAC Parts 1-34, so long as he complies with the provisions of the Act, the permit and 19.8 NMAC Parts 1-34.]~~ Section 1-11 CSMC Rule 80-1, as adopted May 15, 1980, is hereby repealed, provided, however, that such repeal shall not be deemed to affect the authority of persons to engage in or carry out any surface coal mining operations if he has a permit under Laws 1972, Chapter 68, and such permit has not expired pursuant to the Act or 19.8 NMAC Parts 1-35, so long as he complies with the provisions of the Act, the permit and 19.8 NMAC Parts 1-35. [11-29-97; 19.8.1.108 NMAC - Rn, 19 NMAC 8.2.1.108 & A, 9-29-2000; A, 1-15-2002]

19.8.1.109 Restrictions of Employee Financial Interests

A. Responsibilities:

(1) ~~[Employees performing duties or functions under the Act and 19.8 NMAC Parts 1-34 shall]~~ Employees performing duties or functions under the Act and 19.8 NMAC Parts 1-35 shall:

(a) ~~[file a fully completed statement of employment and financial interest 120 days after 19.8 NMAC Parts 1-34 become effective or upon entrance to duty, and annually thereafter on September 1 of each year]~~ file a fully completed statement of employment and financial interest 120 days after 19.8 NMAC Parts 1-35 become effective or upon entrance to duty, and annually thereafter on September 1 of each year;

(b) have no direct or indirect

financial interest in coal mining operations; and

(c) comply with directions issued by persons responsible for approving each statement and comply with directives issued by those persons responsible for ordering remedial action.

(2) The Director shall:

(a) ~~[provide advice, assistance, and guidance to all State employees required to file statements pursuant to 19.8 NMAC Parts 1-34 and inform such employees of the name, address and telephone number of other persons whom they may contact for advice and counseling]~~ provide advice, assistance, and guidance to all State employees required to file statements pursuant to 19.8 NMAC Parts 1-35 and inform such employees of the name, address and telephone number of other persons whom they may contact for advice and counseling;

(b) promptly review the statement of the employee and financial interests and supplements, if any, filed by each employee, to determine if the employee has correctly identified those listed employment and financial interests which constitute a direct or indirect financial interest in surface coal mining and reclamation operations;

(c) resolve prohibited financial interest situations by ordering or initiating remedial action which will resolve the prohibited interest as required within 90 days, or by reporting the violations to the Director of the Office of Surface Mining;

(d) certify on each statement that review has been made, that prohibited financial interests, if any, has been resolved and that no other prohibited interests have been identified from the statement;

(e) submit to the Director of the Office of Surface Mining the initial listing and the subsequent annual listing or positions as required in 19.8.1.109.C NMAC; and

(f) furnish a blank statement 45 days in advance of the filing date established in 19.8.1.109.A(1)(a) NMAC to each employee required to file a statement.

B. Penalties:

(1) Any person who knowingly violates the provisions of Section 69-25A-32 NMSA 1978 of the Act, shall, upon conviction, be punished by a fine of not more than \$2,500, or by imprisonment of not more than one year, or both.

(2) ~~[Any employee who fails to file the required financial interest statement will be considered in violation of the Act and 19.8 NMAC Parts 1-34 and will be subject to removal from his or her position, if 90 days after an employee is notified by the Director to take remedial action, the employee is not in compliance with the requirements of the Act and 19.8 NMAC Parts 1-34.]~~ Any employee who fails to file

the required financial interest statement will be considered in violation of the Act and 19.8 NMAC Parts 1-35 and will be subject to removal from his or her position, if 90 days after an employee is notified by the Director to take remedial action, the employee is not in compliance with the requirements of the Act and 19.8 NMAC Parts 1-35.

C. Who shall file:

(1) Any employee who performs any function or duty under the Act is required to file a statement of employment and financial interests.

(2) ~~[The Director shall prepare and submit to the Director of the Office of Surface Mining an initial listing of positions that do not involve performance or any functions or duties under the Act within 60 days of the effective date of 19.8 NMAC Parts 1-34.]~~ The Director shall prepare and submit to the Director of the Office of Surface Mining an initial listing of positions that do not involve performance or any functions or duties under the Act within 60 days of the effective date of 19.8 NMAC Parts 1-35.

(3) The Director shall annually review and update this listing. For monitoring and reporting reasons, the listing must be submitted to the Director of the Office of Surface Mining and must contain a written justification for inclusions of the positions listed. Proposed revisions or a certification that revision is not required shall be submitted to the Director of the Office of Surface Mining by no later than January 1 of each year.

(4) ~~[The Director may revise the listing by the addition or deletion of positions at any time he determines such revisions are required to carry out the purpose of the Act or 19.8 NMAC Parts 1-34]~~ The Director may revise the listing by the addition or deletion of positions at any time he determines such revisions are required to carry out the purpose of the Act or 19.8 NMAC Parts 1-35.

D. Where to file:

(1) The Director shall file his statement with the Director of the Office of Surface Mining.

(2) All other employees shall file their statement with the Director.

E. What to report:

(1) Each employee shall report all information required on the statement of employment and financial interests of the employee, his or her spouse, minor children, or other relatives who are full-time residents of the employee's home. The reports shall be on OSM Form 705-1. The statement consists of three major parts:

(a) a listing of all financial interests, including employment, security, real property, creditor and other financial

interests held during the course of the preceding year;

(b) a certification that none of the listed financial interests represent a direct or indirect financial interest in any surface coal mining operation except as specifically identified and described by the employee as part of the certificate; and

(c) a certification by the reviewer that the form was reviewed, that prohibited interests have been resolved, and that no other prohibited interests have been identified from the statement.

(2) An employee is expected to:

(a) have complete knowledge of his or her personal involvement in business enterprises such as a sole proprietorship and partnership, his or her outside employment and the outside employment of the spouse and other covered relatives; and

(b) be aware of the information contained in the annual financial statement or other corporate or business reports routinely circulated to investors or routinely made available to the public.

(3) The exceptions shown in the employee's certification of the form must provide enough information for the Director to determine the existence of a direct or indirect financial interest. Accordingly, the exceptions should:

(a) list the financial interests;

(b) show the number of shares, estimated value or annual income of the financial interests; and

(c) include any other information which the employee believes should be considered in determining whether or not the interest represents a prohibited interest.

F. Gifts and gratuities:

(1) Employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or other thing of monetary value, from a coal company which:

(a) conducts or is seeking to conduct operations or activities that are regulated by the Act; and

(b) has interests that may be substantially affected by the performance or non-performance of the employee's official duty.

(2) The prohibitions of this rule do not apply in the context of obvious family or personal relationships, such as those between parents, children, or spouse of the employee, and the employee, when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors. An employee may accept:

(a) food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon, dinner, or other meeting where an employee may

properly be in attendance; and

(b) unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars and other items of nominal value.

[11-29-97; 19.8.1.109 NMAC - Rn, 19 NMAC 8.2.1.109, 9-29-2000; A, 1-15-2002]

19.8.1.110 Computation of Time

A. ~~[Except as otherwise provided computation of time under the Act and 19.8 NMAC Parts 1-34 is based on calendar days.]~~ Except as otherwise provided computation of time under the Act and 19.8 NMAC Parts 1-35 is based on calendar days.

B. In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is a Saturday, Sunday, or legal holiday on which the Director is not open for business, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

C. Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period of prescribed time is 7 days or less.

D. An operator's "mining year" shall be the calendar year.

[11-29-97; 19.8.1.110 NMAC - Rn, 19 NMAC 8.2.1.110, 9-29-2000; A, 1-15-2002]

19.8.1.111 Exemption for Coal Extraction Incidental to Government-financed Highway or Other Construction

A. ~~[Coal extraction which is an incidental part of government-financed construction is exempt from the Act and 19.8 NMAC Parts 1-34].~~ Coal extraction which is an incidental part of government-financed construction is exempt from the Act and 19.8 NMAC Parts 1-35.

B. Any person who conducts or intends to conduct coal extraction which does not satisfy 19.8.1.111.A NMAC shall not proceed until a permit has been obtained from the Director.

C. Any person extracting coal incident to government-financed highway or other construction who extracts more than 250 tons of coal or affects more than two acres shall maintain, on the site of the extraction operation and available for inspection, documents which show:

(1) a description of the construction project;

(2) the exact location of the construction, right-of-way or the boundaries of the area which will be directly affected by the construction; and

(3) the government agency which is providing the financing and the kind and amounts of public financing, including the percentage of the entire construction costs represented by the government financing.

[11-29-97; 19.8.1.111 NMAC - Rn, 19 NMAC 8.2.1.111, 9-29-2000; A, 1-15-2002]

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT MINING AND MINERALS DIVISION

Explanatory paragraph:

The purpose of these changes are to ensure that the State Coal Surface Mining Commission rules are no less effective than the Office of Surface Mining, U.S. Department of the Interior, permanent program regulations (30 CFR) by amending the language at 19.8.2.6, 19.8.2.201, 19.8.2.202 NMAC and 19.8.2.203 NMAC.

19.8.2.6 Objective: ~~[The objective of parts 1 - 36 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).]~~ The objective of parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).

These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.

[19.8.2.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.2.201 Areas Where Mining is Prohibited or Limited Subject to valid existing rights, no surface coal mining operations shall be conducted after August 3, 1977, unless those operations existed on the date of enactment:

A. on any lands which will adversely affect any publicly owned park or any places included on the National Register of Historic Places, unless approved jointly by the Director, and the Federal, State or local agency with jurisdiction over the park or places.

B. within 100 feet measured horizontally of the outside right-of-way line of any public road except:

(1) where mine access roads or haulage roads join such right-of-way line; or

(2) where the Director allows the public road to be relocated or the area affected to be within 100 feet of such road, after:

(a) public notice and opportunity for a public hearing in accordance with 19.8.2.202.C NMAC, and

(b) making a written finding that the interests of the affected public and landowners will be protected;

C. within 300 feet measured horizontally from any occupied dwelling, unless the owner thereof has provided a written waiver consenting to surface coal mining operations closer than 300 feet, or unless an access or haul road connects with an existing public road on the side of the public road opposite the dwelling;

D. within 300 feet measured horizontally of any public building, school, church, community or institutional building or public park; or

E. within 100 feet measured horizontally of a cemetery. This prohibition does not apply if the cemetery is relocated in accordance with all applicable laws and regulations;

[F. on any lands within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act 16 U.S.C. 1276(a) or study rivers or study river corridors as established in any guidelines pursuant to that Act, and National Recreation Areas designated by Act of Congress.]

F. on any lands within the boundaries of:

(1) the National Park System;

(2) the National Wildlife Refuge System;

(3) the National System of Trails, the National Wilderness Preservation System;

(4) the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act 16 U.S.C. 1276(a) or study rivers or study river corridors as established in any guidelines pursuant to that Act, and National Recreation Areas designated by Act of Congress;

(5) federal lands within a national forest. This prohibition does not apply if the Secretary of Interior finds that there are no significant recreational, timber, economic, or other values that may be incompatible with surface coal mining operations, and;

(a) Any surface operations and impacts will be incident to an underground coal mine; or

(b) With respect to lands that do not have significant forest cover within national forests west of the 100th meridian, the Secretary of Agriculture has determined that surface mining is in compliance with the Act, the Multiple-Use Sustained Yield Act of 1960, 16 U.S.C. 528-531; the Federal Coal Leasing Amendments Act of 1975, 30 U.S.C. 181 et seq.; and the National Forest Management Act of 1976, 16 U.S.C. 1600 et seq.

19.8.2.202 Procedures

† A. Upon receipt of a complete application for a surface coal mining and reclamation operations permit, the Director shall review the application to determine whether surface coal mining operations are limited or prohibited under Section 201 on the lands which would be disturbed by the proposed operation.

B.

(1) Where the proposed operation would be located on any lands listed in 19.8.2.201.D and 201.E. NMAC the Director shall reject the application if the applicant had no valid existing rights for the area on August 2, 1977, or if the operation did not exist on that date.

(2) If the Director is unable to determine whether the proposed operation is located within the boundaries of any of the lands listed in 19.8.2.201.F NMAC or closer than the limits provided in 19.8.2.201.D and 201.E. NMAC, the Director shall transmit a copy of the relevant portions of the permit application to the appropriate Federal, State or local Government agency for a determination or clarification of the relevant boundaries or distances, with a notice to the appropriate agency that it has 30 days from receipt of the request in which to respond. The National Park Service or the U.S. Fish and Wildlife Service shall be notified of any request for a determination of valid existing rights pertaining to areas within the boundaries of areas under their jurisdiction and shall have 30 days from receipt of the notification in which to respond. The Director, upon request by the appropriate agency, shall grant an extension to the 30 day period of an additional 30 days. If no response is received within 30 day period or within the extended period granted, the Director may make the necessary determination based on the information he has available.

C. Where the proposed mining operation is to be conducted within 100 feet measured horizontally of the outside right of way line of any public road (except where mine access roads or haulage roads join such right of way line) or where the applicant proposes to relocate any public road, the Director shall:

(1) require the applicant to obtain necessary approvals of the authority with jurisdiction over the public road;

(2) provide notice in a newspaper of general circulation in the affected locale of a public hearing at least 2 weeks before the hearing;

(3) provide an opportunity for a public hearing at which any member of the public may participate in the locality of the proposed mining operations for the purpose of determining whether the interests of the public and affected landowners will be protected; and

(4) make a written finding based upon information received at the public hearing within 30 days after completion of the hearing as to whether the interests of the public and affected landowners will be protected from the proposed mining operations.

D. Where the proposed surface coal mining operations would be conducted within 300 feet measured horizontally of any occupied dwelling, the applicant shall submit with the application a written waiver from the owner of the dwelling, consenting to such operations within a closer distance of the dwelling as specified in the waiver. A new waiver is not required if an effective waiver from the owner of the occupied building exists at the time of the application. Such waiver may be made effective against persons having actual knowledge of the waiver and, if recorded, against all persons deemed to have constructive knowledge in accordance with New Mexico law.

E.

(1) Where the proposed surface coal mining operations may adversely affect any public park or any places included on the National Register of Historic Places, the Director shall transmit to the Federal, State or local agencies with jurisdiction over a statutory or regulatory responsibility for the park or historic place a copy of the completed permit application containing the following:

(a) a request for that agency's approval or disapproval of the operations;

(b) a notice to the appropriate agency that it must respond within 30 days from receipt of the request.

(2) A permit for the operation shall not be issued unless jointly approved by all affected agencies.

F. If the Director determines that the proposed surface coal mining operation is not prohibited under Section 69-25A-26 NMSA 1978 of the Act, and this Part, it may nevertheless, pursuant to appropriate petitions, designate such lands as unsuitable for all or certain types of surface coal mining operations pursuant to 19.8 NMAC Parts 3 and 4.

G. A determination by the Director that a person holds or does not hold a valid existing right or that surface coal mining operations did or did not exist on the date of enactment shall be subject to administrative and judicial review under Section 69-25A-29 and 69-25A-30 NMSA 1978, of the Act.]

A. Upon receipt of a complete application for a surface coal mining and reclamation operations permit, the Director shall review the application to determine whether surface coal mining operations are limited or prohibited under 19.8.2.201 NMAC on the lands which would be disturbed by the proposed operation.

B. The Director must reject any portion of the application that would locate surface coal mining operations on land protected under 19.8.2.201 NMAC unless:

(1) The site qualifies for the exception for **existing** operations under 19.8.2.203 NMAC;

(2) A person has **valid existing rights** for the land, as determined under 19.8.35 NMAC;

(3) The applicant obtains a waiver or exception from the prohibitions of 19.8.2.201 NMAC in accordance with 19.8.2.202.D, 19.8.2.202.E; and 19.8.2.202.G NMAC.

C. If the Director is unable to determine whether the proposed operation is located within the boundaries of any of the lands listed in 19.8.2.201.F NMAC or closer than the limits provided in 19.8.2.201.D and 201.E. NMAC, the Director shall transmit a copy of the relevant portions of the permit application to the appropriate Federal, State or local Government agency for a determination or clarification of the relevant boundaries or distances, with a notice to the appropriate agency that it has 30 days from receipt of the request in which to respond. The National Park Service or the U.S. Fish and Wildlife Service shall be notified of any request for a determination of valid existing rights pertaining to areas within the boundaries of areas under their jurisdiction and shall have 30 days from receipt of the notification in which to respond. The Director, upon request by the appropriate agency, shall grant an extension to the 30-day period of an additional 30 days. If no response is received within 30-day period or within the extended period granted, the Director may make the necessary determination based on the information he has available.

D. Where the proposed mining operation is to be conducted within 100 feet measured horizontally of the outside right-of-way line of any public road (except where mine access roads or haulage

roads join such right-of-way line) or where the applicant proposes to relocate or close any public road, the Director shall:

(1) require the applicant to obtain necessary approvals of the authority with jurisdiction over the public road;

(2) provide notice in a newspaper of general circulation in the affected locale of a public hearing at least 2 weeks before the hearing;

(3) hold a public hearing in the locality of the proposed mining operations where any member of the public may participate for the purpose of determining whether the interests of the public and affected landowners will be protected; and

(4) make a written finding based upon information received at the public hearing within 30 days after completion of the hearing as to whether the interests of the public and affected landowners will be protected from the proposed mining operations.

E. Where the proposed surface coal mining operations would be conducted within 300 feet measured horizontally of any occupied dwelling, the applicant shall submit with the application a written waiver from the owner of the dwelling, consenting to such operations within a closer distance of the dwelling as specified in the waiver. The waiver must clarify that the owner and signatory had the legal right to deny mining and knowingly waived that right.

(1) A new waiver is not required if an effective waiver from the owner of the occupied building exists at the time of the application.

(2) A **valid** waiver will remain effective against subsequent purchasers who had actual or constructive knowledge of the **existing** waiver at the time of purchase. A subsequent purchaser will be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to New Mexico law or if surface coal mining operations have entered the 300-foot zone before the date of purchase.

F.

(1) Where the proposed surface coal mining operations may adversely affect any public park or any places included on the National Register of Historic Places, the Director shall transmit to the Federal, State or local agencies with jurisdiction over a statutory or regulatory responsibility for the park or historic place a copy of the completed permit application containing the following:

(a) a request for that agency's approval or disapproval of the operations, including a copy of applicable parts of the permit application;

(b) a notice to the appropriate agency that it must respond within 30 days from receipt of the request, with a notice that another 30 days is available upon request.

(c) the notice will also state that failure to interpose an objection within the time specified under 19.8.2.202.F(1)(b) NMAC will constitute approval of the proposed operation.

(2) A permit for the operation shall not be issued unless jointly approved by all affected agencies.

(3) 19.8.2.202.F(1) and 19.8.2.202.F(2) NMAC do not apply to:

(a) Lands for which a person has **valid existing rights**, as determined under 19.8.35 NMAC.

(b) Lands within the scope of the exception for **existing** operations in 19.8.2.203 NMAC.

G. When a new surface coal mining operation or boundary revision for an existing surface coal mining operation is proposed that will include Federal lands within a national forest, the Director may not issue the permit or approve the boundary revision before the Secretary of the Interior makes a finding based on information submitted pursuant to 30 CFR Part 761.13.

H. If the Director determines that the proposed surface coal mining operation is not prohibited under Section 69-25A-26 NMSA 1978 of the Act, and this Part, it may nevertheless, pursuant to appropriate petitions, designate such lands as unsuitable for all or certain types of surface coal mining operations pursuant to 19.8 NMAC Parts 3 and 4.

[11-29-97; 19.8.2.202 NMAC - Rn 19 NMAC 8.2.2.202, 9-29-2000; A, 1-15-2002]

19.8.2.203 Exception for existing operations. The prohibitions and limitations of 19.8.2.201 NMAC do not apply to:

A. Surface coal mining operations for which a **valid** permit, issued by the Director under 19.8 NMAC Parts 1-35, exists when the land comes under the protection of 19.8.2.201 NMAC. This exception applies only to lands within the permit area as it exists when the land comes under the protection of 19.8.2.201 NMAC.

B. With respect to operations existing prior to August 3, 1977, lands upon which validly authorized surface coal mining operations existed when the land comes under the protection of 1978 NMSA 69-25A et seq. and 19.8.2.201 NMAC. [19.8.2.203 NMAC - N, 1-15-2002]

**ENERGY, MINERALS AND
NATURAL RESOURCES
DEPARTMENT
MINING AND MINERALS
DIVISION**

Explanatory paragraph:

The purpose of these changes are to ensure that the State Coal Surface Mining Commission rules are no less effective than the Office of Surface Mining, U.S. Department of the Interior, permanent program regulations (30 CFR) by amending the language at 19.8.3.6 NMAC, 19.8.3.300.A NMAC and 19.8.3.302 NMAC.

19.8.3.6 Objective: ~~[The objective of parts 1 - 36 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).]~~ The objective of parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act. [19.8.3.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.3.300 Criteria for Designating Lands as Unsuitable

A. ~~[Upon petition an area shall be designated as unsuitable for all or certain types of surface coal mining operations, if the Director determines that reclamation is not technologically and economically feasible under the act and 19.8 NMAC Parts 1-34].~~ Upon petition an area shall be designated as unsuitable for all or certain types of surface coal mining operations, if the Director determines that reclamation is not technologically and economically feasible under the act and 19.8 NMAC Parts 1-35.

B. Upon petition an area may be (but is not required to be) designated as unsuitable for certain types of surface coal mining operations, if the operations will:

- (1) be incompatible with existing State or local land use plans or programs;
- (2) affect fragile or historic lands in which the operations could result in significant damage to important historic, cultural, scientific, or aesthetic values or natural systems;
- (3) affect renewable resource lands in which the operations could result in

a substantial loss or reduction of long-range productivity of water supply or of food or fiber products; or

- (4) affect natural hazard lands in which the operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geologic formations. [11-29-97; 19.8.3.300 NMAC - Rn, 19 NMAC 8.2.3.200, 9-29-2000]

C. Pursuant to appropriate petitions, lands listed in 19.8.2 NMAC are subject to designation as unsuitable for all or certain types of surface coal mining operations under 19.8.3.300 NMAC.

[11-29-97; 19.8.3.300 NMAC - Rn, 19 NMAC 8.2.3.200, 9-29-2000; A, 01-15-2002]

19.8.3.302 Exploration on Land Designated as Unsuitable for Surface Coal Mining Operations ~~[Designation of any area as unsuitable for all or certain types of surface coal mining operations pursuant to Section 69-25A-26 NMSA 1978 of the Act and regulations of 19.8 NMAC Parts 2 through 4, does not prohibit coal exploration operations in the area, if conducted in accordance with the Act, 19.8 NMAC Parts 1-34 and other applicable requirements.]~~ Designation of any area as unsuitable for all or certain types of surface coal mining operations pursuant to Section 69-25A-26 NMSA 1978 of the Act and regulations of 19.8 NMAC Parts 2 through 4, does not prohibit coal exploration operations in the area, if conducted in accordance with the Act, 19.8 NMAC Parts 1-35, and other applicable requirements. Exploration operations on any lands designated unsuitable for surface coal mining operations must be approved by the Director under 19.8.6 NMAC to insure that exploration does not interfere with any value for which the area has been designated unsuitable for surface coal mining. [11-29-97; 19.8.3.302 NMAC - Rn, 19 NMAC 8.2.3.302, 9-29-2000; A, 1-15-2002]

**ENERGY, MINERALS AND
NATURAL RESOURCES
DEPARTMENT
MINING AND MINERALS
DIVISION**

Explanatory paragraph:

The purpose of these changes are to ensure that the State Coal Surface Mining Commission rules are no less effective than the Office of Surface Mining, U.S.

Department of the Interior, permanent program regulations (30 CFR) by amending the language at 19.8.4.6 NMAC.

19.8.4.6 Objective: ~~[The objective of parts 1 - 34 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).]~~ The objective of parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).

These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act. [19.8.4.6 NMAC - N, 9-29-2000; A, 1-15-2002]

**ENERGY, MINERALS AND
NATURAL RESOURCES
DEPARTMENT
MINING AND MINERALS
DIVISION**

Explanatory paragraph:

The purpose of these changes are to ensure that the State Coal Surface Mining Commission rules are no less effective than the Office of Surface Mining, U.S. Department of the Interior, permanent program regulations (30 CFR) by amending the language at 19.8.5.6 NMAC, 19.8.5.501 NMAC, 19.8.5.502 NMAC, 19.8.5.503 NMAC and 19.8.5.506 NMAC.

19.8.5.6 Objective: ~~[The objective of parts 1 - 34 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).]~~ The objective of parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act. [19.8.5.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.5.501 Continued Operation under Interim Permits A person conducting surface coal mining operations under a permit issued pursuant to Laws 1972, Chapter 68, as amended, or issued by the Director pursuant to the Act, prior to the

effective date of an approved program may conduct these operations beyond the period prescribed in 19.8.5.500 NMAC, if:

A. ~~[timely and complete application for a permit under the approved program has been made to the Director in accordance with the provisions of the Act, and 19.8 NMAC Parts 1-34;]~~ timely and complete application for a permit under the approved program has been made to the Director in accordance with the provisions of the Act, and 19.8 NMAC Parts 1-35;

B. the Director has not yet rendered an initial decision with respect to such application; and

C. ~~[the operations are conducted in compliance with all terms and conditions of the interim permit, the requirements of the Act, and 19.8 NMAC Parts 1-34.]~~ the operations are conducted in compliance with all terms and conditions of the interim permit, the requirements of the Act, and 19.8 NMAC Parts 1-35. [11-29-97; 19.8.5.501 NMAC - Rn 19 NMAC 8.2.5.501, 9-29-2000; A, 1-15-2002]

19.8.5.502 Continued Operation under Federal Program Permits A permit issued by the Office of Surface Mining and Reclamation pursuant to a Federal program for a State shall be valid under any superseding State program approved by the Secretary of the U.S. Department of Interior.

A. The Federal permittee shall have the rights to apply to the State Director for a State permit to supersede the Federal permit.

B. ~~[The Director may review a permit issued pursuant to the superseded Federal program, to determine that the requirements of the Act and 19.8 NMAC Parts 1-34 are not violated by the Federal permit.]~~ The Director may review a permit issued pursuant to the superseded Federal program, to determine that the requirements of the Act and 19.8 NMAC Parts 1-35 are not violated by the Federal permit.

C. To the extent that the approved State program contains additional requirements not contained in the Federal program for the State, the Director shall:

(1) promptly issue an order requiring the permittee to comply with such additional requirements within 60 days of the issuance of the order, unless the permittee demonstrates to the Director that it is physically impossible to meet those additional requirements within 60 days, or unless the Director agrees to a longer period under an established time schedule; and

(2) ~~[notify the permittee, in writing, of the right to a hearing with respect to the order in the manner and time~~

~~provided for in the Act and 19.8 NMAC Parts 1-34;]~~ notify the permittee, in writing, of the right to a hearing with respect to the order in the manner and time provided for in the Act and 19.8 NMAC Parts 1-35. [11-29-97; 19.8.5.502 NMAC - Rn 19 NMAC 8.2.5.502, 9-29-2000; A, 1-15-2002]

19.8.5.503 Compliance with Permits ~~[All persons shall conduct surface coal mining and reclamation operations under permits issued pursuant to the Act and 19.8 NMAC Parts 1-34, and shall comply with the terms and conditions of the permit and the requirements of the Act and 19.8 NMAC Parts 1-34.]~~ All persons shall conduct surface coal mining and reclamation operations under permits issued pursuant to the Act and 19.8 NMAC Parts 1-35, and shall comply with the terms and conditions of the permit and the requirements of the Act and 19.8 NMAC Parts 1-35. [11-29-97; 19.8.5.503 NMAC - Rn 19 NMAC 8.2.5.503, 9-29-2000; A, 1-15-2002]

19.8.5.506 Permit and Exploration Fees

~~[Each application, pursuant to the Act and 19.8 NMAC Parts 1-34 shall be accompanied by a fee determined under the following schedule:]~~ Each application, pursuant to the Act and 19.8 NMAC Parts 1-35 shall be accompanied by a fee determined under the following schedule:

A. Original permit filing fee shall be \$1,000 plus \$15 per acre for estimated area to be disturbed during the first year of mining.

B. Commencing the second year the annual permit fee shall be \$1,000. In addition, there shall be an acreage fee of \$15.00 per acre of disturbed permit area for which the bond has not been released, provided that \$10,000 per year acreage fee is the maximum charge per year for all disturbance. The maximum annual fee will therefore be:

Permit fee =	\$ 1,000
Acreage fee =	\$10,000
Max. Total =	\$11,000

The annual fee is to be submitted with the annual report.

C. Pending further study, the initial annual acreage fee shall not be collected for acres classified as disturbed, when disturbance is due to subsidence associated with underground mining, unless it is determined by the Director that such subsidence causes significant environmental damage to the surrounding area.

D. The fee for transferring a permit shall be \$500.

E. For each revision, the fee will be on a sliding scale from \$0 to

\$2,500, depending upon significance of the revision. The Director will determine the amount of the fee for each revision.

F. The fee for filing a notice of intention to explore under 19.8.6.601 NMAC shall be \$50.00.

G. The fee for filing an application for approval under 19.8.6.602 NMAC shall be \$100.00. [11-29-97; 19.8.5.506 NMAC - Rn, 19 NMAC 8.2.5.506, 9-29-2000; A, 1-15-2002]

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT MINING AND MINERALS DIVISION

Explanatory paragraph:

The purpose of these changes are to ensure that the State Coal Surface Mining Commission rules are no less effective than the Office of Surface Mining, U.S. Department of the Interior, permanent program regulations (30 CFR) by amending the language at 19.8.6.6 NMAC, 19.8.6.602 NMAC and 19.8.6.603 NMAC.

19.8.6.6 Objective: ~~[The objective of parts 1 - 34 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).]~~ The objective of parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act. [19.8.6.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.6.602 General Requirements: Exploration of More Than 250 Tons Any person who intends to conduct coal exploration in which more than 250 tons of coal are removed in the area to be explored, shall, prior to conducting the exploration, obtain the written approval of the Director, accordance with the following:

A. contents of application for approval. Each application for approval shall contain, at a minimum, the following information:

- (1) the name, address, and telephone number of the applicant;
- (2) the name, address, and tele-

phone number of the representative of the applicant who will be present at and be responsible for conducting the exploration;

(3) an exploration and reclamation operations plan, including:

(a) a narrative description of the proposed exploration area, cross-referenced to the map required under 19.8.6.602.A(5), including surface topography, geological, surface water, and other physical features, vegetative cover, the distribution and important habitats of fish, wildlife, and plants, including, but not limited to, any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et. seq.), and the Wildlife Conservation Act, Sections 17-3-17 et. seq. NMSA 1978, the Habitat Protection Act, Sections 17-6-1 et seq. NMSA 1978, and the laws relating to the Protection of Native New Mexico Plants including Section 76-8-1 through 76-8-4 NMSA 1978; districts, sites, buildings, structures or objects listed or eligible for listing on the National Register of Historic Places; and known archeological resources located within the proposed exploration area;

(b) a narrative description of the methods to be used to conduct coal exploration and reclamation, including, but not limited to, the types and uses of equipment, drilling, blasting, road or other access route construction, and excavated earth and other debris disposal activities;

(c) an estimated timetable for conducting and completing each phase of the exploration and reclamation;

(d) the estimated amounts of coal to be removed and a description of the methods to be used to determine those amounts;

(e) a description of the measures to be used to comply with the applicable requirements of 19.8.19 NMAC.

(4) the name and address of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored;

(5) a map at a scale of 1:24,000 or larger, showing the areas of land to be substantially disturbed by the proposed exploration and reclamation. The map shall specifically show existing roads, occupied dwellings, and pipelines; proposed location

of trenches, roads, and other access routes and structures to be constructed; the location of land excavations to be conducted; water or coal exploratory holes and wells to be drilled or altered; earth or debris disposal areas; existing bodies of surface water; documented historic, topographic, cultural and drainage features; and habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 and the Wildlife Conservation Act, Sections 17-3-17 et. seq. NMSA 1978, the Habitat Protection Act, Sections 17-6-1 et. seq. NMSA 1978, and the laws relating to the Protection of Native New Mexico Plants including Sections 76-8-1 through 76-8-4 NMSA 1978; and

(6) a bond sufficient to assure that completion of reclamation of the area disturbed by the exploration activity may be required by the Director. Such bond, if required by the Director, shall be in a form approved by the Director and shall not be subject to the requirements of 19.8.14 NMAC.

(7) a statement of why extraction of more than 250 tons of coal is necessary for exploration.

(8) such other information as the Director deems necessary to take action under 19.8.6.603 NMAC.

(9) For any lands listed in 19.8.2.201 NMAC, a demonstration that, to the extent technologically and economically feasible, the proposed exploration activities have been designed to minimize interference with the values for which those lands were designated as unsuitable for surface coal mining operations. The application must include documentation of consultation with the owner of the feature causing the land to come under the protection of 19.8.2.201 NMAC, and, when applicable, with the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of 19.8.2.201 NMAC.

B. Public notice and opportunity to comment. Public notice of the application and opportunity to comment shall be provided as follows:

(1) Within such time as the Director may designate, public notice of the filing of the application with the Director shall be published in a newspaper of general circulation in the county of the proposed exploration area.

(2) The public notice shall state the name and business address of the person

seeking approval, the date of filing of the application, the address of the Director at which written comments on the application may be submitted, the closing date of the comment period, and a description of the general area of exploration.

(3) Any person with an interest which is or may be adversely affected shall have the right to file written comments within the time limits prescribed in the notice.

[11-29-97; 19.8.6.602 NMAC - Rn, 19 NMAC 8.2.6.602, 9-29-2000; A, 01-15-2002]

19.8.6.603 Applications: Approval or Disapproval of Exploration of More Than 250 Tons

A. The Director shall act upon a completed application for approval within 45 days.

B. The Director shall approve a complete application filed in accordance with this Part, if he finds, in writing, that the applicant has demonstrated that the exploration and reclamation described in the application:

(1) will be conducted in accordance with the Act, 19.8.19 NMAC and these rules and regulations;

(2) will not jeopardize the continued existence of an endangered or threatened species listed pursuant to Section 4 of the Endangered Species Act of 1973 and the Wildlife Conservation Act, Sections 17-3-17 et. seq. NMSA 1978 and the laws relating to the Production of New Mexico Native Plants including Sections 76-8-1 through 76-8-4 NMSA 1978 or result in the destruction of adverse modification of critical habitat of those species and will also comply with the Habitat Protection Act, Sections 17-6-1 et. seq. NMSA 1978;

(3) will not adversely affect any ~~[cultural resources or]~~ districts, sites, buildings, structures, or objects listed on the National Register of Historic Places unless the proposed exploration has been approved by both the Director and the agency with jurisdiction over such matters.

(4) With respect to exploration activities on any lands protected under 19.8.2.201 NMAC, will minimize interference, to the extent technologically and economically feasible, with the values for which those lands were designated as unsuitable for surface coal mining opera-

tions. Before making this finding, the Director must provide reasonable opportunity to the owner of the feature causing the land to come under the protection of 19.8.2.201 NMAC, and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of 19.8.2.201 NMAC, to comment on whether the finding is appropriate.

C. Terms of approval. ~~[Each approval issued by the Director shall contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with the Act, 19.8.19 NMAC and Title 19 Chapter 8 of NMAC Parts 1-34.] Each approval issued by the Director shall contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with the Act, 19.8.19 NMAC and Title 19 Chapter 8 of NMAC Parts 1-35.~~

D. The granting of written approval to conduct exploration shall in no way be construed to ensure the issuance of a permit to conduct surface coal mining and reclamation operations under 19.8.5 NMAC.

[11-29-97; 19.8.6.603 NMAC - Rn, 19 NMAC 8.2.6.603, 9-29-2000; A, 1-15-2002]

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT MINING AND MINERALS DIVISION

Explanatory paragraph:

The purpose of these changes are to ensure that the State Coal Surface Mining Commission rules are no less effective than the Office of Surface Mining, U.S. Department of the Interior, permanent program regulations (30 CFR) by amending the language at 19.8.7.6 NMAC and 19.8.7.704 NMAC.

19.8.7.6 Objective: ~~[The objective of parts 1 - 34 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).] The objective of parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico~~

Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.

[19.8.7.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.7.704 Relationship to Areas Designated Unsuitable for Mining

A. Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for surface coal mining operations under 19.8.4 NMAC or under study for designation in an administrative proceeding under 19.8 NMAC.

B. If an applicant claims the exemption in 19.8.11.1106.D(2) NMAC, the application shall contain information supporting the applicant's assertion.

~~C. If an applicant proposes to conduct surface coal mining operations within 300 feet of an occupied dwelling, the application shall contain the waiver of the owner of the dwelling as required in 19.8.2.202.D NMAC.]~~

C. An application that proposes to conduct surface coal mining operations within 100 feet of a public road or within 300 feet of an occupied dwelling must meet the requirements of 19.8.2.202.D NMAC or 19.8.2.202.E NMAC, respectively.

[11-29-97; 19.8.7.704 NMAC - Rn, 19 NMAC 8.2.7.704, 9-29-2000; A, 01-15-2002]

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT MINING AND MINERALS DIVISION

Explanatory paragraph:

The purpose of these changes are to ensure that the State Coal Surface Mining Commission rules are no less effective than the Office of Surface Mining, U.S. Department of the Interior, permanent program regulations (30 CFR) by amending the language at 19.8.8.6 NMAC, 19.8.8.801 and 19.8.8.802 NMAC.

19.8.8.6 Objective: ~~[The objective of parts 1 - 34 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).] The objective of parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure~~

proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.

[19.8.8.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.8.801 General Environmental Resources Information

Each application shall describe and identify:

A. the size, sequence, and timing of the subareas of the lands subject to surface coal mining operations over the estimated life of those operations for which it is anticipated that individual permits for mining will be sought.

~~[B. the nature of cultural and historic resources listed or eligible for listing on the National Register of Historic Places and known archeological features within the proposed permit and adjacent areas. The description shall be based on all available information, including, but not limited to, data of State and local archeological, historical, and cultural preservation agencies.]~~

B. (1) the nature of cultural and historic resources listed or eligible for listing on the National Register of Historic Places and known archeological features within the proposed permit and adjacent areas. The description shall be based on all available information, including, but not limited to, data of State and local archeological, historical, and cultural preservation agencies.

(2) The Director may require the applicant to identify and evaluate important historic and archeological resources that may be listed or eligible for listing on the National Register of Historic Places, through:

(a) collection of additional information;

(b) conduct of field investigations; or

(c) other appropriate analyses.

[11-29-97; 19.8.8.801 NMAC - Rn, 19 NMAC 8.2.8.801, 9-29-2000; A, 1-15-2002]

19.8.8.802 Description of Hydrology and Geology: General Requirement

A. Each application shall contain a description of the geology, and water quality and quantity of all lands within the proposed permit area and the adjacent area. The description shall include information on the characteristics of all surface and ground waters within the permit and adjacent area, and any water, which will flow

into or receive discharges of water from the permit area. The description shall be prepared according to 19.8.8.802 through 806 NMAC and conform to the following:

(1) ~~[information on hydrology, water quality and quantity, and geology related to hydrology of areas outside the proposed permit area shall be provided by the Director, to the extent that this data is available from an appropriate Federal or State agency]~~ information on hydrology, water quality and quantity, and geology related to hydrology of areas outside the proposed permit area shall be provided to the Director, to the extent that this data is available from an appropriate Federal or State agency.

(2) If this information is not available from those agencies, the applicant shall gather and submit this information to the Director as part of the permit application.

(3) The permit shall not be approved by the Director until this information is made available in the application.

B. The use of modeling techniques may be included as part of the permit application, but the same surface and ground water information may be required for each site as when models are not used. [11-29-97; 19.8.8.802 NMAC - Rn, 19 NMAC 8.2.8.802, 9-29-2000; A, 1-15-2002]

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT MINING AND MINERALS DIVISION

Explanatory paragraph:

The purpose of these changes are to ensure that the State Coal Surface Mining Commission rules are no less effective than the Office of Surface Mining, U.S. Department of the Interior, permanent program regulations (30 CFR) by amending the language at 19.8.9.6 NMAC, 19.8.906 NMAC and 19.8.9.912 NMAC to include new paragraphs A and B.

19.8.9.6 Objective: ~~[The objective of parts 1 - 34 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).]~~ The objective of parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the

New Mexico Surface Mining Act.

[19.8.9.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.9.906 Reclamation Plan: General Requirements

A. ~~[Each application shall contain a plan for reclamation of the lands within the proposed permit area, showing how the applicant will comply with Sections 69-25A-19 and 69-25A-20 NMSA 1978 of the Act and Parts 1-34 Title 19 Chapter 8 NMAC.]~~ Each application shall contain a plan for reclamation of the lands within the proposed permit area, showing how the applicant will comply with Sections 69-25A-19 and 69-25A-20 NMSA 1978 of the Act and Parts 1-35 Title 19 Chapter 8 NMAC. The plan shall include, at a minimum, all information required under 19.8.9.906 through 918 NMAC.

B. Each plan shall contain the following information for the proposed permit area:

(1) a detailed timetable for the completion of each major step in the reclamation plan;

(2) a detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under 19.8.14 and 19.8.15 NMAC;

(3) a plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 19.8.20.2054 through 2059 NMAC;

(4) a plan for removal, storage, protection and redistribution of topsoil, subsoil, and other material suitable for topsoil to meet the requirements of 19.8.20.2004 through 2008 NMAC;

(5) a plan for revegetation as required in 19.8.20.2060 through 2066 NMAC, including, but not limited to, descriptions of the:

(a) schedule of revegetation;
(b) species and amounts per acre of seeds and seedlings to be used;
(c) methods to be used in planting and seeding;

(d) mulching techniques;
(e) irrigation, if appropriate, and pest and disease control measures, if any;

(f) measures proposed to be used to determine the success of revegetation, as required in 19.8.20.2065 NMAC, and

(g) a soil testing plan for evaluation of the results of topdressing handling and reclamation procedures related to revegetation.

(6) a description of measures to be used to maximize the use and conserva-

tion of the coal resource as required in 19.8.20.2027 NMAC;

(7) a description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 19.8.20.2046 and 2056 NMAC, and a description of the contingency plans which have been developed to preclude sustained combustion of such materials;

(8) a description, including appropriate cross sections and maps, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other bore holes, wells, and other openings within the proposed permit area, in accordance with 19.8.20.2001 through 2003 NMAC; and

(9) a description of steps to be taken to comply with the requirements of the Clean Air Act (42 U.S.C. Sec. 7401 et seq.), the Clean Water Act (33 U.S.C. Sec. 1251 et seq.), and all applicable air and water quality laws and regulations and health and safety standards.

[11-29-97; 19.8.9.906 NMAC - Rn, 19 NMAC 8.2.9.906, 9-29-2000; A, 1-15-2002]

19.8.9.912 Protection of Public Parks and Historic Places

~~[For any public parks or historic lands that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to minimize or prevent these impacts and to obtain approval of the Director and other agencies as required in 19.8.2.202.E NMAC.]~~

A. Proposed operations that may have an adverse effect on any publicly owned parks or any places listed on the National Register of Historic Places shall include a plan:

(1) describing the measures to be used to prevent or alleviate adverse impacts, or

(2) designed to minimize adverse impacts when valid existing rights exist or joint agency approval is to be obtained under Sec. 19.8.2.202.E NMAC.

B. The Director may require the applicant to prevent or alleviate impacts to any historic or archeological properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. Appropriate mitigation and treatment measures may be required to be taken after permit issuance provided that the required measures are completed before the properties are affected by any mining operation.

[11-29-97; 19.8.9.912 NMAC - Rn, 19 NMAC 8.2.9.912, 9-29-2000; A, 1-15-2002]

**ENERGY, MINERALS AND
NATURAL RESOURCES
DEPARTMENT
MINING AND MINERALS
DIVISION**

Explanatory paragraph:

The purpose of these changes are to ensure that the State Coal Surface Mining Commission rules are no less effective than the Office of Surface Mining, U.S. Department of the Interior, permanent program regulations (30 CFR) by amending the language at 19.8.10.6 NMAC.

19.8.10.6 Objective: ~~[The objective of parts 1 - 34 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).] The objective of parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).~~ These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act. [19.8.10.6 NMAC - N, 9-29-2000; A, 1-15-2002]

**ENERGY, MINERALS AND
NATURAL RESOURCES
DEPARTMENT
MINING AND MINERALS
DIVISION**

Explanatory paragraph:

The purpose of these changes are to ensure that the State Coal Surface Mining Commission rules are no less effective than the Office of Surface Mining, U.S. Department of the Interior, permanent program regulations (30 CFR) by amending the language at 19.8.11.6 NMAC and 19.8.11.1106 NMAC.

19.8.11.6 Objective: ~~[The objective of parts 1 - 34 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).] The objective of parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).~~ These regulations are intended to ensure proper reclamation through permitting for

operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act. [19.8.11.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.11.1106 Criteria for Permit Approval or Denial No permit or revision application shall be approved, unless the application affirmatively demonstrates and the Director finds, in writing, on the basis of information set forth in the application or from information otherwise available, which is documented in the approval and made available to the applicant, that:

A. the permit application is accurate and complete and that all requirements of the Act and 19.8 NMAC have been complied with;

B. the applicant has demonstrated that surface coal mining and reclamation operations, as required by the Act and 19.8 NMAC, can be feasibly accomplished under the mining and reclamation operations plan contained in the application;

C. the assessment of the probable cumulative hydrological impacts (CHIA) of all anticipated coal mining in the cumulative impact area on the hydrologic balance, as described in 19.8.9.907.C NMAC has been made by the Director, and the operations proposed under the application have been designed to prevent damage to the hydrologic balance outside the proposed permit area;

D. the proposed permit area is:

(1) not included within an area designated unsuitable for surface coal mining operation under 19.8.4 NMAC; or

(2) not within an area under study for designation as unsuitable for surface coal mining operations in an administrative proceeding begun under 19.8.4 NMAC, unless the applicant demonstrates that, before January 4, 1977, he has made substantial legal and financial commitments in relation to the operation for which he is applying for a permit; or,

~~† (3) not on any lands subject to the prohibitions or limitations of 19.8.2.201 NMAC; or,~~

~~(4) not within 100 feet of the outside right of way line of any public road except as provided for in 19.8.2.202.C NMAC; or,~~

~~(5) not within 300 feet from any occupied dwelling, except as provided for in 19.8.2.201.C and 202.D NMAC.]~~

(3) not within an area designated as unsuitable for surface coal mining operations under 19.8 NMAC parts 3, and 4 or within an area subject to the prohibitions of 19.8.2.201 NMAC.

E. the proposed operations will not adversely affect any publicly-owned parks or places included in the National Register of Historic Places, except as provided for in 19.8.2.201.A NMAC;

F. for operations involving the surface mining of coal where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the Director the documentation required under 19.8.7.703.B NMAC.

G. the applicant has either:
(1) submitted the proof required by 19.8.11.1105.C(1) NMAC; or

(2) made the demonstration required by 19.8.11.1105.C(2) NMAC.

H. the applicant has submitted proof that all reclamation fees required for Abandoned Mine Land reclamation under Section 402 of Public Law 95-87 have been paid.

I. the applicant or the operator, if other than the applicant, does not control and has not controlled mining operations with a demonstrated pattern of willful violations of the Act of such nature, duration, and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of the Act.

J. surface coal mining and reclamation operations to be performed under the permit will not be inconsistent with other such operations anticipated to be performed in areas adjacent to the proposed permit area.

K. the applicant will submit the performance bond or other equivalent guarantee required under 19.8.14 and 19.8.15 NMAC of these rules and regulations, prior to the issuance of the permit.

L. the applicant has, with respect to both prime farmland and alluvial valley floors, obtained either a negative determination or satisfied the requirements of 19.8.10.1004 and 1006 NMAC.

M. the proposed postmining land use of the permit area has been approved by the Director in accordance with the requirements of 19.8.20.2073 NMAC.

N. the Director has made all specific approvals required under 19.8.19 through 19.8.28 NMAC of these rules and regulations.

O. the Director has found that the activities would not affect the continued existence of endangered or threatened species, indigenous to the State, or any other species protected under the Endangered Species Act of 1973, or result in the destruction or adverse modification of their critical habitats contrary to State or Federal law.

P. The Director has taken

into account the effect of the proposed permitting action on properties listed on and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the operation plan protecting historic resources or a documented decision that the Director has determined that no additional protection measures are necessary.

[11-29-97; 19.8.11.1106 NMAC - Rn, 19 NMAC 8.2.11.1106, 9-29-2000; A, 1-15-2002]

**ENERGY, MINERALS AND
NATURAL RESOURCES
DEPARTMENT
MINING AND MINERALS
DIVISION**

Explanatory paragraph:

The purpose of these changes are to ensure that the State Coal Surface Mining Commission rules are no less effective than the Office of Surface Mining, U.S. Department of the Interior, permanent program regulations (30 CFR) by amending the language at 19.8.12.6 NMAC.

19.8.12.6 Objective: ~~[The objective of parts 1 - 34 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).]~~ The objective of parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.
[19.8.12.6 NMAC - N, 9-29-2000; A, 1-15-2002]

**ENERGY, MINERALS AND
NATURAL RESOURCES
DEPARTMENT
MINING AND MINERALS
DIVISION**

Explanatory paragraph:

The purpose of these changes are to ensure that the State Coal Surface Mining Commission rules are no less effective than the Office of Surface Mining, U.S. Department of the Interior, permanent program regulations (30 CFR) by amending the language at 19.8.13.6 NMAC and 19.8.13.1307 NMAC.

19.8.13.6 Objective: ~~[The objective of parts 1 - 34 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).]~~ The objective of parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.

[19.8.13.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.13.1307 Transfer, Assignment, or Sale of Permit Rights: Obtaining Approval

A. Any person seeking to succeed by transfer, assignment, or sale to the rights granted by a permit issued shall, pursuant to the Act and 19.8 NMAC, prior to the date of such transfer, assignment or sale:

(1) obtain the performance bond coverage of the original permittee by:

(a) obtaining transfer of the original bond;

(b) obtaining a written agreement with the original permittee and all subsequent successors in interest (if any) that the bond posted by the original permittee and all successors shall continue in force on all areas affected by the original permittee and all successors, and supplementing such previous bonding with such additional bond as may be required by the Director. If such an agreement is reached, the Director may authorize for each previous successor and the original permittee the release of any remaining amount of bond in excess of that required by the agreement;

(c) providing sufficient bond to cover the original permit in its entirety from inception to completion of reclamation operations; or

(d) ~~[such other methods as would provide that reclamation of all areas affected by the original permittee is assured in an amount required by 19.8.14 NMAC and 19.8.15 NMAC.]~~ such other methods as would provide that reclamation of all areas affected by the original permittee is assured in an amount required by 19.8.14 NMAC.

(2) provide the Director with an application for approval of such proposed transfer, assignment, or sale, including:

(a) the name and address of the existing permittee;

(b) the name and address of the person proposing to succeed by such transfer, assignment, or sale and the name and

address of that person's resident agent;

(c) for surface mining activities, the same information as is required by 19.8.7.701, 702, 703, 704.C, 706 and 707 NMAC for applications for new permits for those activities; or

(d) for underground mining activities, the same information as is required by 19.8.13.1307.A(2)(c) NMAC of this Paragraph for applications for new permits for those activities.

(3) obtain the written approval of the Director for transfer, assignment or sale of rights according to 19.8.13.1307.C NMAC.

B.

(1) The person applying for approval of such transfer, assignment or sale of rights granted by a permit shall advertise the filing of the application in a newspaper of general circulation in the county of the proposed surface coal mining and reclamation operations, indicating the name and address of the applicant, the original permittee, the number and particular geographic location of the permit, and the address to which written comments may be sent under this Paragraph.

(2) Any person whose interests are or may be adversely affected, including, but not limited to, the head of any local, State or Federal government agency may submit written comments on the application for approval to the Director within 30 days.

C. The Director may, upon the basis of the applicant's compliance with the requirements of 19.8.13.1307.A and 1307.B NMAC, grant written approval for the transfer, sale, or assignment of rights under a permit, if he first finds, in writing, that:

(1) the person seeking approval will conduct the operations covered by the permit in accordance with the criteria specified in the Act, 19.8.10 NMAC and 19.8.11.1106 through 1108 NMAC.

(2) the applicant has, in accordance with 19.8.13.1307.A(1) NMAC, submitted a performance bond or other guarantee as required by 19.8.14 NMAC and 19.8.15 NMAC and at least equivalent to the bond or other guarantee of the original permittee; and

(3) the applicant will continue to conduct the operations involved in full compliance with the terms and conditions of the original permit, unless and until he has obtained a new permit or a revised permit in accordance with the Act and 19.8 NMAC.

(4) the applicant is eligible to receive a permit in accordance with 19.8.11.1105.C NMAC.

D. The Director shall notify the permittee, the successor in interest, commenters and the Director of the Office of Surface Mining of his findings.

E. The successor in interest shall immediately provide notice to the Director of the consummation of the transfer, assignment or sale of permit rights. [11-29-97; 19.8.13.1307 NMAC - Rn, 19 NMAC 8.2.13.1307, 9-29-2000; A, 1-15-2002]

**ENERGY, MINERALS AND
NATURAL RESOURCES
DEPARTMENT
MINING AND MINERALS
DIVISION**

Explanatory paragraph:

The purpose of these changes are to ensure that the State Coal Surface Mining Commission rules are no less effective than the Office of Surface Mining, U.S. Department of the Interior, permanent program regulations (30 CFR) by adding a new subparagraph at 19.8.14.6 NMAC, 19.8.14.1410, 19.8.14.1412 NMAC and 19.8.14.1415 NMAC.

19.8.14.6 Objective: ~~[The objective of parts 1 - 34 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).] The objective of parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).~~ These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act. [19.8.14.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.14.1410 Self-bonding

A. The Director may accept a self-bond from an applicant for a permit if all of the following conditions are met by the applicant, or its parent corporation guarantor:

(1) the applicant designates a suitable agent to receive service of process in the State.

(2) the applicant has been in continuous operation as a business entity for a period of not less than 5 years. Continuous operation shall mean that business was conducted over a period of 5 years immediately preceding the time of application.

(a) The Director may allow a joint venture or syndicate with less than 5 years of continuous operation to qualify under this requirement, if each member of the joint venture or syndicate has been in continuous operation for at least 5 years

immediately preceding the time of application.

(b) When calculating the period of continuous operation, the Director may exclude past periods of interruption to the operation of the business entity that were beyond the applicant's control and that do not affect the applicant's likelihood of remaining in business during the proposed surface coal mining and reclamation operations.

(3) The applicant submits financial information in sufficient detail to show that the applicant meets one of the following criteria:

(a) the applicant has a current rating for its most recent bond issuance of "A" or higher as issued by either Moody's Investor Service or Standard and Poor's Corporation;

(b) the applicant has a tangible net worth of at least \$10 million, a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater; or

(c) the applicant's fixed assets in the United States total at least \$20 million, and the applicant has a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater.

(4) The applicant submits:

(a) financial statements for the most recently completed fiscal year accompanied by a report prepared by an independent certified public accountant in conformity with generally accepted accounting principles and containing the accountant's audit opinion or review opinion of the financial statements with no adverse opinion;

(b) unaudited financial statements for completed quarters in the current fiscal year; and

(c) additional unaudited information as requested by the Director.

B. The Director may accept a written guarantee for an applicant's self-bond from a parent corporation guarantor, if the guarantor meets the conditions of 19.8.14.1410.A(1) through 1410.A(4) NMAC as if it were the applicant. Such a written guarantee shall be referred to as a "corporate guarantee." The terms of the corporate guarantee shall provide for the following:

(1) If the applicant fails to complete the reclamation plan, the guarantor shall do so or the guarantor shall be liable under the indemnity agreement to provide funds to the State of New Mexico sufficient to complete the reclamation plan, but not to exceed the bond amount.

(2) The corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the applicant and to the Director at

least 90 days in advance of the cancellation date, and the Director accepts the cancellation.

(3) The cancellation may be accepted by the Director if the applicant obtains suitable replacement bond before the cancellation date or if the lands for which the self-bond, or portion thereof, was accepted have not been disturbed.

C. For the Director to accept an applicant's self-bond, the total amount of the outstanding and proposed self-bonds of the applicant for surface coal mining and reclamation operations shall not exceed 25 percent of the applicant's tangible net worth in the United States. For the Director to accept a corporate guarantee, the total amount of the corporate guarantor's present and proposed self-bonds and guaranteed self-bonds for surface coal mining and reclamation operations shall not exceed 25 percent of the guarantor's tangible net worth in the United States.

D. If the Director accepts an applicant's self-bond, an indemnity agreement shall be submitted subject to the following requirements:

(1) The indemnity agreement shall be executed by all persons and parties who are to be bound by it, including the corporate guarantor, and shall bind each jointly and severally.

(2) Corporations applying for a self-bond, and parent and non-parent corporations guaranteeing an applicant's self-bond shall submit an indemnity agreement signed by two corporate officers who are authorized to bind their corporations. A copy of such authorization shall be provided to the Director along with an affidavit certifying that such an agreement is valid under all applicable Federal and State laws. In addition, the guarantor shall provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the indemnity agreement.

(3) If the applicant is a partnership, joint venture or syndicate, the agreement shall bind each partner or party who has a beneficial interest, directly or indirectly, in the applicant.

(4) Pursuant to 19.8.14.1414 NMAC, the applicant or corporate guarantor shall be required to complete the approved reclamation plan for the lands in default or to pay to the State of New Mexico an amount necessary to complete the approved reclamation plan, not to exceed the bond amount.

E. The Director may require self-bonded applicants and corporate guarantors to submit an update of the information required under 19.8.14.1410.A(3) and 1410.A(4) NMAC within 90 days after the close of each fiscal

year following the issuance of the self-bond or corporate guarantee.

F. If at any time during the period when a self-bond is posted, the financial conditions of the applicant or the corporate guarantor change so that the criteria of 19.8.14.1410.A(3) and 1410.C NMAC are not satisfied, the permittee shall notify the Director immediately and shall within 90 days post an alternate form of bond in the same amount as the self-bond. ~~Should the permittee fail to post an adequate substitute bond, the provisions of 19.8.14.1407.F shall apply.~~ Should the permittee fail to post an adequate substitute bond, the provisions of 19.8.14.1406.E shall apply.

[11-29-97; 19.8.14.1410 NMAC - Rn, 19 NMAC 8.2.14.1410, 9-29-2000; A, 1-15-2002]

19.8.14.1412 Requirement to Release Performance Bonds

A. Bond release application.

(1) The permittee may file an application with the Director for the release of all or part of a performance bond. Applications may be filed only at times or during seasons authorized by the Director in order to properly evaluate the completed reclamation operations. The times or seasons appropriate for the evaluation of certain types of reclamation shall be established in the mining and reclamation plan approved by the Director.

(2) An application for a bond release shall at a minimum contain the following information:

(a) the permittee's name, address and the appropriate permit number;

(b) an accurate legal description of the land sought for bond release (either metes and bounds or precise Section, Township and Range designations);

(c) the location of the area proposed for bond release shown on a USGS 7.5' map, which should also show the permit boundaries;

(d) a brief narrative summarizing the past history of the mine, the type, amount and date of the current bonding instrument, the number of acres included in the bond release application and the portion it represents of the total permit area, a description of the type and dates of the reclamation performed with a summary of the results achieved as they relate to the approved reclamation plan, and any other pertinent information that the applicant or the Director may consider appropriate;

(e) a table listing the names, addresses and number of acres held by each of the surface and mineral owners of record in the area proposed for bond release;

(f) copies of letters sent to

adjoining landowners, local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality of the reclamation operation, notifying them of the permittee's intention to seek bond release; and

(g) other maps or other information as may be appropriate or required by the Director to locate or characterize the areas proposed for bond release, revegetation, hydrological or other reclamation issues.

(h) The permittee shall include in the application for bond release a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of SMCRA, the Act, the regulatory program, and the approved reclamation plan. A certification shall be submitted for each application or phase of bond release.

(3) Within 30 days after an application for bond release has been filed with the Director, the operator shall submit a copy of an advertisement placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. The advertisement shall be considered part of any bond release application and shall contain the permittee's name, permit number and approval date, notification of the precise location of the land affected, the number of acres, the type and amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, a description of the results achieved as they relate to the operator's approved reclamation plan, and the name and address of the Director, to whom written comments, objections, or requests for public hearings and informal conferences on the specific bond release may be submitted pursuant to 19.8.14.1413.F and 1413.H NMAC.

B. Inspection by Director.

(1) Upon receipt of the bond release application, the Director shall, within 30 days, or as soon thereafter as weather conditions permit, conduct an inspection and evaluation of the reclamation work involved. The evaluation shall consider, among other factors, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of future occurrence of such pollution, and the estimated cost of abating such pollution. The surface owner, agent, or lessee shall be given notice of such inspection and may participate with the Director in making the bond release inspection. The Director may arrange with the permittee to allow access to the permit area, upon request by any person with an interest in bond release, for the

purpose of gathering information relevant to the proceeding.

(2) Within 60 days from the filing of the bond release application, if no public hearing is held pursuant to 19.8.14.1412.F NMAC, or, within 30 days after a public hearing has been held pursuant to 19.8.14.1412.F NMAC, the Director shall notify in writing the permittee, the surety or other persons with an interest in bond collateral who have requested notification under 19.8.14.1410.F NMAC, and the persons who either filed objections in writing or objectors who were a party to the hearing proceedings, if any, of its decision to release or not to release all or part of the performance bond.

C. The Director may release all or part of the bond for the entire permit area or incremental area if the Director is satisfied that all the reclamation or a phase of the reclamation covered by the bond or portion thereof has been accomplished in accordance with the following schedules for reclamation of Phases I, II, and III:

(1) at the completion of Phase I, after the operator completes the backfilling, regrading (which may include the replacement of topsoil) and drainage control of a bonded area in accordance with the approved reclamation plan, 60 percent of the bond or collateral for the applicable area.

(2) at the completion of Phase II, after revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan, an additional amount of bond. When determining the amount of bond to be released after successful revegetation has been established, the Director shall retain that amount of bond for the revegetated area which would be sufficient to cover the cost of reestablishing revegetation if completed by a third party and for the period specified for operator responsibility in Section 69-25A-19 NMSA 1978 of the Act for reestablishing revegetation. No part of the bond or deposit shall be released under this paragraph so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by Section 69-25A-19B(10) NMSA 1978 of the Act and by 19.8.19 NMAC through 19.8.28 NMAC or until soil productivity for prime farmlands has returned to the equivalent levels of yield as non-mined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to Section 69-25A-10(b)(6) NMSA 1978 of the Act and 19.8.24 NMAC. Where a silt dam is to be retained as a permanent impoundment pursuant to 19.8.19 NMAC

through 19.8.28 NMAC, the Phase II portion of the bond may be released under this paragraph so long as provisions for sound future maintenance by the operator or the landowner have been made with the Director.

(3) at the completion of Phase III, after the operator has completed successfully all surface coal mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified for operator responsibility in 19.8.20.2065 NMAC. However, no bond shall be fully released under provisions of this Section until reclamation requirements of the Act and the permit are fully met.

D. If the Director disapproves the application for release of the bond or portion thereof, the Director shall notify the permittee, the surety, and any person with an interest in collateral as provided for in 19.8.14.1410.A(4) NMAC, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing an opportunity for a public hearing.

E. When any application for total or partial bond release is filed with the Director, the Director shall notify the municipality in which the surface coal mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.

F. Any person with a valid legal interest which might be adversely affected by release of the bond, or the responsible officer or head of any Federal, State, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or which is authorized to develop and enforce environmental standards with respect to such operations, shall have the right to file written objections to the proposed release from bond with the Director within 30 days after the last publication of the notice required by 19.8.14.1413.A(2) NMAC. If written objections are filed and a hearing is requested, the Director shall inform all the interested parties of the time and place of the hearing, and shall hold a public hearing within 30 days after receipt of the request for the hearing. The date, time, and location of the public hearing shall be advertised by the Director in a newspaper of general circulation in the locality for two consecutive weeks. The public hearing shall be held in the locality of the surface coal mining operation from which bond release is sought, or at the location of the Director's office, at the option of the objector.

G. For the purpose of the

hearing under 19.8.14.1412.F NMAC, the Director shall have the authority to administer oaths, subpoena witnesses or written or printed material, compel the attendance of witnesses or the production of materials, and take evidence including, but not limited to, inspection of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing shall be made, and a transcript shall be made available on the motion for any party or by order of the Director.

H. Without prejudice to the right of an objector or the applicant, the Director may hold an informal conference as provided in Section 69-25A-17(B) NMSA 1978 of the Act to resolve such written objections. The Director shall make a record of the informal conference unless waived by all parties, which shall be accessible to all parties. The Director shall also furnish all parties of the informal conference with a written finding of the Director based on the informal conference, and the reasons for said finding.

[11-29-97; 19.8.14.1412 NMAC - Rn, 19 NMAC 8.2.14.1412, 9-29-2000; A, 1-15-2002]

19.8.14.1415 Termination of Regulatory Jurisdiction

A. The Director may terminate regulatory jurisdiction over a reclaimed surface coal mining and reclamation operation, or increment thereof, upon a written finding pursuant to 19.8.14.1412.C(3) NMAC that all reclamation requirements imposed on the permittee have been successfully completed or the performance bond has been released.

B. The Director shall reassert jurisdiction over a site if it is demonstrated that either the bond release or the written finding for termination of jurisdiction are based upon fraud, collusion, or misrepresentation of a material fact.

[19.8.14.1415 NMAC - N, 1-15-2002]

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT MINING AND MINERALS DIVISION

Explanatory paragraph:

The purpose of these changes are to ensure that the State Coal Surface Mining Commission rules are no less effective than the Office of Surface Mining, U.S. Department of the Interior, permanent program regulations (30 CFR) by amending the language at 19.8.19.6 NMAC, 19.8.19.1900

NMAC and 19.8.19.1902 NMAC.

19.8.19.6 Objective: ~~[The objective of parts 1 - 34 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).]~~ The objective of parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act. [19.8.19.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.19.1900 General Responsibility of Persons Conducting Coal Exploration

A. ~~[Each person who conducts coal exploration which substantially disturbs the natural land surface in which 250 tons or less of coal are removed shall file the notice of intention to explore required under 19.8.6.601 NMAC and shall comply with 19.8.19.1903 NMAC.]~~ Each person who conducts coal exploration which substantially disturbs the natural land surface in which 250 tons or less of coal are removed shall file the notice of intention to explore required under 19.8.6.601 NMAC and shall comply with 19.8.19.1902 NMAC.

B. ~~[Each person who conducts coal exploration which substantially disturbs the natural land surface and in which more than 250 tons of coal are removed in the area described by the written approval from the Director, shall comply with the procedures described in the exploration and reclamation operations plan approved under 19.8.6.603 NMAC and shall comply with 19.8.19.1903 NMAC.]~~ Each person who conducts coal exploration which substantially disturbs the natural land surface and in which more than 250 tons of coal are removed in the area described by the written approval from the Director, shall comply with the procedures described in the exploration and reclamation operations plan approved under 19.8.6.603 NMAC and shall comply with 19.8.19.1902 NMAC.

[11-29-97; 19.8.19.1900 NMAC - Rn, 19 NMAC 8.2.19.1900, 9-29-2000; A, 1-15-2002]

19.8.19.1902 Performance Standards for Coal Exploration The performance standards in this Section are applicable to coal exploration, which substantially disturbs land surface.

A. Habitats of unique value for fish, wildlife, and other related environmental values and areas identified in 19.8.9.905.B NMAC shall not be disturbed during coal exploration.

B. The person who conducts coal exploration shall, to the extent practicable, measure important environmental characteristics of the exploration area during the operations, to minimize environmental damage to the area and to provide supportive information for any permit application that person may submit under 19.8.5 NMAC through 19.8.13 NMAC.

C.

(1) Vehicular travel on other than established graded and surfaced roads shall be limited by the person who conducts coal exploration to that absolutely necessary to conduct the exploration. Travel shall be confined to graded and surfaced roads during periods when excessive damage to vegetation or rutting of the land surface could result.

(2) ~~[Any new road or other transportation facility shall comply with the provisions of 19.8.20.2074.B through 2074.F, and 19.8.20.2076 and 2077 NMAC.] Any new road or other transportation facility shall comply with the provisions of 19.8.20.2076.B through 2076.F, and 19.8.20.2077 and 2078 NMAC.~~

(3) Existing roads or other transportation facilities may be used for exploration in accordance with the following:

(a) All applicable Federal, State, and local requirements shall be met.

(b) If the road is significantly altered for exploration, including, but not limited to, change of grade, widening, or change of route, or if use of the road for exploration contributes additional suspended solids to streamflow or runoff, then 19.8.19.1902.G NMAC shall apply to all areas of the road which are altered or which result in such additional contributions.

(c) If the road or other transportation facility is significantly altered for exploration activities, the person conducting exploration shall ensure that the requirements of 19.8.20.2076.B through 2076.F, and 19.8.20.2076 and 2077 NMAC are met for the design, construction, alteration, and maintenance of the road.

(4) Any road or transportation facility that will be retained after exploration activities are complete shall comply with the applicable provisions of 19.8.20.2076, 2077, 2078 or 2079 NMAC, as applicable. Any road that will not be retained will be pr[RTF bookmark start: QuickMark][RTF bookmark end: QuickMark]omptly reclaimed.

D. If excavations, artificial

flat areas, or embankments are created during exploration, those areas shall be returned to the approximate original contour promptly after such features are no longer needed for coal exploration.

E. Topsoil shall be removed, stored, and redistributed on disturbed areas as necessary to assure successful revegetation or as required by the Director.

F. Revegetation of areas disturbed by coal exploration shall be performed by the person who conducts the exploration, or his agent. If more than 250 tons of coal are removed from the exploration area, all revegetation shall be in compliance with the plan approved by the Director and carried out in a manner that encourages prompt vegetative cover and recovery of productivity levels compatible with approved post-exploration land use and in accordance with the following:

(1) All disturbed lands shall be seeded or planted with species of the same aspection native to the disturbed area. If both the pre-exploration and post-exploration land uses are intensive agriculture, planting of the crops normally grown will meet the requirements of this paragraph.

(2) The vegetative cover shall be capable of stabilizing the soil surface in regards to erosion.

G. With the exception of small and temporary diversions of overland flow of water around new roads, drill pads, and support facilities, no ephemeral, intermittent or perennial stream shall be diverted during coal exploration activities. Overland flow of water shall be diverted in a manner that:

(1) prevents erosion;

(2) to the extent possible using the best technology currently available, prevents additional contributions of suspended solids to streamflow or runoff outside the exploration area in accordance with 19.8.20. 2009 through 2026 NMAC and the pertinent State Water Quality Control Commission Regulations Standards; and

(3) complies with all other applicable State or Federal requirements.

H. Each exploration hole, borehole, well, or other exposed underground opening created during exploration must meet the requirements of 19.8.20.2001 through 2003 NMAC.

I. All facilities and equipment shall be removed from the exploration area promptly when they are no longer needed for exploration, except for those facilities and equipment that the Director determines may remain to:

(1) provide additional environmental quality data;

(2) reduce or control the on and off-site effects of the exploration activities;

or

(3) facilitate future surface mining and reclamation operations by the person conducting the exploration under an approved permit.

J. Coal exploration shall be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance, and shall include sediment control measures such as provided in 19.8.20.2013 NMAC of these rules and regulations and the pertinent State Water Quality Control Commission Standards or sedimentation ponds which comply with 19.8.20.2014 NMAC. The Director may specify additional measures which shall be adopted by the person engaged in coal exploration.

K. Toxic or acid-forming materials shall be handled and disposed of in accordance with 19.8.20.2016 and 2056 NMAC. If specified by the Director, additional measures shall be adopted by the person engaged in coal exploration.

[11-29-97; 19.8.19.1902 NMAC - Rn, 19 NMAC 8.2.19.1902, 9-29-2000; A, 1-15-2002]

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT MINING AND MINERALS DIVISION

Explanatory paragraph:

The purpose of these changes are to ensure that the State Coal Surface Mining Commission rules are no less effective than the Office of Surface Mining, U.S. Department of the Interior, permanent program regulations (30 CFR) by amending language at 19.8.20.6 NMAC, 19.8.20.200 NMAC, 19.8.20.2009 NMAC 19.8.20.2057 NMAC, 19.8.20.2058 NMAC .

19.8.20.6 Objective: ~~[The objective of parts 1 - 34 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).] The objective of parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).~~ These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.
[19.8.20.6 NMAC - N, 9-29-2000; A, 1-15-2002]

**19.8.20.2008 Top Dressing :
Nutrients and Soil Amendments**

~~[Nutrients and soil amendments in the amount determined by soil tests shall be applied to the redistributed topdressing, so that it supports the approved postmining land use and meets the revegetation requirements of 19.8.20.2006 through 2006 NMAC]~~ Nutrients and soil amendments in the amount determined by soil tests shall be applied to the redistributed topdressing, so that it supports the approved postmining land use and meets the revegetation requirements of 19.8.20.2060 through 2066 NMAC. All soil analyses shall be performed by a qualified state approved laboratory using standard methods approved by the Director. Methods and results from topdressing analyses shall be submitted to the Director.

[11-29-97; 19.8.20.2008 NMAC - Rn, 19 NMAC 8.2.20.2008, 9-29-2000; A, 1-15-2002]

19.8.20.2009 Hydrologic Balance: General Requirements

A. Surface coal mining operations shall be planned and conducted to minimize changes to the prevailing hydrologic balance in both the permit and adjacent areas and prevent material damage outside of the permit area in order to prevent adverse changes in that balance that could result from those operations.

B. Changes in water quality and quantity, in depth to ground water, and in the location of surface water drainage channels shall be minimized so that the approved postmining land use of the permit area is not adversely affected.

C. In no case shall Federal and State water quality statutes, regulations, standards, or effluent limitations be violated.

D. Operations shall be conducted to minimize water pollution and, where necessary, sediment ponds or other treatment facilities shall be used to control water pollution.

(1) Each person who conducts surface coal mining operations shall emphasize mining and reclamation practices that prevent or minimize water pollution. Methods listed in 19.8.20.2009.D(2) and (3) NMAC shall be capable of containing or treating all surface flow from the disturbed areas and shall be used in preference to the use of sediment ponds or water treatment facilities.

(2) Acceptable practices to control sediment and minimize water pollution include, but are not limited to:

- (a)** stabilizing disturbed areas through land shaping, berming, contour furrowing or regrading to final contour;
- (b)** diverting runoff;
- (c)** achieving quickly germinat-

ing and growing stands of temporary vegetation;

- (d)** regulating channel velocity of water;
- (e)** lining drainage channels with rock or revegetation;
- (f)** mulching;
- (g)** selectively placing and sealing acid-forming and toxic-forming materials; and

(h) selectively placing waste materials in backfill areas.

(3) In addition, unless demonstrated to the Director otherwise, all acceptable practices for controlling and minimizing water pollution at underground mines shall include, but not be limited to:

- (a)** designing mines to prevent gravity drainage of acid waters;
- (b)** sealing all underground mine openings;
- (c)** controlling subsidence; and
- (d)** preventing acid mine drainage.

(4) If the practices listed in 19.8.20.2009.D(2) NMAC are not adequate to meet the requirements of 19.8.20.2009.D(1) NMAC, the person who conducts surface coal mining operations shall comply with the requirements of 19.8.20.2010 NMAC, unless the Director issues a waiver under 19.8.20.2009.E NMAC.

E. ~~[The Director may waive the requirements of 19.8.20 NMAC for regraded areas if the operator can demonstrate to the Director that the runoff from the regraded area is as good as or better quality than the waters entering the permit area and erosion from the regraded area has been controlled to the satisfaction of the Director.]~~ The Director may waive the requirements of 19.8.20.2009 NMAC for regraded areas if the operator can demonstrate to the Director that the runoff from the regraded area is as good as or better quality than the waters entering the permit area and erosion from the regraded area has been controlled to the satisfaction of the Director.

(1) To provide for baseline data for waters entering the permit area, the operator shall operate and maintain monitoring on all drainages leading into the permit area, in a manner approved by the Director, in order to obtain and evaluate occurrences and changes in water quality and quantity during the life of mining operations.

(2) In order to ensure that runoff from the regraded area is in no way a hazard to the environment of the adjacent areas, the waters draining off of the regraded area shall not:

- (a)** exceed the values of Total

Suspended Solids, Iron, Manganese, pH and those parameters listed in 19.8.20.2009.E(3)(a) NMAC from the baseline analyses from the water entering the permit area;

(b) create an increase in sediment load into the receiving streams;

(c) create any environmental harm or threat to public health and safety; and

(d) degrade, pollute or otherwise diminish the characteristics of existing streams and drainages so as to cause imminent environmental harm to fish and wildlife habitats.

(3) Baseline data shall be collected from waters in drainages entering the permit area and runoff from regraded areas shall be collected during any precipitation event that produces such runoff. The operator shall demonstrate to the Director that the runoff from the regraded area has as good as or better chemical quality than the baseline analyses from waters entering the permit area.

(a) In addition to 19.8.20.2009.E(2)(a) NMAC, chemical analysis of the runoff from the regraded area and baseline data from waters entering the permit area shall include, but not limited to, the following parameters:

Arsenic(As)	Phosphorus(P)
Carbonate (CO ₃)	Boron (B)
Potassium (K)	Bicarbonate (HCO ₃)
Calcium (Ca)	Selenium (Se)
Nitrate (NO ₃)	Chloride Sodium (Na)
Sulfate(SO ₄)	C a d m i u m (C d)
Uranium (U)	
Total Dissolved Solids (TDS)	
Fluoride	Vanadium (V)
Sodium Adsorption Ratio (SAR)	
Lead (Pb)	Radioactivity
Magnesium (Mg)	Radium Ra226
Radium Ra228	

(b) The Director may require additional tests and analyses as he deems necessary.

(c) If the operator can demonstrate that the analysis of any particular parameter are of little or not significance in the permit or adjacent areas, then such parameter(s) may be waived upon approval by the director.

(4) All analysis shall be submitted to the Director within 90 days following sample collection.

(5) ~~[Monitoring of regraded areas shall continue in accordance with 19.8.20.2009.E NMAC until that portion of the bond is released pursuant to 19.8.14.1413.C.]~~ Monitoring of regraded areas shall continue in accordance with 19.8.20.2009.E NMAC until that portion of the bond is released pursuant to 19.8.14.1412 NMAC.

F. Other treatment facili-

ties shall be designed to treat the 10-year, 24-hour precipitation event unless a lesser design is approved by the Director based on terrain, climate, other site-specific conditions and a demonstration by the operator that the effluent limitations of 19.8.20.2010 NMAC will be met. Other treatment facilities shall be designed in accordance with the applicable requirements of 19.8.20.2014 NMAC.

[11-29-97; 19.8.20.2009 NMAC - Rn, 19 NMAC 8.2.20.2009, 9-29-2000; A, 1-15-2002]

19.8.20.2057 Backfilling and Grading: Thin Overburden

A. ~~[The provisions of 19.8.20.2057 NMAC apply only where the final thickness is less than 0.8 of the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness prior to removal of coal. Final thickness is the product of the overburden thickness prior to removal of coal, times the bulking factor to be determined for each permit area. The provisions of 19.8.20.2057 NMAC apply only when surface mining activities cannot be carried out to comply with 19.8.20.2054 NMAC to achieve the approximate original contour.] The provisions of 19.8.20.2057 NMAC apply only where the overburden thickness times the swell factor, plus the thickness of other available waste materials, is less than the combined thickness of the overburden and coal bed prior to removing the coal and only when surface mining activities cannot be carried out to comply with 19.8.20.2054 NMAC to achieve the approximate original contour.~~

B. In surface mining activities carried out continuously in the same limited pit area for more than 1 year from the day coal-removal operations begin and where the volume of all available spoil and suitable waste materials over the permit area is demonstrated to be insufficient to achieve the approximate original contour of the lands disturbed, surface mining activities shall be conducted to meet, at a minimum, the following standards:

(1) haul or convey, backfill, and grade, using all available spoil and suitable waste materials from the entire mine area, to attain the lowest practicable stable grade, to achieve a static safety factor of 1.3, and to provide adequate drainage and long-term stability of the regraded areas and cover all acid-forming and toxic-forming materials.

(2) except as provided in 19.8.20.2055.A(2) NMAC, eliminate highwalls by grading or backfilling to stable slopes not exceeding 1v:2H (50 percent), or such lesser slopes as the Director may specify to reduce erosion, maintain the hydro-

logic balance, or allow the approved post-mining land use.

(3) haul or convey, backfill, grade, and revegetate in accordance with 19.8.20.2060 through 2066 NMAC, to achieve an ecologically sound land use compatible with the prevailing use in unmined areas surrounding the permit area; and

(4) haul or convey, backfill, and grade, to ensure impoundments are constructed only where:

(a) it has been demonstrated to the Director's satisfaction that all requirements of 19.8.20.2009 through 2024 NMAC have been met; and

(b) the impoundments have been approved by the Director as suitable for the approved postmining land use and as meeting the requirements of 19.8.20 NMAC and all other applicable Federal and State laws and regulations.

[11-29-97; 19.8.20.2057 NMAC - Rn, 19 NMAC 8.2.20.2057, 9-29-2000; A, 1-15-2002]

19.8.20.2058 Backfilling and Grading: Thick Overburden

A. ~~[The provisions of 19.8.20 NMAC apply only where the final thickness is greater than 1.2 of the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness prior to removal of coal. Final thickness is the product of the overburden thickness prior to removal of coal, times the bulking factor to be determined for each permit area. The provisions of 19.8.20.2058 NMAC apply only when surface mining activities cannot be carried out to comply with 19.8.20.2054 NMAC to achieve the approximate original contour.] The provisions of 19.8.20.2058 NMAC apply only where the overburden thickness times the swell factor exceeds the combined thickness of the overburden and coal bed prior to removing the coal and only when surface mining activities cannot be carried out to comply with 19.8.20.2054 NMAC to achieve the approximate original contour.~~

B. In surface mining activities where the volume of spoil over the permit area is demonstrated to be more than sufficient to achieve the approximate original contour, surface mining activities shall be conducted to meet, at a minimum, the following standards:

(1) Haul or convey, backfill, and grade all spoil and wastes, not required to achieve the approximate original contour of the permit area, to the lowest practicable grade, to achieve a static factor of safety of 1.3 and cover all acid-forming and other toxic-forming materials;

(2) Haul or convey, backfill, and grade excess spoil and wastes only

within the permit area and dispose of such materials in accordance with 19.8.20.2034 through 2037 NMAC;

(3) Haul or convey, backfill, and grade excess spoil and wastes to maintain the hydrologic balance, in accordance with 19.8.20.2009 through 2025 NMAC and to provide long-term stability by preventing slides, erosion and water pollution;

(4) Haul or convey, backfill, grade and revegetate wastes and excess spoil to achieve an ecologically sound land use approved by the Director as compatible with the prevailing land uses in unmined areas surrounding the permit area;

(5) Except as provided for in 19.8.20.2055.A(2) and 2053.B(1) NMAC, eliminate all highwalls and depressions by backfilling with spoil and suitable waste materials; and

(6) Meet the revegetation requirements of 19.8.20.2060 through 2066 NMAC for all disturbed areas.

[11-29-97; Rn, 19.8.20.2058 NMAC - 19 NMAC 8.2.20.2058, 9-29-2000; A, 1-15-2002]

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT MINING AND MINERALS DIVISION

Explanatory paragraph:

The purpose of these changes are to ensure that the State Coal Surface Mining Commission rules are no less effective than the Office of Surface Mining, U.S. Department of the Interior, permanent program regulations (30 CFR) by amending the language at 19.8.21.6 NMAC.

19.8.21.6 Objective: ~~[The objective of parts 1 - 34 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).] The objective of parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).~~

These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.

[19.8.21.6 NMAC - N, 9-29-2000; A, 1-15-2002]

**ENERGY, MINERALS AND
NATURAL RESOURCES
DEPARTMENT**
MINING AND MINERALS
DIVISION

Explanatory paragraph:

The purpose of these changes are to ensure that the State Coal Surface Mining Commission rules are no less effective than the Office of Surface Mining, U.S. Department of the Interior, permanent program regulations (30 CFR) by amending the language at 19.8.22.6 NMAC.

19.8.22.6 Objective: ~~[The objective of parts 1 - 34 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).]~~ The objective of parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.
[19.8.22.6 NMAC - N, 9-29-2000; A, 1-15-2002]

**ENERGY, MINERALS AND
NATURAL RESOURCES
DEPARTMENT**
MINING AND MINERALS
DIVISION

Explanatory paragraph:

The purpose of these changes are to ensure that the State Coal Surface Mining Commission rules are no less effective than the Office of Surface Mining, U.S. Department of the Interior, permanent program regulations (30 CFR) by amending the language at 19.8.23.6 NMAC.

19.8.23.6 Objective: ~~[The objective of parts 1 - 34 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).]~~ The objective of parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.
[19.8.23.6 NMAC - N, 9-29-2000; A, 1-15-2002]

**ENERGY, MINERALS AND
NATURAL RESOURCES
DEPARTMENT**
MINING AND MINERALS
DIVISION

Explanatory paragraph:

The purpose of these changes are to ensure that the State Coal Surface Mining Commission rules are no less effective than the Office of Surface Mining, U.S. Department of the Interior, permanent program regulations (30 CFR) by amending 19.8.24.6 NMAC and adding a new paragraph at 19.8.24.2400 NMAC.

19.8.24.6 Objective: ~~[The objective of parts 1 - 34 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).]~~ The objective of parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.
[19.8.24.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.24.2400 Prime Farmland:
Special Requirements Surface coal mining and reclamation operations conducted on prime farmland shall meet the following requirements:

A. A permit shall be obtained for those operations under 19.8.10.1004 NMAC.

B. Soil materials to be used in the reconstruction of the prime farmland soil shall be removed before drilling, blasting or mining, in accordance with 19.8.24.2401 NMAC and in a manner that prevents mixing or contaminating these materials with undesirable material. Where removal of soil materials results in erosion that may cause air and water pollution, the Director shall specify methods to control erosion of exposed overburden.

C. The aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining. Water bodies, if any, to be constructed during mining and reclamation operations must be located within the post-reclamation non-prime farmland portions of the permit area. The creation of any such water bodies must be approved by the regulatory authority and the consent of all affected property owners within the permit area must be obtained.

[11-29-97; 19.8.24.2400 NMAC- Rn, 19 NMAC 8.2.24.2400, 9-29-2000; A, 1-15-2002]

**ENERGY, MINERALS AND
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DEPARTMENT**
MINING AND MINERALS
DIVISION

Explanatory paragraph:

The purpose of these changes are to ensure that the State Coal Surface Mining Commission rules are no less effective than the Office of Surface Mining, U.S. Department of the Interior, permanent program regulations (30 CFR) by amending the language at 19.8.25.6 NMAC.

19.8.25.6 Objective: ~~[The objective of parts 1 - 34 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).]~~ The objective of parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.
[19.8.25.6 NMAC - N, 9-29-2000; A, 1-15-2002]

**ENERGY, MINERALS AND
NATURAL RESOURCES
DEPARTMENT**
MINING AND MINERALS
DIVISION

Explanatory paragraph:

The purpose of these changes are to ensure that the State Coal Surface Mining Commission rules are no less effective than the Office of Surface Mining, U.S. Department of the Interior, permanent program regulations (30 CFR) by amending the language at 19.8.26.6 NMAC.

19.8.26.6 Objective: ~~[The objective of parts 1 - 34 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).]~~ The objective of parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for

operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act. [19.8.26.6 NMAC - N, 9-29-2000; A, 1-15-2002]

**ENERGY, MINERALS AND
NATURAL RESOURCES
DEPARTMENT
MINING AND MINERALS
DIVISION**

Explanatory paragraph:

The purpose of these changes are to ensure that the State Coal Surface Mining Commission rules are no less effective than the Office of Surface Mining, U.S. Department of the Interior, permanent program regulations (30 CFR) by amending the language at 19.8.27.6 NMAC.

19.8.27.6 Objective: ~~[The objective of parts 1 - 34 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).]~~ The objective of parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act. [19.8.27.6 NMAC - N, 9-29-2000; A, 1-15-2002]

**ENERGY, MINERALS AND
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DIVISION**

Explanatory paragraph:

The purpose of these changes are to ensure that the State Coal Surface Mining Commission rules are no less effective than the Office of Surface Mining, U.S. Department of the Interior, permanent program regulations (30 CFR) by amending the language at 19.8.26.6 NMAC.

19.8.28.6 Objective: ~~[The objective of parts 1 - 34 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).]~~ The objective of parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in

NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act. [19.8.28.6 NMAC - N, 9-29-2000; A, 1-15-2002]

**ENERGY, MINERALS AND
NATURAL RESOURCES
DEPARTMENT
MINING AND MINERALS
DIVISION**

Explanatory paragraph:

The purpose of these changes are to ensure that the State Coal Surface Mining Commission rules are no less effective than the Office of Surface Mining, U.S. Department of the Interior, permanent program regulations (30 CFR) by amending 19.8.29.6 NMAC and 19.8.29.2900 NMAC.

19.8.29.6 Objective: ~~[The objective of parts 1 - 34 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).]~~ The objective of parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act. [19.8.29.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.29.2900 Inspections

A. The Director through his duly authorized representative shall conduct an average of at least one partial inspection per month and one complete inspection per calendar quarter of each active surface coal mining and reclamation operation. A partial inspection is an on-site or aerial review of an operator's compliance with some of the permit conditions and requirements under the Act and NMAC Title 19 Chapter 8, and includes collection of evidence of any violations observed. Aerial inspections shall be conducted in a manner which reasonably ensures the identification and documentation of conditions at each surface coal mining and reclamation site inspected. Any potential violation observed during an aerial inspection shall be investigated on site within three calendar days: Provided that any indication of a condition, practice or violation constituting

cause for issuance of a cessation order under 19.8.30.3000 NMAC shall be investigated on site immediately. And provided further, that an on-site investigation of a potential violation observed during an aerial inspection shall not be considered to be an additional partial or complete inspection for the purposes of this Part. A complete inspection is an on-site review of an operator's compliance with all permit conditions and requirements within the entire area disturbed or affected by the operations, and includes collection of evidence with respect to every violation.

B. The Director, through his duly authorized representative shall conduct periodic inspections of all inactive surface coal mining operations and exploration sites required to comply, in whole or in part, with the Act and NMAC Title 19 Chapter 8, including collection of evidence with respect to every violation of any condition of the exploration approval or surface coal mining and reclamation operation permit, or any requirement of this Act or NMAC Title 19 Chapter 8. At least one complete inspection per calendar quarter shall be conducted on inactive surface coal mining operations. For purposes of this Part, an inactive surface coal mining operation is one for which the Director has received the written notice provided for under 19.8.20.2071 NMAC, or reclamation of Phase II as defined in 19.8.14.1413.C(2) NMAC has been completed.

C. Permits issued under 19.8.11 NMAC shall be inspected quarterly until notice required by 19.8.11.1112.D NMAC has been received by the Director. Upon receipt of Notice, or as determined necessary by the Director, inspections will be conducted as required under 19.8.29.2900.A NMAC.

D. The inspections shall be carried out on an irregular basis so as to monitor compliance at all operations, shall occur without prior notice except for necessary on-site meetings and include the prompt filing of inspection reports adequate to enforce the requirements and carry out the terms and conditions of the Act and NMAC Title 19 Chapter 8.

E. The authorized representatives of the Director without advance notice and upon presentation of appropriate credentials:

(1) shall have the right of entry to, upon or through any coal exploration site, surface coal mining and reclamation operations or any premises in which any records required to be maintained under the Act or NMAC Title 19 Chapter 8 are located; and

(2) may at reasonable times, and without delay, have access to and copy any records, inspect any monitoring equip-

ment or method of operation required under the Act.

F. The inspections shall be in accordance with 69-25A-21(d) and 69-25A-25(e) NMSA 1978 of the Act, except that a search warrant is required to enter a building to inspect if the permittee or operator does not consent to entry.

G. "Abandoned site" means a surface coal mining and reclamation operation for which the regulatory authority has found in writing that:

(1) All surface and underground coal mining and reclamation activities at the site have ceased;

(2) The regulatory authority or OSM has issued at least one notice of violation or the initial program equivalent, and either:

(a) is unable to serve the notice despite diligent efforts to do so; or

(b) the notice was served and has progressed to a failure-to-abate cessation order or the initial program equivalent;

(3) The regulatory authority:

(a) is taking action to ensure that the permittee and operator, and owners and controllers of the permittee and operator, will be precluded from receiving future permits while violations continue at the site; and

(b) is taking action pursuant to section 518(e), 518(f), 521(a)(4) or 521(c) of SMCRA or counterparts included in the Act to ensure that abatement occurs or that there will not be a recurrence of the failure-to-abate, except where after evaluating the circumstances it concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs; and

(4) Where the site is, or was, permitted and bonded:

(a) the permit has either expired or been revoked; and

(b) the regulatory authority has initiated and is diligently pursuing forfeiture of, or has forfeited, any available performance bond.

H. In lieu of the inspection frequency established in 19.8.20.2900.H(1)(a) and (b) NMAC, the regulatory authority shall inspect each abandoned site on a set frequency commensurate with the public health and safety and environmental considerations present at each specific site, but in no case shall the inspection frequency be set at less than one complete inspection per quarter.

(1) In selecting an alternate inspection frequency authorized under the paragraph above, the regulatory authority shall first conduct a complete inspection of the abandoned site and provide public notice under 19.8.29.2900.H(2) NMAC.

Following the inspection and public notice, the regulatory authority shall prepare and maintain for public review a written finding justifying the alternative inspection frequency selected. This written finding shall justify the new inspection frequency by affirmatively addressing in detail all of the following criteria:

(a) how the site meets each of the criteria under the definition of an abandoned site under 19.8.29.2900.G NMAC and thereby qualifies for a reduction in inspection frequency;

(b) whether, and to what extent, there exist on the site impoundments, earthen structures or other conditions that pose, or may reasonably be expected to become, imminent dangers to the health or safety of the public or significant environmental harms to land, air, or water resources;

(c) the extent to which existing impoundments or earthen structures were constructed and certified in accordance with prudent engineering designs approved in the permit;

(d) the degree to which erosion and sediment control is present and functioning;

(e) the extent to which the site is located near or above urbanized areas, communities, occupied dwellings, schools and other public or commercial buildings and facilities;

(f) the extent of reclamation completed prior to abandonment and the degree of stability of unreclaimed areas, taking into consideration the physical characteristics of the land mined and the extent of settlement or revegetation that has occurred naturally with them; and

(g) based on a review of the complete and partial inspection report record for the site during at least the last two consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.

(2) The public notice and opportunity to comment required under 19.8.29.2900.H(1) NMAC shall be provided as follows:

(a) the regulatory authority shall place a notice in the newspaper with the broadest circulation in the locality of the abandoned site providing the public with a 30-day period in which to submit written comments;

(b) the public notice shall contain the permittee's name, the permit number, the precise location of the land affected, the inspection frequency proposed, the general reasons for reducing the inspection frequency, the bond status of the permit, the telephone number and address of the regulatory authority where written comments on

the reduced inspection frequency may be submitted, and the closing date of the comment period.

[11-29-97; 19.8.29.2900 NMAC - Rn, 19 NMAC 8.2.29.2900, 9-29-2000; A, 1-15-2002]

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT MINING AND MINERALS DIVISION

Explanatory paragraph:

The purpose of these changes are to ensure that the State Coal Surface Mining Commission rules are no less effective than the Office of Surface Mining, U.S. Department of the Interior, permanent program regulations (30 CFR) by amending the language at 19.8.30.6 NMAC.

19.8.30.6 Objective: ~~[The objective of parts 1 - 34 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).]~~ The objective of parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act. [19.8.30.6 NMAC - N, 9-29-2000; A, 1-15-2002]

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT MINING AND MINERALS DIVISION

Explanatory paragraph:

The purpose of these changes are to ensure that the State Coal Surface Mining Commission rules are no less effective than the Office of Surface Mining, U.S. Department of the Interior, permanent program regulations (30 CFR) by amending paragraphs 19.8.31.6 NMAC and 19.8.31.3107 NMAC.

19.8.31.6 Objective: ~~[The objective of parts 1 - 34 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).]~~ The objective of parts 1 - 35 of Chapter 8 is to establish regulations to implement the New

Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act. [19.8.31.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.31.3107 Request for Hearing

A. [The person charged with the violation may contest the proposed penalty or the alleged violation by submitting a petition and an amount equal to the proposed penalty, or, if a conference has been held, the reassessed or affirmed penalty to the Director to be held in escrow as provided in 19.8.31.3107.B within 30 days from receipt of the proposed assessment or reassessment or 15 days from the date of service of the conference officer's action, whichever is later.] The person charged with the violation may contest the proposed penalty or the alleged violation by submitting a petition and an amount equal to the proposed penalty, or, if a conference has been held, the reassessed or affirmed penalty to the Director to be held in escrow as provided in 19.8.31.3107.B NMAC within 30 days from receipt of the proposed assessment or reassessment or 30 days from the date of service of the conference officer's action, whichever is later. The fact of the violation may not be contested, if it has been decided in a review proceeding commenced under 19.8.31.3108 NMAC.

B. All funds submitted under 19.8.31.3107.A NMAC shall be held in escrow pending completion of the administrative and judicial review process, at which time the Director shall disburse them as provided 19.8.31.3108 NMAC.

C. The request for hearing and any hearing procedure shall be governed by 19.8.12.1203 NMAC and any contest of a proposed penalty may, unless inconsistent with the timing of a hearing on a notice of violation or cessation order, be combined with any such proceeding under 19.8.12.1203 NMAC.

[11-29-97; 19.8.31.3107 NMAC – Rn, 19 NMAC 8.2.31.3107, 9-29-2000; A, 1-15-2002]

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT MINING AND MINERALS DIVISION

Explanatory paragraph:

The purpose of these changes are to ensure that the State Coal Surface Mining

Commission rules are no less effective than the Office of Surface Mining, U.S. Department of the Interior, permanent program regulations (30 CFR) by amending paragraphs 19.8.32.6 NMAC, 19.8.31.3200 NMAC, 19.8.3203 NMAC and 19.8.3206 NMAC.

19.8.32.6 Objective: [The objective of parts 1 - 34 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).] The objective of parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act. [19.8.32.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.32.3200 Eligibility for Assistance An applicant is eligible for assistance if he:

A. intends to apply for a permit pursuant to the Act;

B. [establishes that his probable total actual and attributed production from all locations during any consecutive 12-month period either during the term of his permit or during the first 5 years after issuance of his permit, whichever period is shorter, will not exceed 100,000 tons. Production from the following operations shall be attributed to the applicant:

(1) the pro rata share, based upon percentage of ownership of applicant, of coal produced by operations in which the applicant owns more than a 5 percent interest;

(2) the pro rata share, based upon percentage of ownership of applicant, of coal produced in other operations by persons who own more than 5 percent of the applicant's operation;] establishes that his probable total actual and attributed production from all locations during any consecutive 12-month period either during the term of his permit or during the first 5 years after issuance of his permit, whichever period is shorter, will not exceed 300,000 tons. Production from the following operations shall be attributed to the applicant:

(1) the pro rata share, based upon percentage of ownership of applicant, of coal produced by operations in which the applicant owns more than a 10 percent interest;

(2) the pro rata share, based upon percentage of ownership of applicant,

of coal produced in other operations by persons who own more than 10 percent of the applicant's operation;

(3) all coal produced by operations owned by persons who directly or indirectly control the applicant by reason of direction of the management;

(4) all coal produced by operations owned by members of the applicant's family and the applicants' relatives, unless it is established that there is no direct or indirect business relationship between or among them.

C. is not restricted in any manner from receiving a permit under the permanent regulatory program; and

D. does not organize or reorganize his company solely for the purpose of obtaining assistance under the SOAP.

[11-29-97; 19.8.32.3200 NMAC – Rn, 19 NMAC 8.2.32.3200, 9-29-2000; A, 1-15-2002]

19.8.32.3203 Program Services and Data Requirements

A. To the extent possible with available funds, the Director shall select and pay a qualified laboratory to make the determination and statement and provide other services referenced in 19.8.32.3203.B NMAC for eligible operators who request assistance.

B. The Director shall determine the data needed for each applicant or group of applicants. Data collected and the results provided to the Director shall be sufficient to satisfy the requirements for:

(1) the determination of the probable hydrologic consequences of the surface mining and reclamation operations in the proposed permit area and adjacent areas, including the engineering analyses and designs necessary for the determination in accordance with 19.8.9.907.C NMAC and any other applicable provisions of NMAC Title 19 Chapter 8.

(2) the drilling and statement of the results of test borings or core samplings for the proposed permit area in accordance with 19.8.8.803 NMAC and any other applicable provisions of NMAC Title 19 Chapter 8 Parts 1-35;

(3) the development of cross-section maps and plans required by 19.8.8.813 NMAC;

(4) the collection of archaeological and historic information and related plans required by 19.8.8.801 NMAC and 19.8.9.912 NMAC and any other archaeological and historic information required by the regulatory authority;

(5) pre-blast surveys required by 19.8.9.902.E NMAC; and

(6) the collection of site-specific resources information, the production of

protection and enhancement plans for fish and wildlife habitats required by 19.8.8.809 NMAC and 19.8.9.905 NMAC, and information and plans for any other environmental values required by the regulatory authority under SMCRA and the Act.

C. Data collection and analysis may proceed concurrently with the development of mining and reclamation plans by the operator.

D. Data collected under this program shall be made publicly available in accordance with the New Mexico Public Record Act. The Director shall develop procedures for interstate coordination and exchange of data.

[11-29-97; 19.8.32.3203 NMAC – Rn, 19 NMAC 8.2.32.3203, 9-29-2000; A, 1-15-2002]

19.8.32.3206 Applicant Liability

A. ~~[The applicant shall reimburse the Director for the cost of the laboratory services performed pursuant to this Part if]~~ The applicant shall reimburse the Director for the cost of the services rendered pursuant to this Part if:

(1) the applicant submits false information, fails to submit a permit application within 1 year from the date of receipt of the approved laboratory report, or fails to mine after obtaining a permit;

(2) ~~[the Director finds that the applicant's actual and attributed annual production of coal for all locations exceeds [100,000] tons during any consecutive 12 month period either during the term of the permit for which assistance is provided or during the first 5 years after issuance of the permit whichever is shorter, or] the Director finds that the applicant's actual and attributed annual production of coal for all locations exceeds 300,000 tons during any consecutive 12-month period either during the term of the permit for which assistance is provided or during the first 5 years after issuance of the permit whichever is shorter, or~~

(3) ~~[the permit is sold, transferred, or assigned to another person and the transferee's total actual and attributed production exceeds the [100,000 ton] annual production limit during any consecutive 12-month period of the remaining term of the permit.] the permit is sold, transferred, or assigned to another person and the transferee's total actual and attributed production exceeds the 300,000 tons annual production limit during any consecutive 12-month period of the remaining term of the permit.~~ Under this Paragraph the applicant and its successor are jointly and severally obligated to reimburse the Director.

B. The Director may waive the reimbursement obligation if he finds that the applicant at all times acted in

good faith.

[11-29-97; 19.8.32.3206 NMAC – Rn, 19 NMAC 8.2.32.3206, 9-29-2000; A, 1-15-2002]

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT MINING AND MINERALS DIVISION

Explanatory paragraph:

The purpose of these changes are to ensure that the State Coal Surface Mining Commission rules are no less effective than the Office of Surface Mining, U.S. Department of the Interior, permanent program regulations (30 CFR) by amending the language at 19.8.33.6 NMAC.

19.8.33.6 Objective: ~~[The objective of parts 1 - 34 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).] The objective of parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).~~ These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.
[19.8.33.6 NMAC - N, 9-29-2000; A, 1-15-2002]

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT MINING AND MINERALS DIVISION

Explanatory paragraph:

The purpose of these changes are to ensure that the State Coal Surface Mining Commission rules are no less effective than the Office of Surface Mining, U.S. Department of the Interior, permanent program regulations (30 CFR) by amending the language at 19.8.34.6 NMAC.

19.8.34.6 Objective: ~~[The objective of parts 1 - 34 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).] The objective of parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979).~~

These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.

[19.8.33.6 NMAC - N, 9-29-2000; A, 1-15-2002]

ENVIRONMENTAL IMPROVEMENT BOARD

TITLE 20 ENVIRONMENTAL PROTECTION

CHAPTER 7 LIQUID WASTE PART 11 LIQUID WASTE TREAT- MENT AND DISPOSAL FEES

20.7.11.1 ISSUING AGENCY:
Environmental Improvement Board.
[20.7.11.1 NMAC - N, 2/1/2002]

20.7.11.2 SCOPE: All persons required to obtain a permit, modification to a permit, tank certification or re-inspection under 20.7.3 NMAC.
[20.7.11.2 NMAC - N, 2/1/2002]

**20.7.11.3 STATUTORY
AUTHORITY:** Environmental
Improvement Act, Section 74-1-1 through
74 -1-10 NMSA 1978.
[20.7.11.3 NMAC - N, 2/1/2002]

20.7.11.4 DURATION:
Permanent.
[20.7.11.4 NMAC - N, 2/1/2002]

20.7.11.5 EFFECTIVE DATE:
February 1, 2002, unless a later date is cited
at the end of a section.
[20.7.11.5 NMAC - N, 2/1/2002]

20.7.11.6 OBJECTIVE: The
objective of this rule is to provide for liquid
waste treatment and disposal fees to meet
expenses in the administration and opera-
tion of the state liquid waste treatment and
disposal program. The purpose of the state
liquid waste treatment and disposal pro-
gram is to protect the health and welfare of
present and future citizens by providing for
the prevention and abatement of hazards to
public health and surface and ground water
contamination from on-site liquid waste
disposal practices.
[20.7.11.6 NMAC - N, 2/1/2002]

20.7.11.7 DEFINITIONS:
A. Unless otherwise
defined in this Part, the words and phrases
used in this Part have the same meanings as
in 20.7.3.7 NMAC, Liquid Waste Disposal.
B. As used in this Part:
(1) "advanced treatment"

means any process of water renovation that upgrades liquid waste to meet specific reuse requirements. Advanced treatment may include general cleanup of wastewater or removal of specific types of wastes, such as nitrates or other nitrogen compounds, insufficiently removed by primary or secondary treatment processes. Advanced treatment may include physical or chemical treatments;

(2) "alternative system" means any on-site liquid waste system utilizing a method of liquid waste treatment and disposal used in lieu of, including modifications to, a conventional system that is not recognized and allowed by 20.7.3.7 NMAC or by the New Mexico Design Standards;

(3) "commercial unit" means a structure without bedrooms but which has sewage producing fixtures such as sinks, baths, showers, toilets, urinals, dish- and clothes-washers, or floor drains for receiving liquid waste;

(4) "conventional system" means an on-site liquid waste system consisting of a septic tank and a subsurface soil absorption system with gravity distribution of the effluent constructed in accordance with the standards set forth in 20.7.3 NMAC;

(5) "hazard to public health" means the indicated presence in water or soil of biological, chemical or other contaminants under such conditions that could adversely impact human health, including without limitation surfacing liquid waste, damage to a domestic water supply source, presence of a cesspool or an open tank, or exposure of liquid waste or seepage in a manner that allows possible transmission of disease;

(6) "liquid waste" means gray-water or blackwater which may contain without limitation human excreta and water carried waste from typical residential plumbing fixtures and activities, including, but not limited to, wastes from toilets, sinks, showers, baths, clothes- and dish-washing machines, and floor drains. "Liquid waste" also includes non-water carried wastes discharged into holding tanks and vaults. Specifically excluded from the definition of "liquid waste" are commercial process wastewaters, roof drainage, mine or mill tailings or wastes, and wastes containing high concentrations of stabilizing or deodorizing agents;

(7) "modify" means:

(a) to change the method of on-site liquid waste treatment or disposal;

(b) to expand the on-site liquid waste system;

(c) to alter the horizontal or vertical location of the on-site liquid waste system;

(d) to increase the amount of design flow or load received by the on-site liquid waste system above the original design flow or load;

(e) to remove or replace component materials in a disposal system; or

(f) to change the size or boundaries of a lot with an existing on-site liquid waste system so that the total design flow for the lot exceeds the total design flow limitation provided by the formula in Subsection 111.C.1 of 20.7.3 NMAC.

(8) "notice of non-approval" means notification that inspection of a permitted liquid waste system is not in compliance with 20.7.3 NMAC.

(9) "on-site liquid waste system" means a liquid waste system, or part thereof, serving a dwelling, establishment or group, and using a liquid waste treatment unit designed to receive liquid waste followed by either a soil treatment or other type of disposal system. On-site liquid waste systems include enclosed systems and privies but do not include systems or facilities designed to receive or treat mine or mill tailings or wastes;

(10) "septic tank" means liquid waste treatment units designed to provide primary treatment and anaerobic treatment prior to disposal.

[20.7.11.7 NMAC - N, 2/1/2002]

20.7.11.8 PERMIT FEE: Payment of the fee is due prior to issuance of a permit meeting all the requirements of 20.7.3 NMAC.

A. The permit fee for a conventional system is \$100.00.

B. The permit fee for modification of a conventional system is \$50.00.

C. The permit fee for construction or modification of a commercial unit is \$150.00.

D. The permit fee for construction of an advanced treatment or alternative system is \$150.00.

E. The permit fee for modification of an advanced treatment or alternative system is \$75.00.

[20.7.11.8 NMAC - N, 2/1/2002]

20.7.11.9 SEPTIC TANK MANUFACTURER CERTIFICATION FEE:

The annual fee for the certification/re-certification of septic tank designs as required in 20.7.3 NMAC is \$100.00.

[20.7.11.9 NMAC - N, 2/1/2002]

20.7.11.10 RE-INSPECTION

FEE: If a site inspection results in an issuance of a notice of non-approval, a fee of \$50.00 shall be assessed for the re-inspection of the system. The re-inspection fee shall be remitted to the department prior

to a subsequent inspection being conducted. [20.7.11.10 NMAC - N, 2/1/2002]

20.7.11.11 VARIANCE FEE: If a variance is requested as provided for in 20.7.3 NMAC, a fee of \$50.00 shall be submitted upon issuance of the variance in addition to the permit fee required in 20.7.11.8 above.

[20.7.11.11 NMAC - N, 2/1/2002]

20.7.11.12 PAYMENT OF FEES:

A. The department shall not issue a permit, variance or tank design certification until payment is received by the department. The fees required in this Part are non-refundable.

B. All fees shall be remitted to the department in the form of a check or money order made payable to the Environment Department liquid waste fund. All fees collected pursuant to this Part shall be transmitted to the State Treasurer for deposit in the liquid waste fund.

[20.7.11.12 NMAC - N, 2/1/2002]

20.7.11.13 APPLICABILITY:

A. The requirement for payment of the permit application fee shall apply only to those applications received on or after the effective date of this Part.

B. The annual tank certification fee shall apply on or after the effective date of this Part. The annual fee shall be received by the department no later than March 1 of each year.

C. The requirements concerning payment of a re-inspection fee shall apply only to those re-inspections occurring on or after the effective date of this Part.

[20.7.11.13 NMAC - N, 2/1/2002]

20.7.11.14 PERIODIC

REVIEW: In July 2002, the department shall review the fees in this Part and shall provide a report to the Environmental Improvement Board. The department shall revise the fees as necessary in accordance with Section 74-1-7 (A), NMSA 1978. The department shall repeat said review and report in January 2003 and every six months thereafter.

[20.7.11.14 NMAC - N, 2/1/2002]

20.7.11.15 COMPLIANCE WITH OTHER REGULATIONS:

Compliance with this Part does not relieve a person of the obligation to comply with other applicable state and federal regulations.

[20.7.11.15 NMAC - N, 2/1/2002]

20.7.11.16 CONSTRUCTION:

This Part shall be liberally construed to implement the purpose of the Act.

[20.7.11.16 NMAC - N, 2/1/2002]

20.7.11.17 SEVERABILITY: If any provision or application of this Part is held invalid, the remainder shall not be affected.

[20.7.11.17 NMAC - N, 2/1/2002]

HISTORY of 20.7.11 NMAC:
[RESERVED]

DEPARTMENT OF HEALTH

TITLE 7 HEALTH CHAPTER 1 GENERAL PROVISIONS PART 11 HEALTH FACILITY RECEIVERSHIP REQUIREMENTS

7.1.11.1 ISSUING AGENCY:
The New Mexico Department of Health.
[7.1.11.1 NMAC - N, 1/15/02]

7.1.11.2 SCOPE: This rule applies to the Department in actions taken pursuant to the Health Facility Receivership Act, Chapter 24, Article 1E, NMSA 1978.
[7.1.11.2 NMAC - N, 1/15/02]

7.1.11.3 STATUTORY AUTHORITY: Section 24-1E-3.1, NMSA 1978 (2001).
[7.1.11.3 NMAC - N, 1/15/02]

7.1.11.4 DURATION:
Permanent.
[7.1.11.4 NMAC - N, 1/15/02]

7.1.11.5 EFFECTIVE DATE:
January 15, 2002, unless a later date is cited in a section.
[7.1.11.5 NMAC - N, 1/15/02]

7.1.11.6 OBJECTIVE: This rule implements provisions of the Health Facility Receivership Act and sets out the conditions for the Department to petition for appointment of a health facility receiver; the duties, authority and responsibility of the health facility receiver; the authority for imposing financial conditions on the facility; the minimum qualifications for the deputy receiver; and the provisions which the secretary will request for inclusion in district court orders.
[7.1.11.5 NMAC - N, 1/15/02]

7.1.11.7 DEFINITIONS: As used in this rule, unless the context requires otherwise:

A. "Abandonment" means the elimination of, or the failure to provide, one or more essential support serv-

ices for all or a portion of the residents of a health facility, including but not limited to appropriate personnel, shelter, medical care, sustenance, assistance with the activities of daily living, habilitation or individual treatment plan activities and support.

B. "Closure Plan" means the health facility's written plan, including any amendments, detailing the manner in which the health facility will satisfy all applicable legal or contractual requirements, including any requirements that the Department may request be included in such written plan, and which at a minimum sets forth the discharge planning and transfer of the residents, and the manner in which the health facility will fully meet the needs of the residents during the period of the facility closure.

C. "Constructive Abandonment" means a situation in which abandonment of the residents of a health facility can be inferred from the totality of circumstances, as, for example, the health facility's untimely payment or nonpayment of suppliers or staff resulting in the lack of necessary supplies or services.

D. "Department" means the New Mexico Department of Health.

E. "Facility" means:

(1) a health facility as defined in Subsection D of Section 24-1-2 NMSA 1978 other than a child-care center or facility, whether or not licensed by the State of New Mexico; or,

(2) a community-based program providing services funded, directly or indirectly, in whole or in part, by the home and community-based Medicaid waiver program or by developmental disabilities, traumatic brain injury or other medical disabilities programs.

F. "Imminent danger" means a significant, foreseeable jeopardy, risk or threat existing at the present time or in the immediate future.

G. "Receivership" means, pursuant to a court order, the condition or occurrence of the legal vesting of authority in the Secretary, acting as a receiver, and vesting of authority in the deputy receiver, to exercise management and control over all of, or a portion of, a facility, in derogation of the rights of the facility owner or operator.

H. "Receivership estate" means the totality of the property, accounts, assets, rights and obligations over which the receiver has authority to manage and control in accordance with a court's order.

I. "Secretary" means the Secretary of the New Mexico Department of Health.

[7.1.11.7 NMAC - N, 1/15/02]

7.1.11.8 CONDITIONS FOR

FILING RECEIVERSHIP PETITION: When any of the following situations exist, the secretary may petition the district court seeking appointment as a health facility receiver.

A. Facility closure. The health facility will close, or cease all or part of its operations, within sixty days; and, the health facility has failed to provide the secretary with, and obtained written approval from the secretary for, the health facility's detailed closure plan. The closure plan must demonstrate that the health facility will maintain and safeguard the health and safety of the care recipients. Upon receipt of a facility closure plan, the secretary will respond within 10 days to the facility with written notice of the secretary's approval or rejection of the closure plan. At a minimum, the closure plan will specify the facility's:

(1) Procedures and arrangements to insure that the health facility's care recipients obtain, or continue to receive, accessible, appropriate and affordable care; and

(2) The method of protecting all legal rights of the care recipients as such rights are affected by the closure; and

(3) Staffing; and

(4) Transfer planning and procedures with respect to the care recipients, including the funds, accounts, and property of the care recipients, medical and financial authorizations, and any other relevant documents executed by or on behalf of the care recipient in the possession of the health facility; and

(5) Other arrangements which the secretary may specify for inclusion in the closure plan.

B. No License. The health facility is operated without such license as otherwise may be required.

C. Abandonment. The health facility is abandoned, care recipients of the health facility are abandoned or constructively abandoned, or such abandonment is imminent.

D. Imminent Danger. The health facility presents an imminent danger of death or significant mental or physical harm to the care recipients of the health facility. Such imminent danger may arise from:

(1) A single factor, or combination of factors, adversely affecting the health or safety of the facility's care recipients; or

(2) A physical condition of a service location for the health facility's care recipients; or

(3) A practice or method of operation of the health facility.

[7.1.11.8 NMAC - N, 1/15/02]

7.1.11.9 QUALIFICATIONS OF THE DEPUTY RECEIVER: Unless otherwise permitted by order of the district court, the secretary will seek appointment of a deputy receiver who possesses the following qualifications:

A. Free of conflicts of interest. The deputy receiver may not have a financial interest which conflicts with:

- (1) Carrying out any of the duties and responsibilities imposed by the district court on the receiver or deputy receiver; or
- (2) Fully protecting the persons receiving care from the health facility; or
- (3) The management and operation of the receivership estate.

B. Experience. The deputy receiver must have relevant experience in health care management appropriate to the health facility. Such experience preferably would reflect successful management experience similar to that reasonably required to manage and operate the facilities within the receivership estate. Experience or licensure as a clinician is discretionary unless otherwise required by law.

C. Education and licensure. The deputy receiver must have achieved such educational level and have such licensure as customarily is held by persons managing and operating health care facilities similar to the facility or facilities within the receivership estate.
[7.1.11.9 NMAC – N, 1/15/02]

7.1.11.10 DUTIES, AUTHORITY & RESPONSIBILITIES OF THE DEPUTY RECEIVER: Unless otherwise ordered by the district court the deputy receiver generally will carry out the duties of the Receiver, as established in the Health Facility Receivership Act, NMSA 1978, Sections 24-1E-1 to 24-1E-7 (2001), including the following.

A. Removal of care recipients from settings or situations within the receivership estate which threaten the care recipients with imminent danger of death or significant mental or physical harm.

B. All necessary actions needed to:

- (1) Correct or remedy each condition on which the receiver's appointment was based.
- (2) Ensure adequate care and services, in accordance with applicable authority, law, regulations, and accrediting requirements, for each care recipient of the health facility.
- (3) Manage and operate the health facility, including, where deemed appropriate in the judgment of the receiver or deputy receiver, any of the following:

- (a) Closing the health facility.
- (b) Expanding existing and initiating new services and operations.
- (c) Hiring and firing officers and employees.
- (d) Contracting for necessary services, personnel, supplies, equipment, facilities, and all other appropriate things.
- (e) Reasonably expending funds of the health facility.
- (f) Paying the health facility's obligations, borrowing money and property and giving security as necessary for such.
- (g) Purchasing, selling, marshalling and otherwise managing the health facility's property and assets.
[7.1.11.10 NMAC – N, 1/15/02]

7.1.11.11 FINANCIAL OBLIGATIONS AND CONDITIONS: The deputy receiver, unless granted prior approval from the district court, will not obligate the health facility to the purchase of real property, the sale of the health facility's real property, or the long-term lease of real property.
[7.1.11.11 NMAC – N, 1/15/02]

7.1.11.12 PROVISIONS SOUGHT IN AN ORDER GRANTING PETITION FOR HEALTH FACILITY RECEIVERSHIP: The secretary will seek provisions in the Order granting the Petition pertaining to:

- A.** Prior approval from the district court for the sale or purchase of real property;
- B.** Periodic accounting to the court and the parties;
- C.** The posting of bond for the deputy receiver and the waiver of any such bonds;
- D.** Allocation of income and assets of the health facility to the receiver to carry out the purposes of the receivership;
- E.** Expansion and restrictions on the statutory authority granted to the receiver or deputy receiver;
- F.** The scope of the receivership estate; and,
- G.** Any other provisions deemed necessary to carry out the duties, authority and responsibilities of the deputy receiver, including provisions that may limit or expand the duties, authority and responsibilities.
[7.1.11.12 NMAC – N, 1/15/02]

History of 7.1.11 NMAC: [RESERVED]

PUBLIC REGULATION COMMISSION INSURANCE DIVISION

TITLE 13 INSURANCE CHAPTER 1 INSURANCE GENERAL PROVISIONS PART 3 PRIVACY OF NON-PUBLIC PERSONAL INFORMATION

13.1.3.1 ISSUING AGENCY: New Mexico Public Regulation Commission Insurance Division.
[13.1.3.1 NMAC - N, 2-25-02]

13.1.3.2 SCOPE: This rule applies to:

A. Nonpublic personal financial information about individuals who obtain or are claimants or beneficiaries of products or services primarily for personal, family or household purposes from licensees. This rule does not apply to information about companies or about individuals who obtain products or services for business, commercial or agricultural purposes; and

B. All nonpublic personal health information.
[13.1.3.2 NMAC - N, 2-25-02]

13.1.3.3 STATUTORY AUTHORITY: NMSA 1978, Section 59A-2-9 (1997) and Section 59A-2-9.3 (2001).
[13.1.3.3 NMAC - N, 2-25-02]

13.1.3.4 DURATION: Permanent.
[13.1.3.4 NMAC - N, 2-25-02]

13.1.3.5 EFFECTIVE DATE: February 25, 2002 unless a later date is cited in the history note at the end of a section.
[13.1.3.4 NMAC - N, 2-25-02]

13.1.3.6 OBJECTIVE: This rule governs the treatment of nonpublic personal health information and nonpublic personal financial information about individuals by all licensees of the NMPRC Insurance Division and is intended to afford individuals greater privacy protections than those provided in the Gramm-Leach-Bliley Financial Modernization Act (GLBA), Pub. L. 106-102, 113 Stat. 1338, 1415-17 (1999) (codified at 15 U.S.C.A. Section 6716). This rule:

A. Requires a licensee to provide notice to individuals about its privacy policies and practices;

B. Describes the conditions under which a licensee may disclose nonpublic personal health information and

nonpublic personal financial information about individuals to affiliates or nonaffiliated third parties without authorization from the affected individual; and

C. Provides methods for individuals to authorize a licensee to disclose nonpublic personal information to affiliates or nonaffiliated third parties.

D. The examples in this rule and the sample clauses in 13.1.3.28 NMAC are not exclusive. Compliance with an example or use of a sample clause, to the extent applicable, constitutes compliance with this rule.

[13.1.3.6 NMAC - N, 2-25-02]

13.1.3.7 DEFINITIONS: As used in this rule, unless the context requires otherwise:

A. "Affiliate" means a company that controls, is controlled by or is under common control with another company.

B. "Clear and conspicuous" means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice. Examples:

(1) Reasonably understandable. A licensee makes its notice reasonably understandable if it:

(a) Presents the information in the notice in clear, concise sentences, paragraphs and sections;

(b) Uses short explanatory sentences or bullet lists whenever possible;

(c) Uses definite, concrete, everyday words and active voice whenever possible;

(d) Avoids multiple negatives;

(e) Avoids legal and highly technical business terminology whenever possible; and

(f) Avoids explanations that are imprecise and readily subject to different interpretations.

(2) Designed to call attention. A licensee designs its notice to call attention to the nature and significance of the information in it if the licensee:

(a) Uses a plain-language heading to call attention to the notice;

(b) Uses a typeface and type size that are easy to read;

(c) Provides wide margins and ample line spacing;

(d) Uses boldface or italics for key words; and

(e) In a form that combines the licensee's notice with other information, uses distinctive type size, style, and graphic devices, such as shading or sidebars.

(3) Notices on web sites. If a licensee provides a notice on a web page, the licensee designs its notice to call attention to the nature and significance of the

information in it if the licensee uses text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the web site (such as text, graphics, hyperlinks or sound) do not distract attention from the notice, and the licensee either:

(a) Places the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or

(b) Places a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature and relevance of the notice.

C. "Collect" means to obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

D. "Superintendent" means the New Mexico Superintendent of Insurance.

E. "Company" means a corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship or similar organization.

F. "Consumer" means an individual who seeks to obtain, obtains or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, and about whom the licensee has nonpublic personal information, or that individual's legal representative. Examples:

(1) An individual who provides nonpublic personal information to a licensee in connection with obtaining or seeking to obtain financial, investment or economic advisory services relating to an insurance product or service is a consumer regardless of whether the licensee establishes an ongoing advisory relationship.

(2) An applicant for insurance prior to the inception of insurance coverage is a licensee's consumer.

(3) An individual who is a consumer of another financial institution is not a licensee's consumer solely because the licensee is acting as agent for, or provides processing or other services to, that financial institution.

(4) An individual is a licensee's consumer if:

(a) the individual is a beneficiary of a life insurance policy underwritten by the licensee; the individual is a claimant under an insurance policy issued by the licensee; the individual is an insured or an annuitant under an insurance policy or an annuity, respectively, issued by the licensee;

or the individual is a mortgagor of a mortgage covered under a mortgage insurance policy; and

(b) the licensee discloses nonpublic personal financial information about the individual to a nonaffiliated third party other than as permitted under 13.1.3.17 NMAC, 13.1.3.18 NMAC, and 13.1.3.19 NMAC.

(5) Provided that the licensee provides any initial, annual and revised notices required under 13.1.3.8 NMAC, 13.1.3.9 NMAC and 13.1.3.12 NMAC to the plan sponsor, group or blanket insurance policyholder, group annuity contractholder, or workers' compensation policyholder, and further provided that the licensee does not disclose nonpublic personal information about such an individual other than as permitted under 13.1.3.17 NMAC, 13.1.3.18 NMAC and 13.1.3.19 NMAC, an individual is not the consumer of the licensee solely because he or she is:

(a) A participant or a beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer or fiduciary;

(b) Covered under a group or blanket insurance policy or group annuity contract issued by the licensee; or

(c) A claimant under a workers' compensation policy.

(6) The individuals described in subparagraphs (a) through (c) of paragraph (5) of subsection F of 13.1.3.7 NMAC are consumers of a licensee if the licensee does not meet all the conditions of paragraph (5) of subsection F of 13.1.3.7 NMAC. In no event shall the individuals, solely by virtue of the status described in subparagraphs (a) through (c) of paragraph (5) of subsection F of 13.1.3.7 NMAC, be deemed to be customers for purposes of this rule.

(7) An individual is not a licensee's consumer solely because he or she is a beneficiary of a trust for which the licensee is a trustee.

(8) An individual is not a licensee's consumer solely because he or she has designated the licensee as trustee for a trust.

G. "Consumer reporting agency" has the same meaning as in Section 603(f) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

H. "Control" means:

(1) Ownership, control or power to vote twenty-five percent (25%) or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

(2) Control in any manner over the election of a majority of the directors, trustees or general partners (or individuals

exercising similar functions) of the company; or

(3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the Superintendent determines.

I. "Customer" means a consumer who has a customer relationship with a licensee.

J. "Customer relationship" means a continuing relationship between a consumer and a licensee under which the licensee provides one or more insurance products or services to the consumer that are to be used primarily for personal, family or household purposes. Examples:

(1) A consumer has a continuing relationship with a licensee if:

(a) The consumer is a current policyholder of an insurance product issued by or through the licensee; or

(b) The consumer obtains financial, investment or economic advisory services relating to an insurance product or service from the licensee for a fee.

(2) A consumer does not have a continuing relationship with a licensee if:

(a) The consumer applies for insurance but does not purchase the insurance;

(b) The licensee sells the consumer travel insurance in an isolated transaction;

(c) The individual is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee;

(d) The consumer is a beneficiary or claimant under a policy and has submitted a claim under a policy choosing a settlement option involving an ongoing relationship with the licensee;

(e) The consumer is a beneficiary or a claimant under a policy and has submitted a claim under that policy choosing a lump sum settlement option;

(f) The customer's policy is lapsed, expired, or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve (12) consecutive months, other than annual privacy notices, material required by law or rule, communication at the direction of a state or federal authority, or promotional materials;

(g) The individual is an insured or an annuitant under an insurance policy or annuity, respectively, but is not the policyholder or owner of the insurance policy or annuity; or

(h) For the purposes of this rule, the individual's last known address according to the licensee's records is deemed invalid. An address of record is

deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

K. "Financial institution" means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in Section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)). Financial institution does not include:

(1) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);

(2) The Federal Agricultural Mortgage Corporation or any entity charged and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*); or

(3) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions related to a transaction of a consumer, as long as the institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

L. "Financial product or service" means a product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under Section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)). Financial service includes a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

M. "Health care" means:

(1) Preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, services, procedures, tests or counseling that:

(a) Relates to the physical, mental or behavioral condition of an individual; or

(b) Affects the structure or function of the human body or any part of the human body, including the banking of blood, sperm, organs or any other tissue; or

(2) Prescribing, dispensing or furnishing to an individual drugs or biologicals, or medical devices or health care equipment and supplies.

N. "Health care provider" means a physician or other health care practitioner licensed, accredited or certified to perform specified health services consistent with state law, or a health

care facility.

O. "Health information" means any information or data except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or the consumer that relates to:

(1) The past, present or future physical, mental or behavioral health or condition of an individual;

(2) The provision of health care to an individual; or

(3) Payment for the provision of health care to an individual.

P. "Insurance product or service" means any product or service that is offered by a licensee pursuant to the insurance laws of this state. Insurance service includes a licensee's evaluation, brokerage or distribution of information that the licensee collects in connection with a request or an application from a consumer for an insurance product or service.

Q. "Licensee" means all licensed insurers, agents, brokers, solicitors, producers and other persons licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to the New Mexico Insurance Code other than pursuant to Chapter 206 of the Laws of 2001 (Senate Bill 556, as amended).

(1) A licensee is not subject to the notice and authorization requirements for nonpublic personal financial information set forth in 13.1.3.8 NMAC through 13.1.3.21 NMAC if the licensee is an employee, agent or other representative of another licensee ("the principal") and:

(a) The principal otherwise complies with, and provides the notices required by, the provisions of this rule; and

(b) The licensee does not disclose any nonpublic personal information to any person other than the principal or its affiliates in a manner permitted by this rule.

(2) Subject to the provisions of this paragraph, "licensee" shall also include an unauthorized insurer that accepts business placed through a licensed surplus lines broker in this state, but only in regard to the surplus lines placements placed pursuant to NMSA 59A-14-1 *et seq.* A surplus lines broker or surplus lines insurer shall be deemed to be in compliance with the notice and authorization requirements for nonpublic personal financial information set forth in 13.1.3.8 NMAC through 13.1.3.19 NMAC provided:

(a) The broker or insurer does not disclose nonpublic personal information of a consumer or a customer to nonaffiliated third parties for any purpose, including joint servicing or marketing under 13.1.3.17 NMAC, except as permitted by 13.1.3.18 NMAC or 13.1.3.19 NMAC; and

(b) The broker or insurer delivers a notice to the consumer at the time a customer relationship is established on which the following is printed in 16-point type:

PRIVACY NOTICE

"Neither the U.S. brokers that handled this insurance nor the insurers that have underwritten this insurance will disclose nonpublic personal information concerning the buyer to nonaffiliates of the brokers or insurers except as permitted by law."

R. "Nonaffiliated third party" means any person except a licensee's affiliate; or a person employed jointly by a licensee and any company that is not the licensee's affiliate (but nonaffiliated third party includes the other company that jointly employs the person). Nonaffiliated third party includes any company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities of the type described in Section 4(k)(4)(H) or insurance company investment activities of the type described in Section 4(k)(4)(I) of the federal Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H) and (I)).

S. "Nonpublic personal information" means nonpublic personal financial information and nonpublic personal health information.

T. "Nonpublic personal financial information" means personally identifiable financial information; and any list, description or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available.

(1) Nonpublic personal financial information does not include:

(a) Health information;

(b) Publicly available information, except as included on a list described above in this section; or

(c) Any list, description or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information that is not publicly available.

(2) **Examples of lists.**

(a) Nonpublic personal financial information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers.

(b) Nonpublic personal financial information does not include any list of individuals' names and addresses that contains only publicly available information, is

not derived in whole or in part using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

U. "Nonpublic personal health information" means health information:

(1) That identifies an individual who is the subject of the information; or

(2) With respect to which there is a reasonable basis to believe that the information could be used to identify an individual.

V. "Personally identifiable financial information" means any information a consumer provides to a licensee to obtain an insurance product or service from the licensee; about a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer; or the licensee otherwise obtains about a consumer in connection with providing an insurance product or service to that consumer. Examples:

(1) **Information included.** Personally identifiable financial information includes:

(a) Information a consumer provides to a licensee on an application to obtain an insurance product or service;

(b) Account balance information and payment history;

(c) The fact that an individual is or has been one of the licensee's customers or has obtained an insurance product or service from the licensee;

(d) Any information about the licensee's consumer if it is disclosed in a manner that indicates that the individual is or has been the licensee's consumer;

(e) Any information that a consumer provides to a licensee or that the licensee or its agent otherwise obtains in connection with collecting on a loan or servicing a loan;

(f) Any information the licensee collects through an Internet cookie (an information-collecting device from a web server); and

(g) Information from a consumer report.

(2) **Information not included.** Personally identifiable financial information does not include:

(a) Health information;

(b) A list of names and addresses of customers of an entity that is not a financial institution; and

(c) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names or addresses.

W. "Publicly available

information" means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from federal, state or local government records; widely distributed media; or disclosures to the general public that are required to be made by federal, state or local law.

(1) **Reasonable basis.** A licensee has a reasonable basis to believe that information is lawfully made available to the general public if the licensee has taken steps to determine:

(a) That the information is of the type that is available to the general public; and

(b) Whether an individual can direct that the information not be made available to the general public and, if so, that the licensee's consumer has not done so.

(2) **Examples.**

(a) **Government records.** Publicly available information in government records includes information in government real estate records and security interest filings.

(b) **Widely distributed media.** Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper or a web site that is available to the general public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

(c) **Reasonable basis.** A licensee has a reasonable basis to believe that mortgage information is lawfully made available to the general public if the licensee has determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded. A licensee has a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if the licensee has located the telephone number in the telephone book or the consumer has informed you that the telephone number is not unlisted.

[13.1.3.7 NMAC - N, 2-25-02]

13.1.3.8 Initial Privacy Notice to Consumers Required for Nonpublic Personal Financial Information:

A. Initial notice requirement. A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to:

(1) **Customer.** An individual who becomes the licensee's customer, not later than when the licensee establishes a customer relationship, except as provided in subsection E of 13.1.3.8 NMAC; and

(2) **Consumer.** A consumer, when the licensee requests authorization to disclose any nonpublic personal financial information about the consumer to any non-affiliated third party other than disclosures listed in 13.1.3.18 NMAC and 13.1.3.19 NMAC for which no authorization is required.

B. When initial notice to a consumer is not required. A licensee is not required to provide an initial notice to a consumer under paragraph (2) of subsection A of 13.1.3.8 NMAC if:

(1) The licensee does not request authorization to disclose any non-public personal information about the consumer to any nonaffiliated third party, other than disclosures listed in 13.1.3.18 NMAC and 13.1.3.19 NMAC for which no authorization is required, and the licensee does not have a customer relationship with the consumer; or

(2) A notice has been provided by an affiliated licensee, as long as the notice clearly identifies all licensees to whom the notice applies and is accurate with respect to the licensee and the other institutions.

C. When the licensee establishes a customer relationship.

(1) **General rule.** A licensee establishes a customer relationship at the time the licensee and the consumer enter into a continuing relationship.

(2) **Examples of establishing customer relationship.** A licensee establishes a customer relationship when the consumer:

(a) Becomes a policyholder of a licensee that is an insurer when the insurer delivers an insurance policy or contract to the consumer, or in the case of a licensee that is an insurance producer or insurance broker, obtains insurance through that licensee; or

(b) Agrees to obtain financial, economic or investment advisory services relating to insurance products or services for a fee from the licensee.

D. Existing customers. When an existing customer obtains a new insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, the licensee satisfies the initial notice requirements of subsection A of 13.1.3.8 NMAC as follows:

(1) The licensee may provide a revised policy notice, under 13.1.3.12 NMAC, that covers the customer's new insurance product or service; or

(2) If the initial, revised or annual notice that the licensee most recently provided to that customer was accurate with respect to the new insurance product or service, the licensee does not need to provide a new privacy notice under subsection

A of 13.1.3.8 NMAC.

E. Exceptions to allow subsequent delivery of notice.

(1) A licensee may provide the initial notice required by paragraph (1) of subsection A of 13.1.3.8 NMAC within a reasonable time after the licensee establishes a customer relationship if:

(a) Establishing the customer relationship is not at the customer's election; or

(b) Providing notice not later than when the licensee establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

(2) **Examples of exceptions.**

(a) **Not at customer's election.**

Establishing a customer relationship is not at the customer's election if a licensee acquires or is assigned a customer's policy from another financial institution or residual market mechanism and the customer does not have a choice about the licensee's acquisition or assignment.

(b) **Substantial delay of customer's transaction.** Providing notice not later than when a licensee establishes a customer relationship would substantially delay the customer's transaction when the licensee and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the insurance product or service.

(c) **No substantial delay of customer's transaction.** Providing notice not later than when a licensee establishes a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at the licensee's office or through other means by which the customer may view the notice, such as on a web site.

F. Delivery. When a licensee is required to deliver an initial privacy notice by this section, the licensee shall deliver it according to 13.1.3.13 NMAC.

[13.1.3.8 NMAC - N, 2-25-02]

13.1.3.9 Annual Privacy Notice to Customers Required for Nonpublic Personal Financial Information:

A. General rule. A licensee shall provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than annually during the continuation of the customer relationship. Annually means at least once in any period of twelve (12) consecutive months during which that relationship exists. A licensee may define the twelve-consecutive-month period, but the licensee shall apply it to the customer on a

consistent basis. **Example:** A licensee provides a notice annually if it defines the twelve-consecutive-month period as a calendar year and provides the annual notice to the customer once in each calendar year following the calendar year in which the licensee provided the initial notice. For example, if a customer opens an account on any day of year 1, the licensee shall provide an annual notice to that customer by December 31 of year 2.

B. Termination of customer relationship. A licensee is not required to provide an annual notice to a former customer. A former customer is an individual with whom a licensee no longer has a continuing relationship. **Examples:**

(1) A licensee no longer has a continuing relationship with an individual if the individual no longer is a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee.

(2) A licensee no longer has a continuing relationship with an individual if the individual's policy is lapsed, expired or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve (12) consecutive months, other than to provide annual privacy notices, material required by law or rule, or promotional materials.

(3) For the purposes of this rule, a licensee no longer has a continuing relationship with an individual if the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

(4) A licensee no longer has a continuing relationship with a customer in the case of providing real estate settlement services, at the time the customer completes execution of all documents related to the real estate closing, payment for those services has been received, or the licensee has completed all of its responsibilities with respect to the settlement, including filing documents on the public record, whichever is later.

C. Delivery. When a licensee is required by this section to deliver an annual privacy notice, the licensee shall deliver it according to 13.1.3.13 NMAC.

[13.1.3.9 NMAC - N, 2-25-02]

13.1.3.10 Information to be Included in Privacy Notices Required for Nonpublic Personal Financial Information:

A. General rule. The initial, annual and revised privacy notices that a licensee provides under 13.1.3.8 NMAC, 13.1.3.9 NMAC and 13.1.3.12 NMAC shall include each of the following items of information, in addition to any other information the licensee wishes to provide, that applies to the licensee and to the consumers to whom the licensee sends its privacy notice:

(1) The categories of nonpublic personal financial information that the licensee collects;

(2) The categories of nonpublic personal financial information that the licensee will disclose if authorization is obtained from the consumer whose nonpublic personal financial information is sought to be disclosed;

(3) The categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information, other than those parties to whom the licensee discloses information under 13.1.3.18 NMAC and 13.1.3.19 NMAC;

(4) The categories of nonpublic personal financial information about the licensee's former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information about the licensee's former customer, other than those parties to whom the licensee discloses information under 13.1.3.18 NMAC and 13.1.3.19 NMAC;

(5) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under 13.1.3.17 NMAC (and no other exception in 13.1.3.18 NMAC and 13.1.3.19 NMAC applies to that disclosure), a separate description of the categories of information the licensee discloses and the categories of third parties with whom the licensee has contracted;

(6) An explanation of the consumer's right under subsection A of 13.1.3.14 NMAC to authorize or not to authorize the disclosure of nonpublic financial personal information to nonaffiliated third parties;

(7) Any disclosures that the licensee makes under Section 603(d)(2)(A)(iii) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates);

(8) The licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information; and

(9) Any disclosure that the licensee makes under subsection B of 13.1.3.10 NMAC.

B. Description of parties subject to exceptions. If a licensee dis-

closes nonpublic personal financial information as authorized under 13.1.3.18 NMAC and 13.1.3.19 NMAC, the licensee is not required to list those exceptions in the initial or annual privacy notices required by 13.1.3.8 NMAC and 13.1.3.9 NMAC. When describing the categories of parties to whom disclosure is made, the licensee is required to state only that it makes disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.

C. Examples.

(1) **Categories of nonpublic personal financial information that the licensee collects.** A licensee satisfies the requirement to categorize the nonpublic personal financial information it collects if the licensee categorizes it according to the source of the information, as applicable:

(a) Information from the consumer;

(b) Information about the consumer's transactions with the licensee or its affiliates;

(c) Information about the consumer's transactions with nonaffiliated third parties; and

(d) Information from a consumer reporting agency.

(2) **Categories of nonpublic personal financial information a licensee discloses.**

(a) A licensee satisfies the requirement to categorize nonpublic personal financial information it discloses if the licensee categorizes the information according to source, as described in paragraph (1) of subsection C of 13.1.3.10 NMAC, as applicable, and provides a few examples to illustrate the types of information in each category. These might include: information from the consumer, including application information, such as assets and income and identifying information, such as name, address and social security number; transaction information, such as information about balances, payment history and parties to the transaction; and information from consumer reports, such as a consumer's creditworthiness and credit history.

(b) A licensee does not adequately categorize the information that it discloses if the licensee uses only general terms, such as transaction information about the consumer.

(3) **Categories of affiliates and nonaffiliated third parties.**

(a) A licensee satisfies the requirement to categorize the affiliates and nonaffiliated third parties if the licensee identifies the types of businesses in which they engage.

(b) Types of businesses may be described by general terms only if the licensee uses a few illustrative examples of

significant lines of business. For example, a licensee may use the term financial products or services if it includes appropriate examples of significant lines of businesses, such as life insurer, automobile insurer, consumer banking or securities brokerage.

(c) A licensee also may categorize the affiliates and nonaffiliated third parties using more detailed categories.

(4) **Disclosures under exception for service providers and joint marketers.** If a licensee discloses nonpublic personal financial information under the exception in 13.1.3.17 NMAC to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution, the licensee satisfies the disclosure requirement of paragraph (5) of subsection A of 13.1.3.10 NMAC if it:

(a) Lists the categories of nonpublic personal financial information it will disclose if authorization is obtained from the consumer whose nonpublic personal information is sought to be disclosed, using the same categories and examples the licensee used to meet the requirements of paragraph 2 of subsection A of 13.1.3.10 NMAC, as applicable; and

(b) States whether the third party is a service provider that performs marketing services on the licensee's behalf or on behalf of the licensee and another financial institution; or a financial institution with whom the licensee has a joint marketing agreement.

(5) **Simplified notices.** If a licensee does not disclose, and does not wish to reserve the right to disclose, nonpublic personal financial information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under 13.1.3.18 NMAC and 13.1.3.19 NMAC, the licensee may simply state the fact, in addition to the information it shall provide under paragraphs (1), (8) and (9) of subsection A of 13.1.3.10 NMAC and subsection B of 13.1.3.10 NMAC.

(6) **Confidentiality and security.** A licensee describes its policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information if it does both of the following:

(a) Describes in general terms who is authorized to have access to the information; and

(b) States whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee's policy. The licensee is not required to describe technical information about the safeguards it uses.

D. Short-form initial notice with notice regarding request for

authorization for non-customers.

(1) A licensee may satisfy the initial notice requirements in paragraph (2) of subsection A of 13.1.3.8 NMAC and subsection C of 13.1.3.11 NMAC for a consumer who is not a customer by providing a short-form initial notice at the same time as the licensee delivers a notice regarding request for authorization as required in 13.1.3.11 NMAC.

(2) A short-form initial notice shall:

- (a) Be clear and conspicuous;
- (b) State that the licensee's privacy notice is available upon request; and
- (c) Explain a reasonable means by which the consumer may obtain that notice.

(3) The licensee shall deliver its short-form initial notice according to 13.1.3.13 NMAC. The licensee is not required to deliver its privacy notice with its short-form initial notice. The licensee instead may simply provide the consumer a reasonable means to obtain its privacy notice. If a consumer who receives the licensee's short-form notice requests the licensee's privacy notice, the licensee shall deliver its privacy notice according to 13.1.3.13 NMAC.

(4) **Examples of obtaining privacy notice.** The licensee provides a reasonable means by which a consumer may obtain a copy of its privacy notice if the licensee:

- (a) Provides a toll-free telephone number that the consumer may call to request the notice; or
- (b) For a consumer who conducts business in person at the licensee's office, maintains copies of the notice on hand that the licensee provides to the consumer immediately upon request.

E. Future disclosures. The licensee's notice may include:

- (1) Categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future, but does not currently disclose; and
- (2) Categories of affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose, but to whom the licensee does not currently disclose, nonpublic personal financial information.

F. Sample clauses. Sample clauses illustrating some of the notice content required by this section are included in 13.1.3.28 NMAC.
[13.1.3.10 NMAC - N, 2-25-02]

13.1.3.11 Notice to Consumers regarding Request for Authorization:

A. Form of notice. If a licensee is required to provide notice under subsection A of 13.1.3.14 NMAC, it shall

provide a clear and conspicuous notice to each of its consumers that accurately explains the right to authorize disclosures under that section. The notice shall state:

(1) That the licensee may only disclose nonpublic personal information about its consumer if the licensee first obtains authorization from the consumer; and

(2) That the consumer has the right to authorize or not to authorize the disclosure.

B. Examples. A licensee provides adequate notice that the consumer has the right to authorize or not to authorize the disclosure of nonpublic personal information if the licensee:

- (1) Identifies all of the categories of nonpublic personal information the licensee will disclose if authorization is obtained from the consumer whose nonpublic personal information is sought to be disclosed and all of the categories of affiliated and nonaffiliated third parties to whom the licensee will disclose the information, as described in paragraphs (2) and (3) of subsection A of 13.1.3.10 NMAC, and states that the consumer has the right to authorize or not to authorize the disclosure of that information; and
- (2) Identifies the insurance products or services that the consumer obtains from the licensee, either singly or jointly, to which the authorization would apply.

C. Notice required when request for authorization delivered subsequent to initial notice. If a licensee provides the notice to consumers regarding request for authorization later than required for the initial notice in accordance with 13.1.3.8 NMAC, the licensee shall also include a copy of the initial notice with the request for authorization in writing or, if the consumer agrees, electronically.

D. Joint relationships.

(1) If two (2) or more consumers jointly obtain an insurance product or service from a licensee, the licensee shall provide notices and an authorization form to each joint consumer.

(2) An authorization signed by all joint consumers must be obtained by the licensee before it may disclose any nonpublic personal information, except as otherwise authorized in this rule or in accordance with an exception in 13.1.3.17 NMAC, 13.1.3.18 NMAC or 13.1.3.19 NMAC.

E. Delivery. When a licensee is required to deliver a notice by this section, the licensee shall deliver it according to 13.1.3.13 NMAC.
[13.1.3.11 NMAC - N, 2-25-02]

13.1.3.12 Revised Privacy Notices for Nonpublic Personal Financial

Information

A. General rule. Except as otherwise authorized in this rule, a licensee shall not, directly or through an affiliate, disclose any nonpublic personal financial information about a consumer other than as described in the initial notice that the licensee provided to that consumer under 13.1.3.8 NMAC or in the authorization obtained from the consumer, unless:

(1) The licensee has provided to the consumer a clear and conspicuous revised notice that accurately describes its policies and practices;

(2) The licensee has provided to the consumer a new notice to consumers regarding request for authorization and a new authorization; and

(3) The licensee has obtained authorization from the consumer whose nonpublic personal financial information is sought to be disclosed.

B. Examples. Except as otherwise permitted by 13.1.3.17 NMAC, 13.1.3.18 NMAC and 13.1.3.19 NMAC, a licensee shall provide a revised notice if it requests authorization to disclose:

- (1) a new category of nonpublic personal information;
- (2) nonpublic personal information to a new category of nonaffiliated third party; or
- (3) nonpublic personal information about a former customer to a nonaffiliated third party, if that former customer has not previously authorized the disclosure.

C. Delivery. When a licensee is required to deliver a revised privacy notice by this section, the licensee shall deliver it according to 13.1.3.13 NMAC.

[13.1.3.12 NMAC - N, 2-25-02]

13.1.3.13 Delivery:

A. How to provide notices. A licensee shall provide any notices that this rule requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(1) **Examples of reasonable expectation of actual notice.** A licensee may reasonably expect that a consumer will receive actual notice if the licensee:

- (a) Hand-delivers a printed copy of the notice to the consumer;
- (b) Mails a printed copy of the notice to the last known address of the consumer separately, or in a policy, billing or other written communication;
- (c) For a consumer who conducts transactions electronically, posts the notice on the electronic site and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a par-

ticular insurance product or service; or

(d) For an isolated transaction with a consumer, such as the licensee providing an insurance quote or selling the consumer travel insurance, posts the notice and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular insurance product or service.

(2) **Examples of unreasonable expectation of actual notice.** A licensee may not, however, reasonably expect that a consumer will receive actual notice of its privacy policies and practices if it:

(a) Only posts a sign in its office or generally publishes advertisements of its privacy policies and practices; or

(b) Sends the notice via electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically.

B. Annual notices only. A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual privacy notice if:

(1) The customer uses the licensee's web site to access insurance products and services electronically and agrees to receive notices at the web site and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the web site; or

(2) The customer has requested that the licensee refrain from sending any information regarding the customer relationship, and the licensee's current privacy notice remains available to the customer upon request.

C. Oral description of notice insufficient. A licensee may not provide any notice required by this rule solely by orally explaining the notice, either in person or over the telephone.

D. Retention or accessibility of notices for customers.

(1) For customers only, a licensee shall provide the initial notice required by paragraph (1) of subsection A of 13.1.3.8 NMAC, the annual notice required by subsection A of 13.1.3.9 NMAC, and the revised notice required by 13.1.3.12 NMAC so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

(2) **Examples of retention or accessibility.** A licensee provides a privacy notice to the customer so that the customer can retain it or obtain it later if the licensee:

(a) Hand-delivers a printed copy of the notice to the customer;

(b) Mails a printed copy of the notice to the last known address of the customer; or

(c) Makes its current privacy notice available on a web site (or a link to

another web site) for the customer who obtains an insurance product or service electronically and agrees to receive the notice at the web site.

E. Joint notice with other financial institutions. A licensee may provide a joint notice from the licensee and one or more of its affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to the licensee and the other institutions. A licensee also may provide a notice on behalf of another financial institution.

F. Joint relationships. If two (2) or more consumers jointly obtain an insurance product or service from a licensee, the licensee may satisfy the initial, annual and revised notice requirements of subsection A of 13.1.3.8 NMAC, subsection A of 13.1.3.9 NMAC and subsection A of 13.1.3.12 NMAC, respectively, by providing one notice to those consumers jointly. [13.1.3.13 NMAC - N, 2-25-02]

13.1.3.14 Limits on Disclosure of Nonpublic Personal Information:

A. Conditions for disclosure. Except as otherwise authorized in this rule, a licensee may not, directly or through any affiliate, disclose any nonpublic personal health information to any party, including affiliates, and may not, directly or through an affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party unless:

(1) The licensee has provided to the consumer any initial notice as required under 13.1.3.8 NMAC regarding nonpublic personal financial information;

(2) The licensee has provided to the consumer a notice as required in 13.1.3.11 NMAC; and

(3) An authorization is obtained from the consumer whose nonpublic personal information is sought to be disclosed.

B. Application to all consumers and all nonpublic personal information.

(1) A licensee shall comply with this section, regardless of whether the licensee and the consumer have established a customer relationship.

(2) Unless a licensee complies with this section, the licensee may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer that the licensee has collected, regardless of whether the licensee collected it before or after receiving authorization from the consumer.

C. Partial authorization. A licensee may allow a consumer to select certain nonpublic personal information or certain affiliates or nonaffiliated third parties with respect to which the consumer wishes to authorize disclosure of specified

nonpublic personal information. [13.1.3.14 NMAC - N, 2-25-02]

13.1.3.15 Limits on Redisclosure and Reuse of Nonpublic Personal Information:

A. Nonpublic personal financial information the licensee receives under an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial or other institution under an exception in 13.1.3.18 NMAC or 13.1.3.19 NMAC, the licensee's disclosure and use of that information is limited as follows:

(1) The licensee may disclose the information to the affiliates of the financial or other institution from which the licensee received the information;

(2) The licensee may disclose the information to its affiliates, but the licensee's affiliates may, in turn, disclose and use the information only to the extent that the licensee may disclose and use the information; and

(3) The licensee may disclose and use the information pursuant to an exception in 13.1.3.18 NMAC or 13.1.3.19 NMAC, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.

(4) **Example.** If a licensee receives information from a nonaffiliated financial or other institution for claims settlement purposes, the licensee may disclose the information for fraud prevention, or in response to a properly authorized subpoena. The licensee may not disclose that information to a third party for marketing purposes or use that information for its own marketing purposes.

B. Nonpublic personal financial information a licensee receives outside of an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution other than under an exception in 13.1.3.18 NMAC or 13.1.3.19 NMAC, the licensee may disclose the information only:

(1) To the affiliates of the financial or other institution from which the licensee received the information;

(2) To its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the licensee may disclose the information; and

(3) To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which the licensee received the information.

(4) **Example.** If a licensee obtains a customer list from a nonaffiliated financial or other institution outside of the exceptions in 13.1.3.18 NMAC or 13.1.3.19

NMAC:

(a) The licensee may use that list for its own purposes; and

(b) The licensee may disclose that list to another nonaffiliated third party only if the financial or other institution from which the licensee purchased the list could have lawfully disclosed the list to that third party. That is, the licensee may disclose the list in accordance with the privacy policy of the financial or other institution from which the licensee received the list, consistent with the authorization of each consumer whose nonpublic personal financial information the licensee intends to disclose, and the licensee may disclose the list in accordance with an exception in 13.1.3.18 NMAC or 13.1.3.19 NMAC, such as to the licensee's attorneys or accountants.

C. Nonpublic personal financial information a licensee discloses under an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in 13.1.3.18 NMAC or 13.1.3.19 NMAC, the third party may disclose and use that information only as follows:

(1) The third party may disclose the information to the licensee's affiliates;

(2) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

(3) The third party may disclose and use the information pursuant to an exception in 13.1.3.18 NMAC or 13.1.3.19 NMAC in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

D. Nonpublic personal financial information a licensee discloses pursuant to consumer authorization outside of an exception. If a licensee discloses nonpublic personal information to a nonaffiliated third party pursuant to 13.1.3.14 NMAC, the third party may disclose the information only:

(1) To the licensee's affiliates;

(2) To the third party's affiliates, but the third party's affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

(3) To any other person, if the disclosure would be lawful if the licensee made it directly to that person.

E. Nonpublic personal health information.

(1) If a licensee receives nonpublic personal health information from an affiliate or a nonaffiliated third party under an exception in 13.1.3.18 NMAC or 13.1.3.19 NMAC, the licensee may disclose

and use the information pursuant to an exception in 13.1.3.18 NMAC or 13.1.3.19 NMAC in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.

(2) If a licensee receives nonpublic personal health information other than under an exception in 13.1.3.18 NMAC or 13.1.3.19 NMAC, the licensee may disclose the information only to any other person, if the disclosure would be lawful if made directly to that person by the individual from whom the licensee received the information.

(3) If a licensee discloses nonpublic personal health information to an affiliate or to a nonaffiliated third party under an exception in 13.1.3.18 NMAC or 13.1.3.19 NMAC, the affiliate or third party may only disclose and use that information pursuant to an exception in 13.1.3.18 NMAC or 13.1.3.19 NMAC in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(4) If a licensee discloses nonpublic personal health information to an affiliate or a nonaffiliated third party pursuant to 13.1.3.14 NMAC, the affiliate or third party may disclose the information only to any other person if the disclosure would be lawful if the licensee made it directly to that person.

[13.1.3.15 NMAC - N, 2-25-02]

13.1.3.16 Limits on Sharing Account Number Information for Marketing Purposes:

A. General prohibition on disclosure of account numbers. A licensee shall not, directly or through an affiliate, disclose, other than to a consumer reporting agency, a policy number or similar form of access number or access code for a consumer's policy or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing or other marketing through electronic mail to the consumer.

B. Exceptions. Subsection A of 13.1.3.16 NMAC does not apply if a licensee discloses a policy number or similar form of access number or access code:

(1) To the licensee's service provider solely in order to perform marketing for the licensee's own products or services, as long as the service provider is not authorized to directly initiate charges to the account;

(2) To a licensee who is a producer solely in order to perform marketing for the licensee's own products or services; or

(3) To a participant in an affin-

ity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

C. Examples.

(1) **Policy number.** A policy number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as the licensee does not provide the recipient with a means to decode the number or code.

(2) **Policy or transaction account.** For the purposes of this section, a policy or transaction account is an account other than a deposit account or a credit card account. A policy or transaction account does not include an account to which third parties cannot initiate charges.

[13.1.3.16 NMAC - N, 2-25-02]

13.1.3.17 Exception to Authorization Requirement for Disclosure of Nonpublic Personal Financial Information for Service Providers and Joint Marketing:

A. General rule.

(1) The notice and authorization requirements in 13.1.3.11 NMAC and 13.1.3.14 NMAC do not apply when a licensee provides nonpublic personal financial information to a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf, if the licensee:

(a) Provides the initial notice in accordance with 13.1.3.8 NMAC; and

(b) Enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in 13.1.3.18 NMAC or 13.1.3.19 NMAC in the ordinary course of business to carry out those purposes.

(2) **Example.** If a licensee discloses nonpublic personal financial information under this section to a financial institution with which the licensee performs joint marketing, the licensee's contractual agreement with that institution meets the requirements of subparagraph (b) of paragraph (1) of subsection A of 13.1.3.17 NMAC if it prohibits the institution from disclosing or using the nonpublic personal financial information except as necessary to carry out the joint marketing or under an exception in 13.1.3.18 NMAC or 13.1.3.19 NMAC in the ordinary course of business to carry out that joint marketing.

B. Joint marketing. The services a nonaffiliated third party performs for a licensee under subsection A of 13.1.3.17 NMAC may include disclosures of nonpublic personal financial information for the purpose of marketing of the licensee's own products or services or mar-

keting of financial products or services offered pursuant to joint agreements between the licensee and one or more financial institutions. A licensee shall not disclose nonpublic personal health information for joint marketing pursuant to 13.1.3.17 NMAC unless the licensee has first obtained authorization from the consumer whose nonpublic personal health information is sought to be disclosed for joint marketing.

C. Definition of "joint agreement." For purposes of this section, "joint agreement" means a written contract pursuant to which a licensee and one or more financial institutions jointly offer, endorse or sponsor a financial product or service.

[13.1.3.17 NMAC - N, 2-25-02]

13.1.3.18 Exceptions to Notice and Authorization Requirements for Disclosure of Nonpublic Personal Information for Processing and Servicing Transactions:

A. Exceptions for processing transactions at consumer's request. The requirements for initial notice in paragraph (2) of subsection A of 13.1.3.8 NMAC, for notice and authorization in 13.1.3.11 NMAC and 13.1.3.14 NMAC, and service providers and joint marketing in 13.1.3.17 NMAC do not apply if the licensee discloses nonpublic personal information only to the extent necessary to effect, administer or enforce a transaction that a consumer requests or authorizes, or in connection with:

(1) Servicing or processing an insurance product or service that a consumer requests or authorizes;

(2) Maintaining or servicing the consumer's account with a licensee, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity;

(3) A proposed or actual securitization, secondary market sale (including sales of servicing rights) or similar transaction related to a transaction of the consumer; or

(4) Reinsurance or stop loss or excess loss insurance.

B. "Necessary to effect, administer or enforce a transaction" means that the disclosure is:

(1) Required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

(2) Required, or is a usual, appropriate or acceptable method:

(a) To carry out the transaction or the product or service business of which

the transaction is a part, and record, service or maintain the consumer's account in the ordinary course of providing the insurance product or service;

(b) To administer, adjust, manage, or service benefits or claims relating to the transaction or the product or service business of which it is a part;

(c) To provide a confirmation, statement or other record of the transaction, or information on the status or value of the insurance product or service to the consumer or the consumer's agent or broker;

(d) To accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or any other party;

(e) To underwrite insurance at the consumer's request;

(f) To perform the following insurance functions: policy placement or issuance, account administration, detecting, reporting, investigating or preventing actual or potential fraud, material misrepresentation or criminal activity, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), loss control, risk management, case management, disease management, quality assurance, quality improvement, performance evaluation, provider credentialing verification, peer review activities, participating in research projects, grievance procedures; internal administration of compliance, managerial, and information systems; policyholder service functions; auditing; reporting; database security; administration of consumer disputes and inquiries; external accreditation standards; the replacement of a group benefit plan or workers compensation policy or program; activities in connection with a sale, merger, transfer or exchange of all or part of a business or operating unit; any activity that permits disclosure without authorization pursuant to the federal Health Insurance Portability and Accountability Act privacy rules promulgated by the U.S. Department of Health and Human Services; disclosure that is required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out a transaction or providing a product or service that a consumer requests or authorizes; and any activity otherwise permitted by law, required pursuant to governmental reporting authority, or to comply with legal process; or

(g) In connection with the authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited or otherwise paid using a debit, credit or other payment card, check or account number, or by other payment means; the transfer of

receivables, accounts or interests therein; or the audit of debit, credit or other payment information.

[13.1.3.18 NMAC - N, 2-25-02]

13.1.3.19 Other Exceptions to Notice and Authorization Requirements for Disclosure of Nonpublic Personal Information:

A. Exceptions to authorization requirement. The requirements for initial notice to consumers in paragraph (2) of subsection A of 13.1.3.8 NMAC, for notice and authorization in 13.1.3.11 NMAC and 13.1.3.14 NMAC, and service providers and joint marketing in 13.1.3.17 NMAC do not apply when a licensee discloses nonpublic personal information:

(1) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;

(2) To protect the confidentiality or security of a licensee's records pertaining to the consumer, service, product or transaction; to protect against or prevent actual or potential fraud or unauthorized transactions; for required institutional risk control or for resolving consumer disputes or inquiries; to persons holding a legal or beneficial interest relating to the consumer; or to persons acting in a fiduciary or representative capacity on behalf of the consumer;

(3) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants and auditors;

(4) To the extent specifically permitted or required under other provisions of law and in accordance with the federal Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.), to law enforcement agencies (including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, the Securities and Exchange Commission, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping), a state insurance authority, and the Federal Trade Commission), self-regulatory organizations or for an investigation on a matter related to public safety;

(5) To a consumer reporting agency in accordance with the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); or from a consumer report reported by a consumer reporting agency;

(6) In connection with a proposed or actual sale, merger, transfer or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely consumers of the business or unit;

(7) To comply with federal, state or local laws, rules and other applicable legal requirements; to comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by federal, state or local authorities; or to respond to judicial process or government regulatory authorities having jurisdiction over a licensee for examination, compliance or other purposes as authorized by law; or

(8) For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan or a workers' compensation policy.

B. Revocation of authorization. A consumer may revoke an authorization at any time by informing the licensee in writing of the revocation.
[13.1.3.19 NMAC - N, 2-25-02]

13.1.3.20 Authorizations:

A. A valid authorization to disclose nonpublic personal information pursuant to 13.1.3.14 NMAC shall be in written or electronic form separate from that used for any other purpose and shall contain all of the following:

(1) The identity of the consumer or customer who is the subject of the nonpublic personal information;

(2) A specific description of the types of nonpublic personal information to be disclosed;

(3) Specific descriptions of the parties to whom the licensee discloses nonpublic personal information, the purpose of the disclosure and how the information will be used;

(4) The signature of the consumer or customer who is the subject of the nonpublic personal information or the individual who is legally empowered to grant authority and the date signed; and

(5) Notice of the length of time for which the authorization is valid and that the consumer or customer may revoke the authorization at any time and the procedure for making a revocation.

B. An authorization for the purposes of this rule shall specify a length of time for which the authorization shall remain valid, which in no event shall be for more than twenty-four (24) months.

C. A consumer or customer who is the subject of nonpublic personal information may revoke an authorization provided pursuant to this rule at any time, subject to the rights of an individual who acted in reliance on the authorization

prior to notice of the revocation.

D. A licensee shall retain the authorization or a copy thereof in the record of the individual who is the subject of nonpublic personal information.
[13.1.3.20 NMAC - N, 2-25-02]

13.1.3.21 Authorization Request

Delivery: A notice to consumers regarding request for authorization and an authorization form shall be delivered to a consumer pursuant to 13.1.3.13 NMAC. A notice to consumers regarding request for authorization and an authorization form are not required to be delivered to a consumer or included in any other notices unless the licensee intends to disclose nonpublic personal information pursuant to 13.1.3.14 NMAC.

[13.1.3.21 NMAC - N, 2-25-02]

13.1.3.22 Relationship to Federal Rules: Irrespective of whether a licensee is subject to the federal Health Insurance Portability and Accountability Act privacy rule as promulgated by the U.S. Department of Health and Human Services (the "federal rule"), if a licensee complies with all requirements of the federal rule except for its effective date provision, the licensee shall not be subject to the provisions of this rule with respect to nonpublic personal health information.

[13.1.3.22 NMAC - N, 2-25-02]

13.1.3.23 Relationship to State Laws: Nothing in this rule shall preempt or supercede existing state law related to medical records, health or insurance information privacy.

[13.1.3.23 NMAC - N, 2-25-02]

13.1.3.24 Protection of Fair Credit Reporting Act: Nothing in this rule shall be construed to modify, limit or supersede the operation of the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), and no inference shall be drawn on the basis of the provisions of this rule regarding whether information is transaction or experience information under Section 603 of that Act.

[13.1.3.24 NMAC - N, 2-25-02]

13.1.3.25 Nondiscrimination: A licensee shall not unfairly discriminate against any consumer because that consumer has not granted authorization for the disclosure of his or her nonpublic personal information pursuant to the provisions of this rule.

[13.1.3.25 NMAC - N, 2-25-02]

13.1.3.26 Severability: If any section or portion of a section of this rule or its applicability to any person or circumstance is held invalid by a court, the remainder of the rule or the applicability of the provision to

other persons or circumstances shall not be affected.

[13.1.3.26 NMAC - N, 2-25-02]

13.1.3.27 Two-year grandfathering of service agreements: Until December 31, 2002, a contract that a licensee has entered into with a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf satisfies the provisions of subparagraph (b) of paragraph (1) of subsection A of 13.1.3.17 NMAC, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information, as long as the licensee entered into the agreement on or before December 31, 2000.

[13.1.3.27 NMAC - N, 2-25-02]

13.1.3.28 Sample Clauses: Licensees, including a group of financial holding company affiliates that use a common privacy notice, may use the following sample clauses, if the clause is accurate for each institution that uses the notice. (Note that disclosure of certain information, such as assets, income and information from a consumer reporting agency, may give rise to obligations under the federal Fair Credit Reporting Act, such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.)

A. Categories of information a licensee collects (all institutions): A licensee may use this clause, as applicable, to meet the requirement of paragraph (1) of subsection A of 13.1.3.10 NMAC to describe the categories of nonpublic personal information the licensee collects. Sample Clause:

We collect nonpublic personal information about you from the following sources:

Information we receive from you on applications or other forms;

Information about your transactions with us, our affiliates or others; and

Information we receive from a consumer reporting agency.

B. Categories of information a licensee discloses with consumer authorization (institutions that disclose outside of the exceptions): A licensee may use one of these clauses, as applicable, to meet the requirement of paragraph (2) of subsection A of 13.1.3.10 NMAC to describe the categories of nonpublic personal information the licensee discloses with consumer authorization. The licensee may use these clauses if it discloses nonpublic personal information other than as permitted by the exceptions in 13.1.3.17 NMAC, 13.1.3.18 NMAC and 13.1.3.19 NMAC.

(1) **Alternative 1:**

If authorized by you, we may disclose the following kinds of nonpublic personal information about you:

Information we receive from you on applications or other forms, such as [provide illustrative examples, such as "your name, address, social security number, assets, income, and beneficiaries"];

Information about your transactions with us, our affiliates or others, such as [provide illustrative examples, such as "your policy coverage, premiums, and payment history"]; and

Information we receive from a consumer reporting agency, such as [provide illustrative examples, such as "your creditworthiness and credit history"].

(2) Alternative 2:

If authorized by you, we may disclose all of the information that we collect, as described [describe location in the notice, such as "above" or "below"].

C. Categories of information a licensee discloses and parties to whom the licensee discloses (institutions that do not disclose outside of the exceptions): A licensee may use this clause, as applicable, to meet the requirements of paragraphs (2), (3), and (4) of subsection A of 13.1.3.10 NMAC to describe the categories of nonpublic personal information about customers and former customers that the licensee discloses with consumer authorization and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses with consumer authorization. A licensee may use this clause if the licensee does not disclose nonpublic personal information to any party, other than as permitted by the exceptions in 13.1.3.18 NMAC and 13.1.3.19 NMAC. Sample Clause:

We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law.

D. Categories of parties to whom a licensee discloses with consumer authorization (institutions that disclose outside of the exceptions): A licensee may use this clause, as applicable, to meet the requirement of paragraph (3) of subsection A of 13.1.3.10 NMAC to describe the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal information with consumer authorization. This clause may be used if the licensee discloses nonpublic personal information with consumer authorization other than as permitted by the exceptions in 13.1.3.17 NMAC, 13.1.3.18 NMAC and 13.1.3.19 NMAC, as well as when permitted by the exceptions in 13.1.3.18 NMAC and 13.1.3.19 NMAC. Sample Clause:

If authorized by you, we may disclose non-

public personal information about you to the following types of third parties:

Financial service providers, such as [provide illustrative examples, such as "life insurers, automobile insurers, mortgage bankers, securities broker-dealers, and insurance agents"];

Non-financial companies, such as [provide illustrative examples, such as "retailers, direct marketers, airlines, and publishers"]; and

Others, such as [provide illustrative examples, such as "non-profit organizations"].

We may also disclose nonpublic personal information about you to nonaffiliated third parties as permitted by law.

E. Service provider/joint marketing exception: A licensee may use one of these clauses, as applicable, to meet the requirements of paragraph (5) of subsection A of 13.1.3.10 NMAC related to the exception for service providers and joint marketers in 13.1.3.17 NMAC. If a licensee discloses nonpublic personal information under this exception, the licensee shall describe the categories of nonpublic personal information the licensee discloses and the categories of third parties with which the licensee has contracted.

(1) Alternative 1:

We may disclose the following nonpublic personal financial information to companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements: Information we receive from you on applications or other forms, such as [provide illustrative examples, such as "your name, address, social security number, assets, income, and beneficiaries"];

Information about your transactions with us, our affiliates or others, such as [provide illustrative examples, such as "your policy coverage, premium, and payment history"]; and

Information we receive from a consumer reporting agency, such as [provide illustrative examples, such as "your creditworthiness and credit history"].

(2) Alternative 2:

We may disclose all of the nonpublic personal financial information we collect, as described [describe location in the notice, such as "above" or "below"] to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements.

F. Explanation of authorization right (institutions that disclose outside of the exceptions): A licensee may use this clause, as applicable, to meet the requirement of paragraph (6) of subsection A of 13.1.3.10 NMAC to provide an explanation of the consumer's right to authorize or not to authorize the disclosure of nonpublic personal information to nonaf-

filiated third parties, including the method(s) by which the consumer may exercise that right. The licensee may use this clause if the licensee requests authorization to disclose nonpublic personal information other than as permitted by the exceptions in 13.1.3.17 NMAC, 13.1.3.18 NMAC and 13.1.3.19 NMAC. Sample Clause:

We may only disclose nonpublic personal information if you sign and return the enclosed authorization. If you prefer that we not disclose nonpublic personal information about you, you should not return the enclosed authorization form.

G. Confidentiality and security (all institutions): A licensee may use this clause, as applicable, to meet the requirement of paragraph (8) of subsection A of 13.1.3.10 NMAC to describe its policies and practices with respect to protecting the confidentiality and security of nonpublic personal information. Sample Clause: We restrict access to nonpublic personal information about you to [provide an appropriate description, such as "those employees who need to know that information to provide products or services to you"]. We maintain physical, electronic, and procedural safeguards that comply with federal rules to guard your nonpublic personal information.

[13.1.3.28 NMAC - N, 2-25-02]

HISTORY OF 13.1.3 NMAC: [RESERVED]

PUBLIC REGULATION COMMISSION INSURANCE DIVISION

This is an amendment to 13.8.2 of the NMAC. This action amends five sections, Sections 13.8.2.1 NMAC, 13.8.2.3 NMAC, 13.8.2.7 NMAC, 13.8.2.13 NMAC and 13.8.2.14 NMAC. This action adds one new section, 13.8.2.26 NMAC. This action also renumbers and reformats 13 NMAC 8.2 to 13.8.2 NMAC and the property and casualty filing summary form in 13 NMAC 8.2.25 to 13.8.2.25 NMAC in accordance with the current New Mexico Administrative Code (NMAC) requirements.

13.8.2.1 ISSUING AGENCY: New Mexico [~~State Corporation~~] Public Regulation Commission, [~~Department of Insurance Division~~], Post Office Box 1269, Santa Fe, NM 87504-1269.

13.8.2.3 STATUTORY AUTHORITY: NMSA 1978 Sections 59A-2-9, [~~59A-3-6~~], 59A-17-4, 59A-17-5, 59A-17-16, 59A-17-17, 59A-17-28, 59A-

17-29 and 59A-32-13.

13.8.2.7 DEFINITIONS: As used in this rule:

A. Advisory filing means any filing by a licensed rate service organization within the scope of its license, solely for informational purposes and such limited uses as provided in 13.8.2.20 NMAC. The term includes a rate filing limited to pure premium rates, supplementary rates, and supporting data developed and trended as appropriate.

B. Credible or credibility in connection with statistical data is used in conformance with generally-accepted actuarial standards.

C. Expenses includes acquisition expenses, field supervision and collection expenses, general expenses, taxes, licenses and fees.

D. Filing means any submission to the Superintendent to establish or revise rates.

E. Line of business means a line of business as shown in the annual statement to the Superintendent.

F. Pure premium rate means that portion of a rate which represents the loss cost per unit of exposure, and may include loss adjustment expense.

G. Regular business day means every day except Saturday, Sunday and official state government holidays.

H. Regular business hours are 8:00 a.m. to 5:00 p.m., mountain standard or mountain daylight time, whichever is applicable, on regular business days; provided that regular business hours may be shortened on certain days without notice by official action of the governor or the ~~[state corporation]~~ Public Regulation Commission.

I. Rate service organization has the meaning given in NMSA 1978 Section 59A-17-4.

J. Supplementary rate information has the meaning given in NMSA 1978 Section 59A-17-4.

K. Supporting data means data and information which justifies, supports, interprets, describes, explains or underlies any rate or supplementary rate information, including but not limited to data the superintendent requires or may require pursuant to this rule.

13.8.2.13 REVIEW OF FINAL ORDER:

A. Reconsideration. The filer or any other party aggrieved by the Superintendent's final order deciding the issues following a hearing, or refusing to grant a hearing, pursuant to 13.8.2.13 NMAC, may, in addition to other remedies provided by law, move for reconsideration, stating in detail the basis therefor. Any

motion for reconsideration shall be filed within fifteen days of the Superintendent's final order, and is barred thereafter. A motion for reconsideration is an optional remedy, and need not be exhausted as a condition of further administrative appeal.

B. Appeal. The filer or any party aggrieved by the Superintendent's final order deciding the issues following hearing, or refusing to grant a hearing, pursuant to 13.8.2.13 NMAC, may ~~[appeal to the state insurance board]~~ request a review by the Public Regulation Commission pursuant to this section.

(1) Following exhaustion of any right to hearing before the Superintendent, the filer or any other aggrieved party may request the ~~[state insurance board]~~ Public Regulation Commission to review any final order of the Superintendent made pursuant to 13.8.2.13 NMAC.

(2) Every such request for review shall be made within thirty days after the Superintendent's final order, and is barred thereafter; provided, that if a motion for reconsideration is timely filed with the Superintendent, a request for review shall be made within thirty days after the date the motion is filed.

(3) The ~~[board's]~~ Public Regulation Commission's review shall be on the record before the Superintendent, unless the ~~[board]~~ Public Regulation Commission in its discretion deems it necessary or appropriate to supplement the evidence through public hearing or otherwise; provided, that the scope of review shall be limited to the issues raised before the Superintendent; and further provided, that the ~~[board]~~ Public Regulation Commission may summarily affirm or reverse the Superintendent without hearing.

(4) Every request for review shall state with particularity the grounds upon which review is sought, and shall itemize each alleged error with citations to the applicable portions of the official record. If the transcript of record is not available despite appellant's prompt request therefor, citations shall be filed within ten days after the transcript first becomes available in substantially complete form. In any event, the request for review, with or without record citations must be timely filed within the time period specified in paragraph (2) of subsection B of 13.8.2.14 NMAC.

(5) The costs of transcribing the record shall be borne by the appellant.

13.8.2.14 COMPANY FILINGS:

A. Any insurer may make rates and rate filings on its own behalf in accordance with this section and other applicable portions of this rule.

B. Any insurer may file at any time any rate or supplementary rate information applicable to any line or part of a line of property and casualty insurance business for which the insurer is certificated.

C. Every company filing shall be accompanied by the exhibits required under 13.8.2.17 NMAC, except as provided in 13.8.2.26 NMAC.

D. Every company filing, except filings pursuant to 13.8.2.16 NMAC and 13.8.2.26 NMAC, shall comply with 13.8.2.18 NMAC.

E. The review period for a company filing begins when the filing is received by the Superintendent, unless delayed for amendment or lack of sufficient information pursuant to Chapter 59A, Article 17 and this rule.

F. Company filings based on a rate service organization advisory pure premium filing may not be used until either the Superintendent has notified the rate service organization that the advisory filing is acceptable or the statutory review period has expired with no action, whichever is sooner.

13.8.2.26 LIMITED EXEMPTION:

A. Insurance rate filings shall be exempt from the requirements of 13.8.2.17 NMAC and 13.8.2.18 if:

(1) the rate filing is for commercial insurance where the insured is a business, government entity, or non-profit organization;

(2) the rate filing is for a commercial line of business, except for the following:

(a) workers compensation;

(b) medical professional liability; or

(c) ski basin liability;

(3) the rate filing does not result in a renewal rate change greater than 25% for any policyholder with current premiums less than \$10,000; and

(4) the rate filing is not:

(a) a policy form filing; or

(b) a rate service organization filing or assigned risk filing.

B. Filings made pursuant to paragraph A of section 26 of 13.18.2 NMAC shall:

(1) include:

(a) a brief explanatory memorandum;

(b) a copy of the rates; and

(c) the filing summary required by section 25 of 13.8.2 NMAC;

2) be subject to all other requirements of this rule; and

(3) be subject to the requirements of NMSA 1978, Section 59A-17-6.

C. The superintendent

may at any time request an insurer to file the exhibits required by section 17 of 13.8.2 NMAC.

D. If a rate filing made pursuant to paragraph A of section 26 of 13.18.2 NMAC is based on a rate service organization filing, the rate service organization filing shall have been preauthorized for use in New Mexico.

**End of Adopted Rules and
Regulations Section**

2002

SUBMITTAL DEADLINES AND PUBLICATION DATES

Volume XIII	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 28
Issue Number 5	March 1	March 15
Issue Number 6	March 18	March 29
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
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