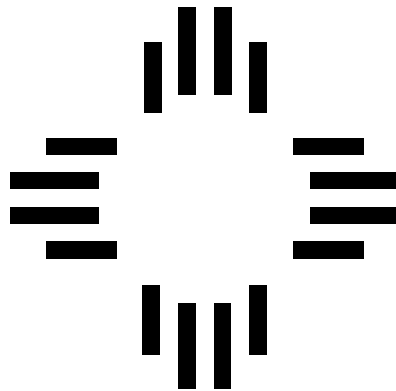


New Mexico Register

Volume XIII, Issue Number 9
May 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
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New Mexico Register

Volume XIII, Number 9

May 15, 2002

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

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Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail rules@rain.state.nm.us.

Notices of Rulemaking and Proposed Rules

**NEW MEXICO
DEPARTMENT OF
ENERGY, MINERALS AND
NATURAL RESOURCES
STATE PARKS DIVISION**

**NOTICE OF PUBLIC HEARING
PROPOSED REGULATIONS FOR
CONSTRUCTION AND MAINTENANCE
OF PRIVATE BOAT DOCKS**

The New Mexico State Parks Division of the Energy, Minerals and Natural Resources Department will hold a public hearing at **4:00 p.m. on Wednesday, May 29, 2002**, in Porter Hall, located at 1220 South St. Francis Dr., Santa Fe, New Mexico. Entrance is located on the first floor northeast side of the Energy Minerals and Natural Resources Building, (also known as the Pinon Building).

Purpose of proposed regulation is to provide standards for construction and maintenance of private, non-commercial docks on lakes that are subject to the authority of the New Mexico State Parks Division. Hearing will be conducted in accordance with the Open Meeting Act, NMSA 1978, Section 10-15-1 et seq; and the Energy, Minerals and Natural Resources Department Guidelines for Rulemaking.

A copy of proposed regulations is available upon written request to **DRAFT BOAT DOCK REGULATIONS SECTION**, NM State Parks Division, P.O. Box 1147, Santa Fe, NM 87504-1147, or downloading a copy at www.nmparks.com, or calling (505) 476-3355 to request a draft.

Individuals are invited to make oral comments on the proposed regulations at the hearing or by submitting written comment by 5:00 p.m. on May 30, 2002 to **DRAFT BOAT DOCK REGULATIONS SECTION**, NM State Parks Division, P.O. Box 1147, Santa Fe, New Mexico 87504-1147; or nmparks@state.nm.us. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Doris Archuletta or Jerome Madrid at least one week prior to the hearing or as soon as possible through New Mexico voice relay at 1-800-659-1779 or TTD 1-800 659-8331. Public documents can be provided in various formats if needed.

**NEW MEXICO
STATE GAME
COMMISSION**

NOTICE OF MEETING

The State Game Commission will meet at Tierra Amarilla Complex Building, State Road 162, Tierra Amarilla, New Mexico, 87575 on May 10, 2002, at 9:00a.m. - 5:00p.m.

The proposed agenda may be found by accessing the web site of the New Mexico Department of Game and Fish at www.gmfsh.state.nm.us or by contacting the office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico or by calling (505) 476-8008.

***Notations under each agenda items are for discussion only and commission action will not be limited to said notations.**

NOTE: Persons attending this Commission meeting who wish to address the Commission regarding agenda items appearing in Old Business and New Business must fill out and submit to the recording secretary an agenda discussion request card available at the table with the agenda copies.

Those who desire to address the Commission and who claim to represent an organization must provide the following information:

The number of members in the organization, frequency of the organization's meeting and either a signed statement from that organization's president that states the organization has discussed the topic and approved the position that the representative is presenting, or proof that they are a registered lobbyist for the organization.

AGENDA ITEM NO. 1. Meeting Called to Order

AGENDA ITEM NO. 2. Roll Call

AGENDA ITEM NO. 3. Introduction of Guests

AGENDA ITEM NO. 4. Approval of Minutes (March 29, 2002)

AGENDA ITEM NO. 5. Approval of Agenda

AGENDA ITEM NO. 6. Consent Agenda

* Revocations

OLD BUSINESS

AGENDA ITEM NO. 7. Deer Management Update - Barry Hale

The Department will update the State Game Commission on its management strategies for addressing declining deer populations. Including possible statewide draw for licenses, the need for habitat improvement, harvest reduction, and predator control, etc. Some major habitat proposals currently in their preliminary stages of development will be identified. The presentation will also include a brief discussion of the Department's draft deer regulatory package for the upcoming regulation cycle. For further information contact the Division of Wildlife at (505) 476-8038.

AGENDA ITEM NO. 8. Gray-Banded Kingsnake Recovery Plan.

Presented by Chuck Hayes/Charlie Painter

The Department will present the Gray-Banded Kingsnake Recovery Plan to the Commission for formal approval. A draft recovery plan was presented to the Commission in March, and has since been revised based on comments from the Commission, representatives of the gray-banded kingsnake advisory committee, and others.

NEW BUSINESS

AGENDA ITEM NO. 9. Black-footed Ferret Recovery. Presented by Mike Phillips, Turner Endangered Species Fund

The Turner Endangered Species Fund will present information regarding a proposal for experimental releases of black-footed ferrets at Vermejo Park Ranch. Information will be presented to allow the Commission to provide input to this proposal, and to form a position on the proposed experimental releases on Vermejo Park, if desired. A representative of the Black-Footed Ferret Recovery Team will also be available to provide additional information on how this proposal would figure into black-footed ferret recovery efforts.

AGENDA ITEM NO. 10. Biennial Review - Chuck Hayes

The Department will announce the availability of the Biennial Review of Threatened and Endangered Species in New Mexico. The New Mexico Wildlife

Conservation Act (WCA) requires that all species listed as threatened or endangered under the WCA are reviewed biennially to determine if their status fits the definition of threatened or endangered (procedures described in 17-2-40 NMSA 1978 and 19.33.3 NMAC). During the biennial review, species may be uplisted or downlisted under the WCA based on biological and ecological factors, but may not be added nor removed from the list. The Biennial Review is open for a 90-day comment period, during which comments may be submitted to a public repository. Initial recommendations, based on Department information and materials in the repository, are then brought to the Commission following the close of the 90-day comment period.

AGENDA ITEM NO. 11 Disposal of Department Fixed Assets. Presented by Patrick Block

The Department will be presenting a list of vehicles, radios, computers and other fixed assets that are worn out, obsolete or otherwise unusable. In accordance with 13-6-1 NMSA 1978, the Department will seek the Commission's approval to dispose of these items at auction.

AGENDA ITEM NO. 12. Recommendations/Concerns for Unit 34 Elk Permit Numbers. Presented by Alexa Sandoval

The Department will present recommended changes to elk permit numbers in Unit 34 for the 2002-2003 hunts. Representatives of the Otero County Sportsman Association will address the Commission concerning elk management in Unit 34.

AGENDA ITEM NO. 13 2003-2005 Big Game Rule Making Process - Hunting and Fishing License Application 19.31.3 NMAC, Big Game 19.31.8 NMAC, Hunting and Fishing - Manner & Method of Taking 19.31.10 NMAC, Boundary Descriptions for Wildlife Management Units 19.30.4 NMAC; and Private Land elk License Allocation 19.30.5 NMAC will be open for amendment. Presented by Luis Rios

The Department will open rules necessary in establishing 2003-2005 big game seasons and any accompanying changes that may need to occur to facilitate their implementation. This will announce initial recommendations for seasons and describe the public involvement plan for input into the regulation process. Rules will remain open until final adoption (which is anticipated in October 2002).

AGENDA ITEM NO. 14 Headquarters Building Phase II. Presented by Jeff Pederson

The Department will propose the sale of warehouse property in Santa Fe with the proceeds to be directed to the proposed Phase II construction of the headquarters building.

AGENDA ITEM NO. 15 -- Big Game 19.31.8 NMAC will be open for amendment and discussion. Presented by Luis Rios

The Commission will review the policy and rule for license refunds and reinstatement of once in a lifetime Oryx privileges, and amend the rule(s) as necessary to accommodate their directives.

AGENDA ITEM NO. 16 Big Game 19.31.8 NMAC will be open for amendment and discussion - Presented by Kerry Mower

The Department will recommend a rule change allowing and encouraging participation of voluntary CWD testing of elk and deer lawfully taken. Proposed eligibility for an incentive license would require participation in this program.

AGENDA ITEM NO. 17 Forage lease value considerations - Depredation Assistance 19.30.2 NMAC will be open for amendment and discussion, Presented by Dan Brooks

The Department will make recommendations to the Commission amending the Big Game Depredation Rule to set standards, including monetary consideration for forage leases to resolve big game damage.

AGENDA ITEM NO. 18 Game Protection Money for the purchase of Eagle Nest Lake

The Department will inform the Commission as to budget impacts to the Game Protection Fund and ask the Commission for a position on additional funding.

AGENDA ITEM NO. 19 Joint Colorado, New Mexico State Game Commission discussion.

AGENDA ITEM NO. 20 Commission/Department Discussion

- * Bear Canyon Update
- * Narciso Baca Update
- * Future meetings dates and locations
- * Santa Rosa Hatchery land and water rights purchase

AGENDA ITEM NO. 21 General Public Comments: (Comments limited to 3 minutes.)

AGENDA ITEM NO. 22 Closed Executive Session

- * Litigation
- * Personnel matters
- * Land acquisition

**Commission Workshop
The Lodge at Chama
16253 Highway 84 South
Chama, New Mexico 87520
May 11, 2002
9:00 a.m. - 5:00 p.m.**

***During the following agenda items no public input will be taken.**

AGENDA ITEM NO. 23 Bear Biology Information - Bill Dunn

The Department will present to the Commission biological information used in formulating harvest management strategies for black bear in New Mexico.

AGENDA ITEM NO. 24 Cougar Biology Information - Rich Beausoleil

The Department will present to the Commission biological information used in formulating harvest management strategies for cougar in New Mexico.

AGENDA ITEM NO. 25 Elk Biology Information - Terry Enk

The Department will present to the Commission biological information and habitat based management approach for elk in New Mexico.

AGENDA ITEM NO. 26 Oryx Biology Information - Darrell Weybright

The Department will present to the Commission biological information used in formulating harvest management strategies for off range Oryx.

AGENDA ITEM NO. 27 Bighorn Biology Information - Elise Goldstein

The Department will present to the Commission biological information used in formulating management strategies for Bighorn in New Mexico.

AGENDA ITEM NO. 28 Wildlife of New Mexico Video - Tim Baca

AGENDA ITEM NO. 29 Field Trip

The Commission will tour the Sargent Wildlife Area and Parkview Fish Hatchery. The Department will provide discussion on management strategies concerning the wildlife area and the hatchery to the Commission. The field trip will begin promptly at 1:00 p.m. Meet at the campground located at the Sargent Wildlife Area entrance. Public is welcome.

NOTE: The meeting will be adjourned

upon completion of the agenda or up to those items that time allows. Any items not discussed will be on the following meeting's agenda.

The Agenda is subject to change up to 24 hours prior to the scheduled meeting date and time as deemed necessary by the Chairman. To inquire about agenda changes, please contact the Office of the Director at (505) 476-8008.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Shirley Baker at (505) 476-8030. Please contact Ms. Baker at least 3 working days before the set meeting date. Public documents, including the agenda and minutes can be provided in various accessible forms. Please contact Shirley Baker if a summary or other type of accessible form is needed.

**NEW MEXICO
DEPARTMENT OF
HEALTH**

**Division of Health Improvement
Caregivers Criminal History Screening
Program**

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on the reissue of 7.1.9 NMAC "Caregivers Criminal History Screening Requirements." The Hearing will be held at 9:00 am on Tuesday, June 25, 2002 in the auditorium of the Runnels Building at 1190 St. Francis Drive, Santa Fe, New Mexico.

The regulation for the Caregivers Criminal History Screening Program is proposed to be repealed and a new rule adopted which incorporates required format and which eliminates the references to implementation phases; include listing of care provider types required to comply; adding language from Section 29-17-5 NMSA 1978 Amended; adding reference to documentation submitted; and, adding an affidavit form for verification of employment action regarding disqualified caregivers.

A draft of the proposed Caregivers Criminal History Screening Requirements can be obtained from:

Paul E. Cook
Program Manager

Caregivers Criminal History Screening Program
1421 Luisa Street, Suite "R"
Santa Fe, NM 87505
505-827-1417 (tel) or 505-827-1419 (fax)

Please submit any written comment regarding the proposed 7.1.9 NMAC "Caregivers Criminal History Screening Requirements" to the Caregivers Criminal History Screening Program to the attention of:

Paul E. Cook
Program Manager
Caregivers Criminal History Screening Program
1421 Luisa Street, Suite "R"
Santa Fe, NM 87505

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter or any other form of auxiliary aide or service to attend or participate in the hearing, please contact Paul Cook at his address or telephone number listed above. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

**NEW MEXICO
COMMISSION OF PUBLIC RECORDS**

NOTICE OF REGULAR MEETING

The New Mexico Commission of Public Records has scheduled a regular meeting for Tuesday, June 4, 2002, at 9:00 A.M. The meeting will be held at the New Mexico State Records Center and Archives, which is an accessible facility at 1205 Camino Carlos Rey, Santa Fe, NM. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Kathy Mattison at 476-7902 by May 28, 2002. Public documents including the agenda and minutes can be provided in various accessible formats. A final copy of the agenda will be available 24 hours before the hearing.

Notice of Rulemaking

Repeal

1 NMAC 3.2.93.630, Human Services

New

1.18.630 NMAC ERRDS, Human Services

Amendments

1.15.2 NMAC GRRDS Administrative

1.15.3 NMAC GRRDS, General Administrative Records (For Use By Local Government and Educational Institutions)

1.18.350 NMAC ERRDS, General Services Department

1.18.665 NMAC ERRDS, Department of Health

1.18.790 NMAC ERRDS Department of Public Safety

1.18.805 NMAC ERRDS, Highway & Transportation

Renumbered

From

1 NMAC 3.2.93.521

1 NMAC 3.2.93.670

1 NMAC 3.2.95.70

1 NMAC 3.2.95.71

To

1.18.521 NMAC ERRDS, Energy Minerals & Natural Resources

1.18.670 NMAC ERRDS, Veterans Services Commission

1.20.2 NMAC EDRRDS, New Mexico Public Schools

1.20.3 NMAC EDRRDS, New Mexico Colleges and Universities

**NEW MEXICO PUBLIC
REGULATION
COMMISSION**
INSURANCE DIVISION

**IN THE MATTER OF AMENDING
13.14.10 NMAC, ENDORSEMENT
RATES, & 13.14.17 NMAC, UNDER-
WRITER'S
EXPERIENCE REPORT D O C K E T
NO. 02-105-IN**

**NOTICE OF HEARING ON PRO-
POSED RULEMAKING AND PROCE-
DURAL ORDER**

The purpose of this hearing is to obtain input on proposed amendments to 13.14.10 NMAC, Endorsement Rates, and 13.14.17 NMAC, Underwriter's Experience Report.

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 proposed amendments to 13.14.10 NMAC, Endorsement Rates, and 13.14.17 NMAC, Underwriter's Experience Report. 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 June 19, 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 June 12, 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 Docketing Office, 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 Docketing Office 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 Docketing Office, 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 May 15, 2002. To obtain a copy of the proposed rule: (1) send the docket number, rule name, and rule number to the Docketing Office, 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 Docketing Office 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 Docketing Office, 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 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 him 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 June 12, 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 30th day of April, 2002.

NEW MEXICO PUBLIC REGULATION
COMMISSION
INSURANCE DIVISION

ERIC P. SERNA,
Superintendent of Insurance

**End of Notices
and Proposed Rules Section**

Adopted Rules and Regulations

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This Subpart, 20 NMAC 3.1 Subpart 5, "Radiation Safety Requirements for Industrial Radiographic Operations", filed June 17, 1999, is hereby repealed and replaced by 20.3.5 NMAC, "Radiation Safety Requirements for Industrial Radiographic Operations", effective May 19, 2002.

20 NMAC 5.1, Underground Storage Tanks, General Provisions, filed December 30, 1999, with the State Records Center and Archives, is repealed effective June 14, 2002, and re-promulgated as 20.5.1 NMAC, Petroleum Storage Tanks, General Provisions, effective June 14, 2002.

20 NMAC 5.2, Underground Storage Tanks, Registration of Tanks, filed February 27, 1997, with the State Records Center and Archives, is repealed effective June 14, 2002, and re-promulgated as 20.5.2 NMAC, Petroleum Storage Tanks, Registration of Tanks, effective June 14, 2002.

20 NMAC 5.3, Underground Storage Tanks, Annual Fee, filed February 27, 1997, with the State Records Center and Archives, is repealed effective June 14, 2002, and re-promulgated as 20.5.3 NMAC, Petroleum Storage Tanks, Annual Fee, effective June 14, 2002.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

TITLE 20 ENVIRONMENTAL PROTECTION CHAPTER 3 RADIATION PRO- TECTION PART 5 RADIATION SAFE- TY REQUIREMENTS FOR INDUSTRI- AL RADIOGRAPHIC OPERATIONS

20.3.5.1 ISSUING AGENCY:
Environmental Improvement Board.
[20.3.5.1 NMAC – N, 5/19/02]

20.3.5.2 SCOPE: The regulations in this Part apply to all licensees or registrants who use sources of radiation for industrial radiography. Except for those regulations of this Part clearly applicable only to sealed radioactive sources, both radiation machine and sealed radioactive sources are covered by this Part. The

requirements of this Part are in addition to, and not in substitution for, other applicable requirements of 20.3 NMAC.
[20.3.5.2 NMAC – Rp 20 NMAC 3.1.5.501, 5/19/02]

20.3.5.3 STATUTORY AUTHORITY: Sections 74-1-8, 74-1-9, 74-3-5, and 74-3-9 NMSA 1978.
[20.3.5.3 NMAC – N, 5/19/02]

20.3.5.4 DURATION: Permanent.
[20.3.5.4 NMAC – N, 5/19/02]

20.3.5.5 EFFECTIVE DATE: May 19, 2002, unless a later date is cited at the end of a section.
[20.3.5.5 NMAC – N, 5/19/02]

20.3.5.6 OBJECTIVE: To establish radiation safety requirements for both radiation machines and sealed radioactive sources used for industrial radiography.
[20.3.5.6 NMAC – Rp 20 NMAC 3.1.5.500, 5/19/02]

20.3.5.7 DEFINITIONS. As used in this Part, the following apply:

A. "ALARA" (acronym for "as low as is reasonably achievable") means making every reasonable effort to maintain exposures to radiation as far below the dose limits specified in Part 4 of 20.3 NMAC as is practical consistent with the purpose for which the licensed activity is undertaken, taking into account the state of technology, the economics of improvements in relation to state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of radiation and licensed materials in the public interest;

B. "Annual refresher safety training" means a review conducted or provided by the licensee or registrant for its employees on radiation safety aspects of industrial radiography. The review may include, as appropriate, the results of internal inspections, new procedures or equipment, new or revised regulations, accidents or errors that have been observed, and should also provide opportunities for employees to ask safety questions;

C. "Associated equipment" means equipment that is used in conjunction with a radiographic exposure device to make radiographic exposures that drives, guides, or comes in contact with the source, (e.g., guide tube, control tube, control (drive) cable, removable source stop,

"J" tube and collimator when it is used as an exposure head;

D. "Becquerel" (Bq) means one disintegration per second;

E. "Cabinet radiography" means industrial radiography conducted in an enclosure or cabinet shielded so that radiation levels at every location on the exterior meet the limitations specified in 20.3.4.406 NMAC;

F. "Cabinet x-ray system" means an x-ray system with the x-ray tube installed in an enclosure (hereinafter termed "Cabinet") which, independently of existing architectural structures except the floor on which it may be placed, is intended to contain at least that portion of a material thing irradiated, provide radiation attenuation, and exclude personnel from its interior during generation of x-radiation. Included are all x-ray systems designed primarily for the inspection of carry-on baggage at airline, railroad, and bus terminals, and in similar facilities. An x-ray tube used within a shielded part of a building, or x-ray equipment that may temporarily or occasionally incorporate portable shielding is not considered a cabinet x-ray system;

G. "Certified cabinet x-ray system" means an x-ray system which has been certified in accordance with 21 CFR 1010.2 as being manufactured and assembled pursuant to the provisions of 21 CFR 1020.40;

H. "Certifying Entity" means an independent certifying organization meeting the requirements in 20.3.5.12 NMAC or an Agreement State meeting the requirements in 20.3.5.12 NMAC;

I. "Collimator" means a radiation shield that is placed on the end of the guide tube or directly onto a radiographic exposure device to restrict the size of the radiation beam when the sealed source is cranked into position to make a radiographic exposure;

J. "Control (drive) cable" means the cable that is connected to the source assembly and used to drive the source to and from the exposure location;

K. "Control drive mechanism" means a device that enables the source assembly to be moved to and from the exposure device;

L. "Control tube" means a protective sheath for guiding the control cable. The control tube connects the control drive mechanism to the radiographic exposure device;

M. "Exposure head" means a device that locates the gamma radiography sealed source in the selected working position. (an exposure head is also known

as a source stop);

N. "Field station" means a facility where licensed material or registered machines may be stored or used, and from which equipment is dispatched;

O. "Gray" means the SI unit of absorbed dose. One gray is equal to an absorbed dose of 1 Joule/kilogram. It is also equal to 100 rads;

P. "Guide tube" (Projection sheath) means a flexible or rigid tube (i.e., "J" tube) for guiding the source assembly and the attached control cable from the exposure device to the exposure head. The guide tube may also include the connections necessary for attachment to the exposure device and to the exposure head;

Q. "Hands-on experience" means experience in all of those areas considered to be directly involved in the radiography process;

R. "Independent certifying organization" means an independent organization that meets all of the criteria of 20.3.5.12 NMAC;

S. "Industrial radiography" means the examination of the macroscopic structure of materials by nondestructive methods using sources of ionizing radiation to produce radiographic images;

T. "Lixiscope" means a portable light-intensified imaging device using a sealed source;

U. "Permanent radiographic installation" means an enclosed shielded room, cell, or vault, not located at a temporary jobsite, in which radiography is performed;

V. "Personal supervision" means guidance and instruction to a radiographer trainee by a radiographer instructor who is present at the site, in visual contact with the trainee while the trainee is using sources of radiation, and in such proximity that immediate assistance can be given if required;

W. "Practical Examination" means a documented demonstration through practical application of the safety rules and principles in industrial radiography including use of all appropriate equipment and procedures;

X. "Radiation Safety Officer" (RSO) for industrial radiography means an individual with the responsibility for the overall radiation safety program on behalf of the licensee or registrant and who meets the requirements as specified in Subsection C of 20.3.5.11 NMAC;

Y. "Radiographer" means any individual who performs, or in attendance personally supervises, industrial radiographic operations and who is responsible to the licensee or registrant for assuring compliance with the requirements of these

regulations and all license and/or certificate of registration conditions. This individual must meet the training requirements as specified in Subsection B of 20.3.5.11 NMAC;

Z. "Radiographer certification" means written approval received from a certifying entity stating that an individual has satisfactorily met certain established radiation safety, testing, and experience criteria;

AA. "Radiographer instructor" means any radiographer who provides on-the-job training to radiographer trainees in accordance with Subsection D of 20.3.5.11 NMAC;

AB. "Radiographer trainee" means any individual who, under the personal supervision of a radiographer instructor, uses sources of radiation, related handling tools, or radiation survey instruments during the course of his instruction;

AC. "Radiographer's assistant" means any individual who under the direct supervision of a radiographer, uses radiographic exposure devices, sealed sources or related handling tools, or radiation survey instruments in industrial radiography;

AD. "Radiographic exposure device" means any instrument containing a sealed source fastened or contained therein, in which the sealed source or shielding thereof may be moved, or otherwise changed, from a shielded to unshielded position for purposes of making a radiographic exposure;

AE. "Radiographic operations" means all activities performed with a radiographic device, or with a radiation machine. These include however are not limited to activities associated with the use of the device or machine, or transport (except when being transported by a common or contract transport), including surveys to confirm the adequacy of boundaries, setting up equipment and any activity inside restricted area boundaries;

AF. "Radiographic personnel" means any radiographer, radiographer's assistant, radiographer instructor, or radiographer trainee;

AG. "Residential location" means any area where structures in which people lodge or live are located, and the grounds on which structures are located including, but not limited to, houses, apartments, condominiums, and garages;

AH. "S-tube" means a tube through which the radioactive source travels when inside a radiographic exposure device;

AI. "Sealed source" means any byproduct material that is encased in a capsule designed to prevent leakage or

escape of the byproduct material;

AJ. "Shielded position" means the location within the radiographic exposure device or source changer where the sealed source is secured and restricted from movement;

AK. "Shielded-room radiography" means industrial radiography conducted in an enclosed room, the interior of which is not occupied during radiographic operations, which is shielded so that radiation levels at every location on the exterior meet the limitations specified in 20.3.4.406 NMAC;

AL. "sievert" (Sv) means the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sieverts is equal to the absorbed dose in grays multiplied by the quality factor (1 Sv = 100 rems);

AM. "Source assembly" means an assembly that consists of the sealed source and a connector that attaches the source to the control cable. The source assembly may also include a stop ball used to secure the source in the shielded position;

AN. "Source changer" means a device designed and used for replacement of sealed sources in radiographic exposure devices, including those source changers also used for transporting and storage of sealed sources;

AO. "Storage area" means any location, facility, or vehicle which is used to store, to transport, or to secure a radiographic exposure device, a storage container, or a sealed source when it is not in use and which is locked or has a physical barrier to prevent accidental exposure, tampering with, or unauthorized removal of the device, container, or source;

AP. "Storage container" means a shielded device in which sealed sources are secured and stored;

AQ. "Temporary job site" means any location where industrial radiography is performed and where licensed material or X-ray machines may be stored other than the location(s) listed in a specific license or certificate of registration; and

AR. "Transport container" means a package that is designed to provide radiation safety and security when sealed sources are transported and which meets all applicable requirements of the U.S. Department of Transportation;

AS. "Underwater radiography" means industrial radiography performed when the radiographic exposure device and/or related equipment are beneath the surface of the water.

[20.3.5.7 NMAC – Rp 20 NMAC 3.1.5.502, 5/19/02]

20.3.5.8

EXEMPTIONS:

A. Except for the require-

ments of Subsections B and C of 20.3.5.25 NMAC, certified x-ray systems designed to exclude individuals from the interior of the cabinet are exempt from the requirements of this Part.

B. Industrial uses of lixiscopes are exempt from the requirements of this Part.

[20.3.5.8 NMAC – Rp 20 NMAC 3.1.5.503, 5/19/02]

20.3.5.9 PROHIBITIONS:

Industrial radiography performed with a sealed source that is not fastened to or contained in a radiographic exposure device, known as fish pole radiography, is prohibited unless specifically authorized in a license issued by the Department.

[20.3.5.9 NMAC – Rp 20 NMAC 3.1.5.526, 5/19/02]

20.3.5.10 SPECIFIC LICENSE FOR INDUSTRIAL RADIOGRAPHY:

An application for a specific license for the use of licensed material in industrial radiography will be approved if the applicant meets the following requirements:

A. The applicant satisfies the general requirements specified in Part 3 of 20.3 NMAC for byproduct material, as appropriate, and any special requirements contained in this part.

B. The applicant submits an adequate program for training radiographers and radiographers' assistants that meets the requirements of paragraph (1) of Subsection A of 20.3.5.11 NMAC. License applicants need not describe the initial training and examination program for radiographers in the subjects outlined in paragraph (1) of Subsection A of 20.3.5.11 NMAC.

C. The applicant submits procedures for verifying and documenting the certification status of radiographers and for ensuring that the certification of individuals acting as radiographers remains valid.

D. The applicant submits written operating and emergency procedures as described in 20.3.5.29 NMAC.

E. The applicant submits a description of a program for inspections of the job performance of each radiographer and radiographers' assistant. The intervals for these performance inspections are not to exceed 6 months as described in Subsection B of 20.3.5.13 NMAC.

F. The applicant submits a description of the applicant's overall organizational structure as it applies to the radiation safety responsibilities in industrial radiography, including specified delegation of authority and responsibility.

G. The applicant identifies and lists the qualifications of the individual(s) designated as the RSO and potential

designees responsible for ensuring that the licensee's radiation safety program is implemented in accordance with approved procedures. Refer to Subsection C of 20.3.5.11 NMAC for RSO qualification requirements.

H. If an applicant intends to perform leak testing of sealed sources or exposure devices containing depleted uranium (DU) shielding, the applicant must describe the procedures for performing and the qualifications of the person(s) authorized to do the leak testing. If the applicant intends to analyze its own wipe samples, the application must include a description of the procedures to be followed. The description must include the--

- (1) Instruments to be used;
- (2) Methods of performing the analysis; and
- (3) Pertinent experience of the person who will analyze the wipe samples.

I. If the applicant intends to perform "in-house" calibrations of survey instruments the applicant must describe methods to be used and the relevant experience of the person(s) who will perform the calibrations. All calibrations must be performed according to the procedures described and at the intervals prescribed in 20.3.5.16 NMAC.

J. The applicant identifies and describes the location(s) of all field stations and permanent radiographic installations.

K. The applicant identifies the location(s) where all records required by this part and other parts of 20.3 NMAC will be maintained. If a license is issued to the applicant, the licensee shall maintain copies of records required by this Part and other applicable Parts of 20.3 NMAC at the specified location(s).

[20.3.5.10 NMAC – N, 5/19/02]

20.3.5.11 TRAINING AND QUALIFICATION REQUIREMENTS:

A. Radiographer's Assistant. Licensees and registrants may not permit any individual to act as a radiographer's assistant until the requirements of this subsection have been completed. Until completion of these requirements the individual is considered to be a radiographer trainee. Licensees and registrants will have 120 days from the effective date of these regulations to comply with these requirements:

(1) Training shall be provided regarding the fundamentals of radiation safety including--

- (a) Characteristics of gamma and X-ray radiation;
- (b) Units of radiation dose and quantity of radioactivity;
- (c) Hazards of exposure to radiation during radiographic operations, includ-

ing case histories of accidents in radiography;

(d) Levels of radiation experienced during radiographic operations; and

(e) Methods of controlling radiation dose (time, distance, and shielding).

(f) Proper techniques for use and operation, and limitations of, the specific radiation survey instruments and personnel monitoring equipment used by the licensee or registrant.

(2) The individual has been provided copies of and instruction in the requirements contained in this Part, applicable sections of Parts 3, 4, and 10 of 20.3 NMAC, 10 CFR 71 of federal regulations, and conditions of the radioactive materials license or registration under which the radiographer will perform industrial radiography, and the licensee's or registrant's operating and emergency procedures;

(3) The individual has developed competence to use, under the personal supervision of the radiographer or radiographer instructor, the radiographic exposure devices, sealed sources, radiation machines, associated equipment, and radiation survey instruments that the assistant will use; and

(4) The individual has demonstrated understanding of the instructions provided under paragraph (2) of Subsection A of 20.3.5.11 NMAC by successfully completing a written test on the subjects covered and has demonstrated competence in the use of hardware described in paragraph (3) of Subsection A of 20.3.5.11 NMAC by successful completion of a practical examination on the use of such hardware.

B. Radiographer. Licensees may not permit any individual to act as a radiographer until the individual has completed the requirements of this subsection. With the exception of paragraph (3) of Section B of 20.3.5.11 NMAC, licensees and registrants will have 120 days from the effective date of these regulations to comply with these requirements:

(1) The requirements of Subsection A of 20.3.5.11 NMAC; and,

(2) Two months minimum on-the-job training in addition to paragraph (1) of Subsection B of 20.3.5.11 NMAC; and,

(3) Certification through a radiographer certification program by a certifying entity in accordance with the criteria specified in 20.3.5.12 NMAC. Licensees or registrants will have one calendar year from the effective date of these regulations to comply with this requirement. Records of radiographer certification maintained in accordance with Subsection F of 20.3.5.11 NMAC provide appropriate affirmation of meeting this certification requirement; and,

(4) Has demonstrated understanding of the license or registration and the operating and emergency procedures by

successful completion of a written or oral examination covering this material; and,

(5) Has received adequate training and has demonstrated understanding in the use of the licensee's or registrant's radiation survey instruments and associated equipment by successful completion of a practical examination covering the following material:

(a) Use, operation, calibration, and limitations of radiation survey instruments; and

(b) Survey techniques; and

(c) Use of personnel monitoring equipment; and

(6) Has received adequate training and has demonstrated understanding in the use of the licensee's or registrant's radiographic exposure devices, sources, radiation machines, and associated equipment by successful completion of a practical examination covering the following material:

(a) Operation and control of radiographic exposure equipment, radiation machines, remote handling equipment, and storage containers, including pictures or models of source assemblies (pigtailed); and

(b) Storage, control, and disposal of licensed material; and

(c) Inspection and maintenance of equipment.

C. Radiation Safety Officer (RSO). The licensee may not permit any individual to act as an RSO until the requirements of this subsection have been satisfied. Licensees and registrants will have one year from the effective date of these regulations to comply with these requirements:

(1) The minimum qualifications, training, and experience for RSOs are as follows:

(a) Completion of the training and qualification requirements of Subsection B of 20.3.5.11 NMAC; and

(b) 2000 hours of hands-on experience as a qualified radiographer in industrial radiographic operations; and

(c) Formal training in the establishment and maintenance of a radiation protection program.

(2) The Department will consider alternatives to these requirements when the RSO has appropriate training and/or experience in the field of ionizing radiation, and in addition, has adequate formal training with respect to the establishment and maintenance of a radiation safety protection program.

D. Radiographer Instructor. No individual shall act as a radiographer instructor unless such individual:

(1) Has met the requirements of Subsection B of 20.3.5.11 NMAC; and

(2) Has 2000 hours of hands-on

experience as a qualified radiographer in industrial radiographic operations; and

(3) Has been named as a radiographer instructor on the license or a registration certificate issued by the Department.

E. Annual Refresher Training. The licensee or registrant shall provide annual refresher training in radiation safety for each radiographer and radiographer's assistant at intervals not to exceed 12 months.

F. Records of Training and Certification. Each licensee or registrant shall maintain the following records (of training and certification) for 3 years after the record is made:

(1) Records of training of each radiographer and each radiographer's assistant. The record must include radiographer certification documents and verification of certification status, copies of written tests, dates of oral and practical examinations, and names of individuals conducting and receiving the oral and practical examinations; and

(2) Records of annual refresher safety training for each radiographer and each radiographer's assistant. The records must list the topics discussed during the refresher safety training, the dates the annual refresher safety training was conducted, and names of the instructors and attendees. For inspections of job performance required by Subsection B of 20.3.5.13 NMAC, the records must also include a list showing the items checked and any non-compliances observed by the RSO.

[20.3.5.11 NMAC – Rp 20 NMAC 3.1.5.515, 5/19/02]

20.3.5.12 REQUIREMENTS FOR AN INDEPENDENT CERTIFYING ORGANIZATION:

A. An independent certifying organization shall:

(1) Be an organization such as a society or association, whose members participate in, or have an interest in, the fields of industrial radiography; and

(2) Make its membership available to the general public nationwide that is not restricted because of race, color, religion, sex, age, national origin or disability; and

(3) Have a certification program open to nonmembers, as well as members; and

(4) Be an incorporated, nationally recognized organization, that is involved in setting national standards of practice within its fields of expertise; and

(5) Have an adequate staff, a viable system for financing its operations, and a policy-and decision-making review board; and

(6) Have a set of written organizational by-laws and policies that provide adequate assurance of lack of conflict of interest and a system for monitoring and enforcing those by-laws and policies; and

(7) Have a committee, whose members can carry out their responsibilities impartially, to review and approve the certification guidelines and procedures, and to advise the organization's staff in implementing the certification program; and

(8) Have a committee, whose members can carry out their responsibilities impartially, to review complaints against certified individuals and to determine appropriate sanctions; and

(9) Have written procedures describing all aspects of its certification program, maintain records of the current status of each individual's certification and the administration of its certification program; and

(10) Have procedures to ensure that certified individuals are provided due process with respect to the administration of its certification program, including the process of becoming certified and any sanctions imposed against certified individuals; and

(11) Have procedures for proctoring examinations, including qualifications for proctors. These procedures must ensure that the individuals proctoring each examination are not employed by the same company or corporation (or a wholly-owned subsidiary of such company or corporation) as any of the examinees; and

(12) Exchange information about certified individuals with other independent certifying organizations, the Department, the U.S. Nuclear Regulatory Commission, and/or Agreement States and allow periodic review of its certification program and related records; and

(13) Provide a description to the Department of its procedures for choosing examination sites and for providing an appropriate examination environment.

B. Requirements for Certification Programs. All certification programs must:

(1) Require applicants for certification to: a) receive training in the topics set forth in Subsection D of 20.3.5.12 NMAC or equivalent Agreement State regulations; and b) satisfactorily complete a written examination covering these topics; and

(2) Require applicants for certification to provide documentation that demonstrates that the applicant has:

(a) received training in the topics set forth in Subsection D of 20.3.5.12 NMAC or equivalent Agreement State regulations;

(b) satisfactorily completed a minimum period of on-the-job training; and

(c) has received verification by an Agreement State or a NRC licensee that the applicant has demonstrated the capability of independently working as a radiographer; and

(3) Include procedures to ensure that all examination questions are protected from disclosure; and

(4) Include procedures for denying an application, revoking, suspending, and reinstating a certificate; and

(5) Provide a certification period of not less than 3 years nor more than 5 years; and

(6) Include procedures for renewing certifications and, if the procedures allow renewals without examination, require evidence of recent full-time employment and annual refresher training.

(7) Provide a timely response to inquiries, by telephone or letter, from members of the public, about an individual's certification status.

C. Requirements for Written Examinations. All examinations must be:

(1) Designed to test an individual's knowledge and understanding of the topics listed in Subsection D of 20.3.5.12 NMAC or equivalent Agreement State requirements; and

(2) Written in a multiple-choice format; and

(3) Have test items drawn from a question bank containing psychometrically valid questions based on the material in Subsection D of 20.3.5.12 NMAC.

D. Required Training Topics. All certification programs shall include training in the following topics:

(1) Fundamentals of radiation safety including--

(a) Characteristics of gamma radiation; and

(b) Units of radiation dose and quantity of radioactivity; and

(c) Hazards of exposure to radiation; and

(d) Levels of radiation from licensed material; and

(e) Methods of controlling radiation dose (time, distance, and shielding); and

(2) Radiation detection instruments including--

(a) Use, operation, calibration, and limitations of radiation survey instruments; and

(b) Survey techniques; and

(c) Use of personnel monitoring equipment; and

(3) Equipment to be used including--

(a) Operation and control of radiographic exposure equipment, remote handling equipment, and storage containers, including pictures or models of source assemblies (pigtailed); and

(b) Storage, control, and disposal of licensed material; and

(c) Inspection and maintenance of equipment; and

(4) The requirements of pertinent State and Federal regulations; and

(5) Case histories of accidents in radiography.

[20.3.5.12 NMAC – N, 5/19/02]

20.3.5.13 REQUIREMENTS OF THE RADIATION SAFETY OFFICER (RSO):

A. The specific duties and authorities of the RSO include, but are not limited to:

(1) Ensuring that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's or registrant's program; and

(2) Establish, document, and oversee all operating, emergency, and ALARA procedures required by Part 4 of 20.3 NMAC. The procedures shall be revised by the RSO whenever necessary to ensure procedural accuracy. The procedures shall be reviewed regularly by the RSO at intervals not to exceed one calendar year to ensure that they conform to Part 4, other pertinent regulations, and to the conditions of the license or registration; and

(3) Overseeing and approving all phases of the training program for radiographic personnel, ensuring that appropriate and effective radiation protection practices are taught; and

(4) Ensuring that required radiation surveys and leak tests are performed and documented in accordance with the regulations, including any corrective measures when levels of radiation exceed established limits; and

(5) Ensuring that personnel monitoring devices are calibrated and used properly by occupationally-exposed personnel, that records are kept of the monitoring results, and that timely notifications are made as required by 20.3.4.453 NMAC; and

(6) Ensuring that operations are conducted safely and to assume control for instituting corrective actions including stopping of operations when necessary.

B. Inspections of Job Performance. Except as provided in paragraph (4) of Subsection B of 20.3.5.13 NMAC, the RSO or designee shall conduct an inspection program of the job performance of each radiographer and radiograph-

er's assistant to ensure that the Department's regulations, license or registration requirements, and the applicant's operating and emergency procedures are followed. The inspection program must:

(1) Include observation of the performance of each radiographer and radiographer's assistant during an actual industrial radiographic operation, at intervals not to exceed 6 months; and

(2) Provide that, if a radiographer or a radiographer's assistant has not participated in an industrial radiographic operation for more than 6 months since the last inspection, the radiographer must demonstrate knowledge of the training requirements of paragraph (5) of Subsection B of 20.3.5.11 NMAC and the radiographer's assistant must re-demonstrate knowledge of the training requirements of paragraph (3) of Subsection A of 20.3.5.11 NMAC by a practical examination before these individuals can next participate in a radiographic operation.

(3) The Department may consider alternatives requested in writing in those situations where the individual serves as both radiographer and RSO.

(4) Records of semi-annual inspections of job performance for each radiographer and each radiographer's assistant shall include a list showing the items checked and any non-compliances observed by the RSO.

[20.3.5.13 NMAC – N, 5/19/02]

20.3.5.14 SUPERVISION OF RADIOGRAPHER'S ASSISTANTS:

Whenever a radiographer's assistant uses radiographic exposure devices, associated equipment, sealed sources, radiation machines, or conducts radiation surveys required by Subsection B of 20.3.5.17 NMAC to determine that the sealed source has returned to the shielded position after an exposure, the assistant shall be under the personal supervision of a radiographer. The personal supervision must include:

A. The radiographer's physical presence at the site where the sealed sources or radiation machines are being used;

B. The availability of the radiographer to give immediate assistance if required; and

C. The radiographer's direct observation of the assistant's performance of the operations referred to in this section.

[20.3.5.14 NMAC – Rp 20 NMAC 3.1.5.518, 5/19/02]

20.3.5.15 PERSONNEL MONITORING:

A. The licensee or regis-

trant may not permit any individual to act as a radiographer or a radiographer's assistant unless, at all times during radiographic operations, each individual wears, on the trunk of the body, a combination of direct reading dosimeter, an operating alarm ratemeter, and a NVLAP certified dosimeter. At permanent radiography installations where other appropriate alarming or warning devices are in routine use, the wearing of an alarming ratemeter is not required.

(1) Pocket dosimeters must have a range from zero to 2 millisieverts (200 millirem) and must be recharged at the start of each shift. Electronic personal dosimeters may only be used in place of ion-chamber pocket dosimeters.

(2) Each NVLAP certified dosimeter must be assigned to and worn by only one individual.

(3) Film badges must be replaced at periods not to exceed one month. All other NVLAP certified dosimeters must be replaced at periods not to exceed three months.

(4) After replacement, each NVLAP certified dosimeter must be processed as soon as possible.

B. Direct reading dosimeters such as pocket dosimeters or electronic personal dosimeters must be read and the exposures recorded at the beginning and end of each shift. Records shall be maintained in accordance with paragraph (2) of Subsection H of 20.3.5.15 NMAC.

C. Pocket dosimeters, or electronic personal dosimeters, must be checked at periods not to exceed 12 months for correct response to radiation. Acceptable dosimeters must read within plus or minus 20 percent of the true radiation exposure. Records shall be maintained in accordance with paragraph (1) of Subsection H of 20.3.5.15 NMAC.

D. If an individual's pocket dosimeter is found to be off-scale, or if his or her electronic personal dosimeter reads greater than 2 millisieverts (200 millirem), and the possibility of radiation exposure cannot be ruled out as the cause, the individual's NVLAP certified dosimeter must be sent for processing within 24 hours. In addition, the individual may not resume work associated with radiation use until a determination of the individual's radiation exposure has been made. This determination must be made by the RSO or the RSO's designee. The results of this determination shall be documented. The documents shall be maintained in accordance with paragraph (4) of Subsection H of 20.3.5.15 NMAC.

E. If a NVLAP certified dosimeter is lost or damaged, the worker shall cease work immediately until a replacement dosimeter is provided and the

exposure is calculated for the time period from issuance to loss or damage of the dosimeter. The results of the calculated exposure and the time period for which the dosimeter was lost or damaged shall be documented. The documents shall be maintained in accordance with paragraph (4) of Subsection H of 20.3.5.15 NMAC.

F. Reports received from dosimetry processors shall be maintained in accordance with paragraph (3) of Subsection H of 20.3.5.15 NMAC.

G. Each alarm ratemeter must--

(1) Be checked to ensure that the alarm functions properly (sounds) before using at the start of each shift;

(2) Be set to give an alarm signal at a preset dose rate of 5 mSv/hr (500 mrem/hr); with an accuracy of plus or minus 20 percent of the true radiation dose rate;

(3) Require special means to change the preset alarm function; and

(4) Be calibrated at periods not to exceed 12 months for correct response to radiation. The licensee or registrant shall maintain records of alarm ratemeter calibrations in accordance with paragraph (2) of Subsection H of 20.3.5.15 NMAC.

H. Personnel Monitoring Records. Each licensee and registrant shall maintain the following exposure records pursuant to 20.3.5.15 NMAC:

(1) Direct reading dosimeter readings and yearly operability checks required by Subsections B and C of 20.3.5.15 NMAC for 3 years after the record is made.

(2) Records of alarm ratemeter calibrations for 3 years after the record is made.

(3) Reports received from dosimetry processors shall be maintained until the Department terminates the license or registration.

(4) Records of estimates of exposures as a result of: off-scale personal direct reading dosimeters, or lost or damaged external dosimetric device, until the Department terminates the license or registration.

[20.3.5.15 NMAC – Rp 20 NMAC 3.1.5.517, 5/19/02]

20.3.5.16 RADIATION SURVEY INSTRUMENTS:

A. Licensees and registrants shall keep sufficient calibrated and operable radiation survey instruments at each location to make the radiation surveys required by this Part and by 20.3.4.416 NMAC. Instrumentation required by this section must be capable of measuring a range from 0.02 millisieverts (2 millirem) per hour through 0.01 sievert (1 rem) per

hour.

B. Each radiation survey instrument shall be calibrated:

(1) At energies appropriate for use and at intervals not to exceed 6 months and after each instrument servicing (except battery changes);

(2) Such that accuracy within plus or minus 20 percent can be demonstrated; and

(3) At 2 points located approximately 1/3 and 2/3 of full-scale on each scale for linear scale instruments; at mid-range of each decade, and at 2 points of at least 1 decade for logarithmic scale instruments; and at appropriate points for digital instruments.

C. Records of these calibrations shall be maintained for 3 years after the calibration date for inspection by the Department.

D. Each radiation survey instrument shall be checked with a radiation source at the beginning of each day of use and at the beginning of each work shift to ensure it is operating properly.

[20.3.5.16 NMAC – Rp 20 NMAC 3.1.5.509, 5/19/02]

20.3.5.17 RADIATION SURVEYS AND SURVEY RECORDS:

A. No radiographic operation shall be conducted unless calibrated and operable radiation survey instrumentation, as described in 20.3.5.16 NMAC is available and used at each site where radiographic exposures are made.

B. Survey Requirements for Devices Containing Radioactive Materials.

(1) Using a survey instrument meeting the requirements of Subsection A of 20.3.5.17 NMAC, conduct a survey of the radiographic exposure device and the guide tube after each exposure when approaching the device or the guide tube. The survey must determine that the sealed source has returned to its shielded position before exchanging films, repositioning the exposure head, or dismantling equipment.

(2) Conduct a survey of the radiographic exposure device with a calibrated radiation survey instrument any time the source is exchanged and whenever a radiographic exposure device is placed in a storage area (as defined in Subsection AO of 20.3.5.7 NMAC), to ensure that the sealed source is in its shielded position.

C. Survey Requirements for Radiation Machines. A physical radiation survey shall be made after each radiographic exposure using radiation machines to determine that the machine is "off".

D. Records shall be kept of the surveys required by Subsection B of

20.3.5.17 NMAC. Such records shall be maintained for inspection by the Department for 3 years after completion of the survey. If the survey was used to determine an individual's exposure, however, the records of the survey shall be maintained until the Department authorizes their disposition.

[20.3.5.17 NMAC – Rp 20 NMAC 3.1.5.521, 5/19/02]

20.3.5.18 SPECIFIC REQUIREMENTS FOR RADIOGRAPHIC OPERATIONS:

A. Licensees and registrants shall supply the following items at each job site:

(1) At least one operable, calibrated survey instrument;

(2) A current whole body NVLAP certified dosimeter for each individual;

(3) An operable, calibrated pocket dosimeter with a range of 0 to 200 milliroentgens (2 milligrays) for each worker; and

(4) The appropriate barrier ropes and signs.

B. Industrial radiographic operations shall not be performed if any of the items in Subsection A of 20.3.5.18 NMAC are not available at the job site or are inoperable.

C. No individual other than a qualified radiographer, radiographer's assistant, radiographer instructor, or radiographer trainee (under the personal supervision of a radiographer instructor) shall manipulate controls or operate equipment used in industrial radiographer operations.

D. No individual shall act as radiographer instructor unless such individual possesses the qualifications required for radiographer instructors as listed in Subsection D of 20.3.5.11 NMAC.

E. During an inspection by the Department, the Department inspector may terminate an operation if any of the items in Subsection A of 20.3.5.18 NMAC are not available and operable or if the required number of radiographic personnel is not present. Operations shall not be resumed until such conditions are met.

F. All radiographic operations conducted at locations of use authorized on the license or registration must be conducted in a permanent radiographic installation, unless specifically authorized by the Department.

G. Whenever radiography is performed at a location other than a permanent radiographic installation, the radiographer must be accompanied by at least one other qualified radiographer or a radiographer's assistant who has at a minimum

met the requirements specified within Subsections B or A of 20.3.5.11 NMAC as appropriate. The additional qualified individual shall observe the operations and be capable of providing immediate assistance to prevent unauthorized entry. Radiography may not be performed if only one qualified individual is present. Licensees will have one calendar year from the effective date of these regulations to meet the requirements for having two qualified individuals present at locations other than a permanent radiographic installation.

H. During each radiographic operation the radiographer, or the other individual present as required by Subsection G of 20.3.5.18 NMAC, shall maintain continuous direct visual surveillance of the operation to protect against unauthorized entry into a high radiation area, as defined in Part 1 of 20.3 NMAC, except:

(1) Where the high radiation area is equipped with a control device or alarm system as described in Part 4 of 20.3 NMAC; or

(2) Where the high radiation area is locked to protect against unauthorized or accidental entry.

I. All areas in which industrial radiography is being performed must be conspicuously posted as required by Part 4 of 20.3 NMAC. Exceptions to posting requirements listed in Part 4 do not apply to industrial radiographic operations.

J. Utilization Logs. Each licensee or registrant shall maintain current logs which shall be kept available for inspection by the Department for 3 years from the date of the recorded event, showing for each source of radiation the following information:

(1) A description, including the make, model, and serial number of the radiographic exposure device or transport or storage container in which the sealed source is located;

(2) The identity and signature of the radiographer to whom assigned;

(3) Locations where used and dates of use; and

(4) The date(s) each source of radiation is removed from storage and returned to storage.

K. Locking of Sources of Radiation.

(1) Each radiographic exposure device must have a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position. The exposure device and/or its container must be kept locked (and if a keyed-lock, with the key removed at all times) when not under the direct surveillance of a radiographer or a

radiographer's assistant except at permanent radiographic installations as stated in Subsection G of 20.3.5.18 NMAC. In addition, during radiographic operations the sealed source assembly must be secured in the shielded position each time the source is returned to that position.

(2) Each sealed source storage container and source changer must have a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position. Storage containers and source changers must be kept locked (and if a keyed-lock, with the key removed at all times) when containing sealed sources except when under the direct surveillance of a radiographer or a radiographer's assistant.

L. A licensee may conduct underwater radiography only if procedures have been approved by the Department.

[20.3.5.18 NMAC – Rp 20 NMAC 3.1.5.523, 5/19/02]

20.3.5.19 PERMANENT RADIOGRAPHIC INSTALLATIONS:

A. Each entrance that is used for personnel access to the high radiation area in a permanent radiographic installation must have either:

(1) An entrance control of the type described in Part 4 of 20.3 NMAC that reduces the radiation level upon entry into the area, or

(2) Both conspicuous visible and audible warning signals to warn of the presence of radiation. The visible signal must be actuated by radiation whenever the source is exposed. The audible signal must be actuated when an attempt is made to enter the installation while the source is exposed.

B. The alarm system must be tested for proper operation with a radiation source each day before the installation is used for radiographic operations. The test must include a check of both the visible and audible signals. Entrance control devices that reduce the radiation level upon entry (designated in Subsection A of 20.3.5.19 NMAC) must be tested monthly. If an entrance control device or an alarm is operating improperly, it must be immediately labeled as defective and repaired within 7 calendar days. The facility may continue to be used during this 7-day period, provided the licensee implements the continuous surveillance requirements of Subsection H of 20.3.5.18 NMAC and uses an alarming ratemeter.

C. Test records for entrance controls and audible and visual alarms must be maintained for 3 years after they are made.

[20.3.5.19 NMAC – Rp 20 NMAC 3.1.5.514, 5/19/02]

20.3.5.20 LABELING, STORAGE, AND TRANSPORTATION:

A. The licensee may not use a source changer or a container to store licensed material unless the source changer or the storage container has securely attached to it a durable, legible, and clearly visible label bearing the standard trefoil radiation caution symbol conventional colors, i.e., magenta, purple or black on a yellow background, having a minimum diameter of 25 mm, and the wording:

CAUTION (or "DANGER")
RADIOACTIVE MATERIAL
NOTIFY CIVIL AUTHORITIES (or
"NAME OF COMPANY")

B. The licensee may not transport licensed radioactive material unless the material is packaged, and the package is labeled, marked, and accompanied with appropriate shipping papers in accordance with regulations set out in 10 CFR part 71.

C. Locked radiographic exposure devices, storage containers, and radiation machines shall be physically secured to prevent tampering or removal by unauthorized personnel. The licensee shall store licensed material in a manner which will minimize danger from explosion or fire.

D. The licensee shall lock and physically secure the transport package containing licensed material or radiation machine(s) in the transporting vehicle to prevent accidental loss, tampering, or unauthorized removal of the licensed material from the vehicle.

[20.3.5.20 NMAC – N, 5/19/02]

20.3.5.21 PERFORMANCE REQUIREMENTS FOR RADIOGRAPHY EQUIPMENT. Equipment used in industrial radiographic operations must meet the following minimum criteria:

A. Each radiographic exposure device and all associated equipment must meet the requirements specified in American National Standard N432-1980 "Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography," (published as NBS Handbook 136, issued January 1981). This publication has been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a). This publication may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 and from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018, Telephone (212) 642-4900.

B. In addition to the requirements specified in Subsection A of 20.3.5.21 NMAC, the following requirements apply to radiographic exposure devices and associated equipment;

(1) Each radiographic exposure device utilizing radioactive material must have attached to it by the user, a durable, legible, clearly visible label bearing the:

(a) Chemical symbol and mass number of the radionuclide in the device;

(b) Activity and the date on which this activity was last measured;

(c) Model number and serial number of the sealed source;

(d) Manufacturer of the sealed sources; and

(e) Licensee's name, address, and telephone number.

(2) Radiographic exposure devices intended for use as Type B transport containers must meet the applicable requirements of 10 CFR part 71; and

(3) Modification of any exposure devices and associated equipment is prohibited, unless the design of any replacement component, including source holder, source assembly, controls or guide tubes would not compromise the design safety features of the system.

C. In addition to the requirements specified in Subsections A and B of 20.3.5.21 NMAC, the following requirements apply to radiographic exposure devices and associated equipment that allow the source to be moved out of the device for routine operation.

(1) The coupling between the source assembly and the control cable must be designed in such a manner that the source assembly will not become disconnected if cranked outside the guide tube. The coupling must be such that it cannot be unintentionally disconnected under normal and reasonably foreseeable abnormal conditions.

(2) The device must automatically secure the source assembly when it is cranked back into the fully shielded position within the device. This securing system may only be released by means of a deliberate operation on the exposure device.

(3) The outlet fittings, lock box, and drive cable fittings on each radiographic exposure device must be equipped with safety plugs or covers which must be installed during storage and transportation to protect the source assembly from water, mud, sand or other foreign matter.

(4) Each sealed source or source assembly must have attached to it or engraved in it, a durable, legible, visible label with the words "DANGER--RADIOACTIVE." The label must not interfere with the safe operation of the

exposure device or associated equipment.

(5) The guide tube must be able to withstand a crushing test that closely approximates the crushing forces that are likely to be encountered during use, and be able to withstand a kinking resistance test that closely approximates the kinking forces that are likely to be encountered during use.

(6) Guide tubes must be used when moving the source out of the device.

(7) An exposure head or similar device designed to prevent the source assembly from passing out of the end of the guide tube must be attached to the outermost end of the guide tube during radiographic operations.

(8) The guide tube exposure head connection must be able to withstand the tensile test for control units specified in ANSI N432-1980.

(9) Source changers must provide a system for assuring that the source will not be accidentally withdrawn from the changer when connecting or disconnecting the drive cable to or from a source assembly.

D. All radiographic exposure devices and associated equipment in use must comply with the requirements of this section.

E. Notwithstanding Subsection A of 20.3.5.21 NMAC, equipment used in industrial radiographic operations need not comply with §8.9.2(c) of the Endurance Test in American National Standards Institute N432-1980, if the prototype equipment has been tested using a torque value representative of the torque that an individual using the radiography equipment can realistically exert on the lever or crankshaft of the drive mechanism. [20.3.5.21 NMAC – Rp 20 NMAC 3.1.5.506, 5/19/02]

20.3.5.22 LIMITS ON EXTERNAL RADIATION LEVELS FROM STORAGE CONTAINERS AND SOURCE CHANGERS:

The maximum exposure rate limits for storage containers and source changers are 2 millisieverts (200 millirem) per hour at any exterior surface, and 0.1 millisieverts (10 millirem) per hour at 1 meter from any exterior surface with the sealed source in the shielded position.

[20.3.5.22 NMAC – Rp 20 NMAC 3.1.5.504, 5/19/02]

20.3.5.23 INSPECTION AND MAINTENANCE:

A. The licensee or registrant shall perform visual and operability checks on survey meters, radiation machines, radiographic exposure devices, transport and storage containers, associated equipment and source changers before use

on each day the equipment is to be used to ensure that the equipment is in good working condition, that the sources are adequately shielded, and that required labeling is present. Survey instrument operability must be performed using check sources or other appropriate means. If equipment problems are found, the equipment must be removed from service until repaired.

B. Each licensee or registrant shall perform, and have written procedures for, inspection and routine maintenance of radiation machines, radiographic exposure devices, source changers, associated equipment, transport and storage containers, and survey instruments at intervals not to exceed 3 months or before the first use thereafter to ensure the proper functioning of components important to safety. Replacement components shall meet design specifications. If equipment problems are found, the equipment must be removed from service until repaired.

C. The inspection and maintenance program must include procedures to assure that Type B packages are shipped and maintained in accordance with the certificate of compliance or other approval.

D. If any inspection conducted pursuant to Subsections A, B, or C of 20.3.5.23 NMAC reveals damage to components critical to radiation safety, the device shall be removed from service and labeled as defective until repairs have been made.

E. Records of equipment problems and of any maintenance performed pursuant to the requirements of this section shall be made in accordance with the following:

(1) Each licensee or registrant shall maintain records of equipment problems found in daily checks and quarterly inspections of radiation machines, radiographic exposure devices, transport and storage containers, associated equipment, source changers, and survey instruments; and retain each record for 3 years after it is made.

(2) The record must include the date of check or inspection, name of inspector, equipment involved, any problems found, and what repair and/or maintenance, if any, was done.

[20.3.5.23 NMAC – Rp 20 NMAC 3.1.5.513, 5/19/02]

20.3.5.24 LEAK TESTING, REPAIR, TAGGING, OPENING, MODIFICATION, AND REPLACEMENT OF SEALED SOURCES:

A. The replacement of any sealed source fastened to or contained in a radiographic exposure device and leak testing, repair, tagging, opening, or any other

modification of any sealed source shall be performed only by persons specifically authorized to do so by the Department.

B. Each sealed source shall be tested for leakage at intervals not to exceed six months. In the absence of a certificate from a transferor indicating that a test has been made within the six-month period prior to the transfer, the sealed source shall not be put into use until tested.

C. The leak test shall be capable of detecting the presence of 185 becquerels (0.005 microcuries) of removable contamination on the sealed source. An acceptable leak test for sealed sources in the possession of a radiography licensee would be to test at the nearest accessible point to the sealed source storage position, or other appropriate measuring point, by a procedure to be approved pursuant to Part 3 of 20.3 NMAC. Records of leak test results shall be kept in units of becquerels or microcuries and maintained for inspection by the Department for 3 years.

D. Any test conducted pursuant to Subsections B and C of 20.3.5.24 NMAC that reveals the presence of 185 becquerels (0.005 microcuries) or more of removable radioactive material shall be considered evidence that the sealed source is leaking. The licensee shall immediately withdraw the equipment involved from use and shall cause it to be decontaminated and repaired or to be disposed of in accordance with 20.3 NMAC. Within 5 days after obtaining results of the test, the licensee shall file a report with the Department describing the equipment involved, the test results, and the corrective action taken.

E. A sealed source which is not fastened to or contained in a radiographic exposure device shall have permanently attached to it a square durable tag at least 2.5 cm on each side bearing the prescribed radiation caution symbol in conventional colors, magenta or purple on a yellow background, and at least the instructions: "Danger - Radioactive Material - Do Not Handle - Notify Civil Authorities if Found."

F. Each exposure device using depleted uranium (DU) shielding and an "S" tube configuration must be tested for DU contamination at intervals not to exceed 12 months. The analysis must be capable of detecting the presence of 185 Bq (0.005 microcuries) of radioactive material on the test sample and must be performed by a person specifically authorized by the Department to perform the analysis. Should such testing reveal the presence of 185 Bq (0.005 microcuries) or more of removable DU contamination, the exposure device must be removed from use until an evaluation of the wear on the S-tube has been made. Should the evaluation reveal that the

S-tube is worn through, the device may not be used again. DU shielded devices do not have to be tested for DU contamination while in storage and not in use. Before using or transferring such a device however, the device must be tested for DU contamination if the interval of storage exceeded 12 months. Records of DU leak tests results shall be kept in units of microcuries (becquerels) and maintained for inspection by the Department for 3 years.

[20.3.5.24 NMAC – Rp 20 NMAC 3.1.5.510, 5/19/02]

20.3.5.25 SPECIAL REQUIREMENTS AND EXEMPTIONS FOR CABINET RADIOGRAPHY:

A. Systems for cabinet radiography designed to allow admittance of individuals shall:

(1) Comply with all applicable requirements of this Part, and Sections 405 to 412 of 20.3.4 NMAC. If such a system is a certified cabinet x-ray system, it shall comply with all applicable requirements of this Part and 21 CFR 1020.40; and

(2) Be evaluated at intervals not to exceed 1 year to assure compliance with the applicable requirements as specified in paragraph (1) of Subsection A of 20.3.5.25 NMAC. Records of these evaluations shall be maintained for inspection by the Department for a period of 3 years after the evaluation.

B. Certified cabinet x-ray systems designed to exclude individuals from the interior of the cabinet are exempt from the requirements of this Part except that:

(1) Operating personnel must be provided with a NVLAP certified dosimeter, and reports of the results shall be maintained for inspection by the Department;

(2) No registrant shall permit any individual to operate a cabinet x-ray system until such individual has received a copy of and instruction in the operating procedures for the unit and has demonstrated competence in its use. Records which demonstrate compliance with this section shall be maintained for inspection by the Department until disposition is authorized by the Department;

(3) Tests for proper operation of high radiation area control devices or alarm systems, where applicable, shall be conducted, recorded, and maintained in accordance with Subsection B of 20.3.5.19 NMAC; and

(4) The registrant shall perform an evaluation at intervals not to exceed 1 year, to determine conformance with Sections 405 to 412 of 20.3.4 NMAC. If such a system is a certified cabinet x-ray system, it shall be evaluated at intervals not

to exceed 1 year to determine conformance with 21 CFR 1020.40. Records of these evaluations shall be maintained for inspection by the Department for a period of 3 years after the evaluation.

C. Certified cabinet x-ray systems shall be maintained in compliance with 21 CFR 1020.49 unless prior approval has been granted by the Department pursuant to Subsection A of 20.3.1.107 NMAC. [20.3.5.25 NMAC – Rp 20 NMAC 3.1.5.524, 5/19/02]

20.3.5.26 SPECIAL REQUIREMENTS FOR RADIOGRAPHY EMPLOYING RADIATION MACHINES:

A. Shielded Room Radiography. Shielded room radiography (as defined in Subsection AK of 20.3.5.7 NMAC) using radiation machines shall be exempt from other requirements of this Part; however:

(1) no registrant shall permit any individual to operate a radiation machine for shielded room radiography until such individual has received a copy of, and instruction in, and demonstrated an understanding of operating procedures of the unit, and has demonstrated competence in its use;

(2) each registrant shall supply appropriate personnel monitoring equipment to, and shall require the use of such equipment by, every individual who operates, makes "set-ups", or performs maintenance on a radiation machine for shielded room radiography; and

(3) a physical radiation survey shall be conducted to determine that the radiation machine is "off" prior to each entry into the shielded room. Such surveys shall be made with a radiation measuring instrument which is capable of measuring radiation of the energies and at the exposure rates to be encountered, which is in good working order, and which has been properly calibrated within the preceding three months or following the last instrument servicing, whichever is later.

B. Other Radiography Using Radiation Machines. Other radiography using machines shall be exempt from 20.3.5.17 NMAC, 20.3.5.21 NMAC, 20.3.5.22 NMAC, and 20.3.5.24 NMAC; however:

(1) A physical radiation survey shall be conducted to determine that the radiation machine is "off" prior to each entry into the radiographic exposure area. Such surveys shall be made with a radiation measuring instrument capable of measuring radiation of the energies and at the exposure rates to be encountered, which is in good working order, and which has been properly calibrated within the preceding three

months or following the last instrument servicing, whichever is later. Survey results and records of boundary locations shall be maintained and kept available for inspection; and

(2) Mobile or portable radiation machines shall be physically secured to prevent removal by unauthorized personnel. [20.3.5.26 NMAC – Rp 20 NMAC 3.1.5.525, 5/19/02]

20.3.5.27 REPORTING REQUIREMENTS:

A. In addition to the reporting requirements specified in Part 3 and under other sections of 20.3 NMAC, each licensee or registrant (as appropriate) shall provide a written report to the Department within 30 days of the occurrence of any of the following incidents involving radiographic equipment:

(1) Unintentional disconnection of the source assembly from the control cable;

(2) Inability to retract the source assembly to its fully shielded position and secure it in this position; and/or

(3) Failure of any component (critical to safe operation of the device) to properly perform its intended function.

B. The licensee or registrant shall include the following information in each report submitted under Subsection A of 20.3.5.27 NMAC:

(1) A description of the equipment problem;

(2) Cause of each incident, if known;

(3) Manufacturer and model number of equipment involved in the incident;

(4) Place, time and date of the incident;

(5) Actions taken to establish normal operations;

(6) Corrective actions taken or planned to prevent recurrence; and

(7) Qualifications of personnel involved in the incident.

C. Any licensee or registrant conducting radiographic operations, or storing radioactive material or radiation machine(s), at any location not listed on the license for a period in excess of 180 days in a calendar year, shall notify the Department in writing prior to exceeding the 180 days. [20.3.5.27 NMAC – Rp 20 NMAC 3.1.5.507, 5/19/02]

20.3.5.28 INVENTORY ACCOUNTING REQUIREMENTS:

A. Receipt and Transfer of Sealed Sources.

(1) Each licensee shall maintain records showing the receipts and transfers of sealed sources, radiation machines, and

devices using DU for shielding and retain each record for 3 years after it is made.

(2) These records must include the date, the name of the individual making the record, radionuclide, number of becquerels (curies) or mass (for DU), and manufacturer, model, and serial number of each sealed source, radiation machine, and/or device, as appropriate.

B. Quarterly Inventories.

(1) Quarterly physical inventories shall be conducted by licensees and registrants to account for all sealed sources, radiography exposure devices, radiation machines, and devices containing depleted uranium received or in their possession. Inventory records shall be maintained for 3 years from the date of the inventory for inspection by the Department.

(2) Each record must include the date of the inventory, name of the individual conducting the inventory, quantities of radiation machines, radionuclide, number of becquerels (curies) or mass (for DU) in each device, location of sealed source and/or devices, and manufacturer, model, and serial number of each sealed source, radiation machines, and/or device, as appropriate.

[20.3.5.28 NMAC – Rp 20 NMAC 3.1.5.511, 5/19/02]

20.3.5.29 OPERATING AND EMERGENCY PROCEDURES:

A. Operating and emergency procedures must include, as a minimum, instructions in the following:

(1) Appropriate handling and use of licensed sealed sources and radiographic exposure devices so that no person is likely to be exposed to radiation doses in excess of the limits established in Part 4 of 20.3 NMAC;

(2) Methods and occasions for conducting radiation surveys;

(3) Methods for controlling access to radiographic areas;

(4) Methods and occasions for locking and securing radiographic exposure devices, transport and storage containers and sealed sources;

(5) Personnel monitoring and the use of personnel monitoring equipment;

(6) Transporting sealed sources to field locations, including packing of radiographic exposure devices and storage containers in the vehicles, placarding of vehicles when needed, and control of the sealed sources during transportation (refer to 49 CFR parts 171-173);

(7) The inspection, maintenance, and operability checks of radiographic exposure devices, survey instruments, transport containers, and storage containers;

(8) Steps that must be taken immediately by radiography personnel in

the event a pocket dosimeter is found to be off-scale or an alarm ratemeter alarms unexpectedly;

(9) The procedure for notifying proper persons in the event of an accident;

(10) Minimizing exposure of persons in the event of an accident;

(11) Source recovery procedure if licensee will perform source recovery;

(12) Maintenance of records.

B. Each licensee or registrant shall maintain a copy of current operating and emergency procedures until the Department terminates the license or registration. Superseded material must be retained for 3 years after the change is made.

[20.3.5.29 NMAC – Rp 20 NMAC 3.1.5.516, 5/19/02]

20.3.5.30 DOCUMENTS AND RECORDS REQUIRED AT TEMPORARY JOB SITES: Each licensee or registrant shall also maintain copies of the following documents and records sufficient to demonstrate compliance at each applicable field station and each temporary jobsite:

A. Appropriate license or certificate of registration or equivalent document;

B. Operating and emergency procedures;

C. A copy of Parts 4, 5, and 10 of 20.3 NMAC;

D. Survey records required pursuant to 20.3.5.17 NMAC and area survey records required pursuant to Part 4 of 20.3 NMAC for the period of operation at the site;

E. Daily pocket dosimeter records for the period of operation at the site;

F. The latest instrument calibration and leak test records for specific devices and sealed sources in use at the site. Acceptable records include tags or labels which are affixed to the device or survey meter;

G. Utilization records for each radiographic exposure device dispatched from that location as required by Subsection J of 20.3.5.18 NMAC;

H. Records of equipment problems identified in daily checks of equipment as required by Subsection A of 20.3.5.23 NMAC;

I. Records of alarm system and entrance control checks required by Subsection B of 20.3.5.19 NMAC, if applicable;

J. Evidence of the latest calibrations of alarm ratemeters and operability checks of pocket dosimeters and/or electronic personal dosimeters as required by Subsection H of 20.3.5.15 NMAC; and,

K. The shipping papers for the transportation of radioactive materials required by 10 CFR 71.5.

L. When operating under reciprocity pursuant to Part 3 of 20.3 NMAC, a copy of the Agreement State license authorizing the use of licensed materials.

[20.3.5.30 NMAC – Rp 20 NMAC 3.1.5.522, 5/19/02]

HISTORY OF 20.3.5 NMAC:

Pre-NMAC History:

Material in this part was derived from that previously filed with the commission of public records - state records center and archives:

EIB 73-2, Regulations For Governing The Health And Environment Aspects Of Radiation, filed 7-9-73;

EIB RPR-1, Radiation Protection Regulations, filed 4-21-80;

EIB RPR 1, Radiation Protection Regulations, filed 3-10-89.

History of Repealed Material: 20 NMAC 3.1, Subpart 5, Radiation Safety Requirements For Industrial Radiographic Operations, repealed effective 5/19/02.

Other History:

EIB RPR 1, Radiation Protection Regulations, filed 3-10-89 was **renumbered** into first version of the New Mexico Administrative Code as 20 NMAC 3.1, Radioactive Materials And Radiation Machines, filed 7-3-95;

20 NMAC 3.1, Radioactive Materials And Radiation Machines, filed 7-3-95 was **replaced** by 20 NMAC 3.1, Radioactive Materials And Radiation Machines, filed 6-17-99;

20 NMAC 3.1, Subpart 5, Radiation Safety Requirements For Industrial Radiographic Operations, filed 6-17-99 **replaced** by 20.3.5 NMAC, Radiation Safety Requirements For Industrial Radiographic Operations, effective 5/19/02.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

TITLE 20 ENVIRONMENTAL PROTECTION CHAPTER 3 RADIATION PROTECTION PART 16 FEES FOR LICENSURE OF RADIOACTIVE MATERIALS

20.3.16.1 ISSUING AGENCY: Environmental Improvement Board. [20.3.16.1 NMAC – N, 5/19/2002]

20.3.16.2 SCOPE:

A. This Part applies to those entities or activities which require licensure in accordance with Parts 3, 13, and 14 of these regulations.

B. The requirements of this Part are in addition to, and not in substitution for, other applicable requirements of these regulations.

C. This Part does not apply to those activities subject to regulation by the U.S. Nuclear Regulatory Commission (NRC).

[20.3.16.2 NMAC – N, 5/19/2002]

20.3.16.3 STATUTORY AUTHORITY: Section 74-1-8.A(5) and Section 74-3-5.A(2) NMSA 1978.

[20.3.16.3 NMAC – N, 5/19/2002]

20.3.16.4 DURATION: Permanent

[20.3.16.4 NMAC – N, 5/19/2002]

20.3.16.5 EFFECTIVE DATE: May 19, 2002

[20.3.16.5 NMAC – N, 5/19/2002]

20.3.16.6 OBJECTIVE: To establish fees for licensure of radioactive material licenses, and to provide for methods of payment for such fees.

[20.3.16.6 NMAC – N, 5/19/2002]

20.3.16.7 DEFINITIONS:

A. "Byproduct Material" means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

B. "Department" means the New Mexico Environment Department and its duly authorized representatives.

C. "Fiscal year" means a year that begins on July 1 of each calendar year and ends on June 30 of the following calendar year. Fiscal years are identified by the year in which they end (e.g., fiscal year 2002 begins in 2001 and ends in 2002).

D. "Government Agency" means any State or Federal executive department, commission, independent establishment, corporation, wholly or partly owned by any State or the United States of America which is an instrumentality of the State or United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in executive branches of government.

E. "Materials License" means a license, certificate, approval, registration or other form of permission issued by the Department under the various parts of these regulations.

F. "Nonprofit educational institution" means a public or nonprofit educational institution whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

G. "NORM" means any naturally occurring radioactive material subject to the licensing requirements of these regulations.

H. "NRC" means the United States Nuclear Regulatory Commission; an officer, employee, or authorized representative of the Commission.

I. "Operating license" means having a license issued pursuant to Parts 3, 13, or 14 of these regulations.

J. "Overhead and General and Administrative costs" means:

(1) The State benefits for each employee such as leave and holidays, retirement and disability benefits, health and life insurance costs, and social security costs;

(2) Travel costs;

(3) Direct overhead, e.g., supervision and support staff that directly support the Department safety mission areas (administrative support costs, e.g., rental of space, equipment, telecommunications and supplies); and

(4) Indirect costs that would include, but not be limited to, Department central policy direction, legal and executive management services for the Department and special and independent reviews, investigations, and enforcement and appraisal of Department programs and operations.

K. "Person means":

(1) Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Department; any state or any political subdivision of, or any political entity within, a state; any foreign Government or nation or any political subdivision of any such government or nation; or other entity; and

(2) any legal successor, representative, agent, or agency of the foregoing.

L. "Registration Holder" as used in this Part means any manufacturer or initial distributor of a sealed source or device containing a sealed source that holds a certificate of registration issued by the NRC or a holder of a registration for a sealed source or device manufactured in accordance with the unique specifications of, and for use by, a single applicant.

M. "Source Material" means:

(1) Uranium or thorium, or any combination thereof, in any physical or chemical form; or

(2) Ores which contain by weight one-twentieth of one percent (0.05%) or more of

(a) Uranium,

(b) Thorium, or

(c) Any combination thereof.

(3) Source material does not include special nuclear material.

N. "Special Nuclear Material" means:

(1) Plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the NRC, pursuant to the provisions of section 51 of the Atomic Energy Act of 1954, as amended, determines to be special nuclear material, but does not include source material; or

(2) Any material artificially enriched by any of the foregoing, but does not include source material.

[20.3.16.7 NMAC – N, 5/19/2002]

20.3.16.8 INTERPRETATIONS: Except as specifically authorized by the Department in writing, no interpretation of the regulations in this Part by an officer or employee of the Department, other than a written interpretation by the General Counsel, will be recognized as binding on the Department.

[20.3.16.8 NMAC – N, 5/19/2002]

20.3.16.9 EXEMPTIONS:

A. Licensing fees and annual fees are not required for a license applied for by, or issued to, a nonprofit educational institution for the possession and use of byproduct material, source material, or special nuclear material. This exemption does not apply to those byproduct, source, or special nuclear material licenses which authorize:

(1) Human use;

(2) Remunerated services to other persons;

(3) Distribution of byproduct material, source material, or special nuclear material or products containing byproduct material, source material, or special nuclear material; or

(4) Activities performed under a Government contract.

B. The Department may, upon application by an interested person or on its own initiative, grant an exemption from the requirements of this Part that it determines is authorized by law or otherwise in the public interest. Requests for exemption must be filed with the

Department within 90 days from the effective date of the final rule establishing the annual fees for which the exemption is sought in order to be considered. Absent extraordinary circumstances, any exemption requests filed beyond that date will not be considered. The filing of an exemption request does not extend the date on which the bill is payable. If a partial or full exemption is granted, any overpayment will be refunded. Requests for clarification of or questions relating to an annual fee bill must also be filed within 90 days from the date of the initial invoice to be considered.

C. The Department may grant a materials licensee an exemption from the annual fee if it determines that the annual fee is not based on a fair and equitable allocation of Department costs. The following factors must be fulfilled as determined by the Department for an exemption to be granted:

(1) There are data specifically indicating that the assessment of the annual fee will result in a significantly disproportionate allocation of costs to the licensee, or class of licensees; or

(2) There is clear and convincing evidence that the budgeted generic costs attributable to the class of licensees are neither directly or indirectly related to the specific class of licensee nor explicitly allocated to the licensee by Department policy decisions; or

(3) Any other relevant matter that the licensee believes shows that the annual fee was not based on a fair and equitable allocation of Department costs.

[20.3.16.9 NMAC – N, 5/19/2002]

20.3.16.10 LICENSING FEE REQUIREMENTS AND INDICATIONS:

A. Fees for Department review for the following licensing applications are subject to the licensing application fees indicated in the fee schedule:

(1) applications for new materials licenses;

(2) applications to reinstate expired, terminated, or inactive licenses except those subject to fees assessed at full costs;

(3) and applications for amendments to materials licenses.

B. Each application for which a fee is prescribed must be accompanied by a remittance for the full amount of the fee.

C. The Department will not issue a new license or an amendment increasing the scope of an existing license to a higher fee category or adding a new fee category prior to receiving the prescribed application fee.

D. The application fee(s) is charged whether the Department approves the application or not. The application fee(s) is also charged if the applicant withdraws the application.

E. Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. The full cost fees for professional staff time will be determined at the professional hourly rates in effect the time the service was provided. The full cost fees are payable upon notification by the Department.

F. The Department intends to bill each applicant or licensee at quarterly intervals for all accumulated costs for each application the applicant or licensee has on file for Department review, until the review is completed. Each bill will identify the applications submitted for review and the costs related to each.

G. The Department intends to bill each applicant or licensee for costs related to project staff time on a quarterly basis. Each bill will identify the costs related to project staff time.

H. Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

I. Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for the fee category specified in paragraph (1) of Subsection A of 20.3.16.12 NMAC. [20.3.16.10 NMAC – N, 5/19/2002]

20.3.16.11 ANNUAL FEE REQUIREMENTS AND INDICATIONS:

A. Each person subject to the requirements of this Part shall pay an annual fee for each license the person holds at any time during the first six months of the State fiscal year (July 1 through January 1). Annual fees will be prorated for new licenses issued and for licenses for which termination is requested and activities permanently ceased during the period July 1 through January 1 of the fiscal year as provided in 20.3.16.14 NMAC. If a single license authorizes more than one activity (e.g., human use and irradiator activities), annual fees will be assessed for each fee category applicable to the license. If the person holds more than one license, the total annual fee assessed will be the cumulative total of the annual fees applicable to the licenses held.

B. The annual fee is comprised of a base annual fee and an addition-

al charge (surcharge). The activities comprising the surcharge are shown below in Subsection C of 20.3.16.11 NMAC. The activities comprising the base annual fee is the sum of the Department budgeted costs for:

(1) Generic and other research activities directly related to the regulation of materials licenses as defined in this part; and

(2) Other safety, environmental, and safeguards activities for materials licenses, except costs for licensing and inspection activities.

C. The activities comprising the surcharge are:

(1) LLW disposal generic activities;

(2) Activities not directly attributable to an existing Department licensee or classes of licensees; e.g., support for the Agreement State program; site decommissioning management plan (SDMP) activities; and

(3) Activities not currently assessed licensing and inspection fees based on Department policy, e.g., reviews and inspections conducted of nonprofit educational institutions and reviews for State or Federal agencies and activities related to decommissioning and reclamation.

[20.3.16.11 NMAC – N, 5/19/2002]

20.3.16.12 SCHEDULE OF FEES: The following indicates the categories of materials licenses and associated fees. Reference paragraphs (1) and (2) of Subsection L of 20.3.16.12 NMAC.

A. Special Nuclear Material

(1) Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers.

Licensing applications – \$0

Annual fee – \$1,200

(2) All other special nuclear material licenses.

Licensing applications – \$0

Annual fee – \$2,240

B. Source Material

(1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.

(a) Class I facilities. Reference

paragraph (3) of Subsection L of 20.3.16.12 NMAC.

Licensing applications

– Full Cost. Reference paragraph (4) of Subsection L of 20.3.16.12 NMAC.

Annual fee – \$87,000

(b) Class II facilities. Reference paragraph (3) of Subsection L of 20.3.16.12 NMAC.

Licensing applications

– Full Cost. Reference paragraph (4) of Subsection L of 20.3.16.12 NMAC.

Annual fee – \$73,000

(c) Other facilities. Reference paragraph (3) of Subsection L of 20.3.16.12 NMAC.

Licensing applications

– Full Cost. Reference paragraph (4) of Subsection L of 20.3.16.12 NMAC.

Annual fee – \$20,300

(2) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in paragraphs (1) and (3) of Subsection B of 20.3.16.12 NMAC.

Licensing applications – \$0

Annual fee – \$53,800

(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in paragraph (1) of Subsection B of 20.3.16.12 NMAC.

Licensing applications – \$0

Annual fee – \$8,490

(4) Licenses that authorize only the possession, use and/or installation of source material for shielding.

Licensing applications – \$0

Annual fee – \$500

(5) All other source material licenses

Licensing applications – \$0

Annual fee – \$7,765

C. Byproduct Material

(1) Licenses of broad scope for possession and use of byproduct material issued for processing or manufacturing of items containing byproduct material for commercial distribution.

Licensing applications – \$0

Annual fee – \$17,300

(2) Other licenses for possession and use of byproduct material issued for processing or manufacturing of items containing byproduct material for commercial distribution.

Licensing applications – \$0

Annual fee – \$4,140

(3) Licenses authorizing the pro-

cessing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under Subsection A of 20.3.16.9 NMAC of this part, which instead are covered by the fee required for paragraph (4) of Subsection C of 20.3.16.12 NMAC.

Licensing applications – \$0
Annual fee – \$10,270

(4) Licenses authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under Subsection A of 20.3.16.9 NMAC. This category also includes the possession and use of source material for shielding when included on the same license.

Licensing applications – \$0
Annual fee – \$2,455

(5) Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units).

Licensing applications – \$0
Annual fee – \$2,260

(6) Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes.

Licensing applications – \$0
Annual fee – \$3,820

(7) Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes.

Licensing applications – \$0
Annual fee – \$9,695

(8) Licenses to distribute items containing byproduct material or quantities of byproduct material to persons exempt from the licensing requirements of these regulations, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements.

Licensing applications – \$0
Annual fee – \$3,055

(9) Licenses to distribute items containing byproduct material or quantities of byproduct material to generally licensed persons, except specific licenses authorizing redistribution of items that have been authorized for distribution to generally licensed persons.

Licensing applications – \$0
Annual fee – \$1,200

(10) Licenses of broad scope for possession and use of byproduct material for research and development that do not authorize commercial distribution.

Licensing applications – \$0
Annual fee – \$7,350

(11) Other licenses for possession and use of byproduct material for research and development that do not authorize commercial distribution

Licensing applications – \$0
Annual fee – \$3,230

(12) Licenses that authorize services for other licensees; except licenses that authorize only calibration and/or leak testing services which are subject to the fees specified in paragraph (14) of Subsection C of 20.3.16.12 NMAC, and licenses that authorize waste disposal services are subject to the fees specified in paragraphs (1), (2), and (3) of Subsection D of 20.3.16.12 NMAC.

Licensing applications – \$0
Annual fee – \$3,420

(13) Licenses for possession and use of byproduct material for industrial radiography operations. This category also includes the possession and use of source material for shielding when authorized on the same license.

Licensing applications – \$0
Annual fee – \$9,630

(14) All other specific byproduct material licenses, except those in Subsections D through J of 20.3.16.12 NMAC.

Licensing applications – \$0
Annual fee – \$1,700

D. Waste Disposal and Processing

(1) Class 1 Waste Licenses. Licenses specifically authorizing the receipt of waste byproduct material, source material, NORM, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material.

Licensing applications – Full Cost. Reference paragraph (4) of

Subsection L of 20.3.16.12 NMAC.

Annual fee – N/A. Reference paragraph (5) of Subsection L of 20.3.16.12 NMAC.

(2) Class 2 Waste Licenses. Licenses specifically authorizing the receipt of waste byproduct material, source material, NORM, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.

Licensing applications – \$0
Annual fee – \$7,480

(3) Class 3 Waste Licenses. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, NORM, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.

Licensing applications – \$0
Annual fee – \$5,530

E. Well Logging

(1) Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies.

Licensing applications – \$0
Annual fee – \$6,530

(2) Licenses for possession and use of byproduct material for field flooding tracer studies.

Licensing applications – \$0
Annual fee – \$6,530

F. Nuclear Laundries.

Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material.

Licensing applications – \$0
Annual fee – \$12,410

G. Medical Licenses

(1) Licenses for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.

Licensing applications – \$0
Annual fee – \$10,075

(2) Licenses of broad scope issued to medical institutions or two or more physicians authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when author-

ized on the same license. Reference paragraph (9) of Subsection L of 20.3.16.12 NMAC.

Licensing applications – \$0
Annual fee – \$13,560

(3) Other licenses for human use of byproduct material, source material, and/or special nuclear material except licenses for in-vitro analysis, and except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. Reference paragraph (9) of Subsection L of 20.3.16.12 NMAC.

Licensing applications – \$0
Annual fee – \$3,815

H. Civil Defense.

Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities.

Licensing applications – \$0
Annual fee – \$1,000

I. Reciprocity

Applications for Recognition – \$1,200

Annual fee – N/A. Reference paragraph (8) of Subsection L of 20.3.16.12 NMAC.

J. Special Projects

(1) Special Reviews – N/A. Reference paragraph (6) of Subsection L of 20.3.16.12 NMAC.

(2) Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities.

Department support and activities – Full Cost. Reference paragraph (4) of Subsection L of 20.3.16.12 NMAC.

Annual fee – \$0. Reference paragraph (7) of Subsection L of 20.3.16.12 NMAC.

K. Professional Staff-hour Rate. Fees for licenses, amendments, renewals, special projects, other required reviews, approvals, and inspections will be calculated using the following applicable professional staff-hour rate.

Professional Staff-hour Rate – \$125 per hour

L. FEE SCHEDULE REFERENCES. The following indications pertain specifically to references contained in the fee schedule, and are to be taken only in context with said references.

(1) Annual fees will be assessed based on whether a licensee held a valid license with the Department authorizing possession and use of radioactive material during the fiscal year. However, the annual fee is waived for those materials licenses

and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to July 1, 2000, and permanently ceased licensed activities entirely by June 30, 2000. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession only license during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of 20.3.16.14 NMAC. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license.

(2) Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of Parts 3, 13, and 14 of these regulations as applicable

(3) A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An "other" license includes licenses for extraction of metals, heavy metals, and rare earths.

(4) Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in Subsection K of 20.3.16.12.14 NMAC in effect at the time the service is provided, and the appropriate contractual support services expended.

(5) There are no existing Department licenses in these fee categories. Once Department issues a license for these categories, the Department will consider establishing an annual fee for that type of license.

(6) Special reviews, such as topical reports, are not assessed fees because the generic costs of regulating these activities are primarily attributable to the users of the designs, certificates, and topical reports.

(7) Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

(8) No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

(9) Separate annual fees will not

be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses subject to the requirements of paragraphs (2) and (3) of Subsection G of 20.3.16.12 NMAC.

[20.3.16.12 NMAC – N, 5/19/2002]

20.3.16.13 SMALL ENTITIES.

A licensee who is required to pay an annual fee under this Part may qualify as a small entity. If a licensee qualifies as a small entity and provides the Department with the proper certification with the annual fee payment, the licensee may pay reduced annual fees as shown below. Failure to file a small entity certification in a timely manner could result in the denial of any refund that might otherwise be due.

A. The following are the maximum annual fees per licensed category for qualifying small entities:

(1) Small businesses not engaged in manufacturing and small not-for-profit organizations.

(a) Gross annual receipts of \$350,000 to \$5 million, the fee is \$1,500;

(b) Gross annual receipts of less than \$350,000, the fee is \$500.

(2) Manufacturing entities that have an average of 500 employees or less.

(a) 35 to 500 employees, the fee is \$1,500;

(b) Less than 35 employees, the fee is \$500.

(3) Small Governmental Jurisdictions.

(a) Population of 20,000 to 50,000, the fee is \$1,500.

(b) Population of less than 20,000, the fee is \$500.

(4) Educational Institutions that are not State or Publicly Supported with 500 employees or less.

(a) With 35 to 500 employees, the fee is \$1,500.

(b) With less than 35 employees, the fee is \$500.

B. Small Entity Size Standards. A licensee qualifies as a small entity if it meets the following size standards:

(1) A small business is a for-profit concern and is a --

(a) Concern that provides a service or a concern not engaged in manufacturing with average gross receipts of \$5 million or less over its last 3 completed fiscal years; or

(b) Manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months.

(2) A small governmental jurisdiction is a government of a city, county,

town, township, or village with a population (including educational institutions) of less than 50,000.

(3) A small educational institution is an educational institution or school district that is --

(a) Supported by a qualifying small governmental jurisdiction; or

(b) Not supported by state or public funds and has 500 or fewer employees.

C. For the purposes of this section, the Department shall use the Small Business Administration definition of receipts (13 CFR 121.402(b)(2)). A licensee who is a subsidiary of a large entity does not qualify as a small entity for purposes of this section.

D. Whenever appropriate in the interest of administering statutes and regulations within its jurisdiction, it is the practice of the Department to answer inquiries from small entities concerning information on and advice about compliance with the statutes and regulations that affect them.

E. A licensee who seeks to establish status as a small entity for the purpose of paying the annual fees required under this section must file a certification statement with the Department. The licensee must file the required certification on Department Form RPP526 for each license under which it is billed. The Department will include a copy of Form RPP526 with each annual fee invoice sent to a licensee. A licensee who seeks to qualify as a small entity must submit the completed Form RPP526 with the reduced annual fee payment.

F. For purposes of this section, the licensee must submit a new certification with its annual fee payment each year.

G. Small entities are required to pay the appropriate small entity fee for each fee category applicable to their license(s).

[20.3.16.13 NMAC – N, 5/19/2002]

20.3.16.14 PRORATION. Annual fees will be prorated for Department licensees as follows:

A. New licenses and terminations. The annual fee for a materials license that is subject to fees under this Part and issued on or after July 1 of the FY is prorated on the basis of when the Department issues the new license. New licenses issued during the period July 1 through December 31 of the FY will be assessed one-half the annual fee for that FY. New licenses issued on or after January 1 of the FY will not be assessed an annual fee for that FY. Thereafter, the full fee is due and payable each subsequent FY. The annual fee

will be prorated for licenses for which a termination request has been received on or after July 1 of a FY on the basis of when the application for termination is received by the Department provided the licensee permanently ceased licensed activities during the specified period. Licenses for which applications for termination are filed during the period July 1 through December 31 of the FY are assessed one-half the annual fee for the applicable category(ies) for that FY. Licenses for which applications for termination are filed on or after January 1 of the FY are assessed the full annual fee for that FY. Materials licenses transferred to a new Agreement State during the FY are considered terminated by the Department, for annual fee purposes, on the date that the Agreement with the State becomes effective; therefore, the same proration provisions will apply as if the licenses were terminated.

B. Downgraded licenses.

(1) The annual fee for a materials license that is subject to fees under this Part and downgraded on or after July 1 of a FY is prorated upon request by the licensee on the basis of when the application for downgrade is received by the Department provided the licensee permanently ceased the stated activities during the specified period. Requests for proration must be filed with the Department within 90 days from the effective date of the final rule establishing the annual fees for which a proration is sought. Absent extraordinary circumstances, any request for proration of the annual fee for a downgraded license filed beyond that date will not be considered.

(2) Annual fees for licenses for which applications to downgrade are filed during the period July 1 through December 31 of the FY will be prorated as follows:

(a) Licenses for which applications have been filed to reduce the scope of the license from a higher fee category(ies) to a lower fee category(ies) will be assessed one-half the annual fee for the higher fee category and one-half the annual fee for the lower fee category(ies), and, if applicable, the full annual fee for fee categories not affected by the downgrade; and

(b) Licenses with multiple fee categories for which applications have been filed to downgrade by deleting a fee category will be assessed one-half the annual fee for the fee category being deleted and the full annual fee for the remaining categories.

(3) Licenses for which applications to downgrade are filed on or after January 1 of the FY are assessed the full fee for that FY.

[20.3.16.14 NMAC – N, 5/19/2002]

20.3.16.15 PAYMENT

A. Fee payments shall be in the form of check or money order made payable to the Radiation Protection Fund at the address shown on the application, license, registration, or fee due notice.

B. Annual fees in the amount of \$100,000 or more must be paid in quarterly installments of 25 percent as billed by the Department. The quarters begin on July 1, October 1, January 1, and April 1 of each fiscal year. The Department will adjust the fourth quarterly invoice to recover the full amount of the revised annual fee. If the amounts collected in the first three quarters exceed the amount of the revised annual fee, the overpayment will be refunded. Licensees whose annual fee in the immediately previous fiscal year was less than \$100,000 (billed on the anniversary date of the license), and whose revised annual fee for the current fiscal year would be \$100,000 (subject to quarterly billing), would be issued a bill less any payments received for the current fiscal year based on the anniversary date billing process.

C. Annual fees that are less than \$100,000 are billed on the anniversary date of the license. For annual fee purposes, the anniversary date of the license is considered to be the first day of the month in which the original license was issued by the Department. Licensees that are billed on the license anniversary date will be assessed the annual fee in effect on the anniversary date of the license. Materials licenses subject to the annual fee that are terminated during the fiscal year but before the anniversary month of the license will be billed upon termination for the fee in effect at the time of the billing. New materials licenses subject to the annual fee will be billed in the month the license is issued or in the next available monthly billing for the fee in effect on the anniversary date of the license. Thereafter, annual fees for new licenses will be assessed in the anniversary month of the license.

D. Annual fees of less than \$100,000 must be paid as billed by the Department. Materials license annual fees that are less than \$100,000 are billed on the anniversary date of the license. The materials licensees that are billed on the anniversary date of the license are those covered by paragraphs (1) and (2) of Subsection A of 20.3.16.12 NMAC, paragraphs (1) through (5) of Subsection B of 20.3.16.12 NMAC, and paragraphs (1) through (14) of Subsection C of 20.3.16.12 NMAC.

E. Payment is due on the invoice date.

[20.3.16.15 NMAC – N, 5/19/2002]

20.3.16.16 ENFORCEMENT. If any person required to pay the annual fee

fails to pay when the fee is due, or files a false certification with respect to qualifying as a small entity, the Department may refuse to process any application submitted by or on behalf of the person with respect to any license issued to the person and may suspend or revoke any licenses held by the person. The filing of a false certification to qualify as a small entity under section 20.3.16.13 of this Part may also result in punitive action pursuant to applicable New Mexico state statutes.

[20.3.16.16 NMAC – N, 5/19/2002]

20.3.16.17 COLLECTION AND ADMINISTRATIVE COSTS. In the event a fees are not made by the appropriate due date, all the full fee becomes due and payable, with penalties and administrative costs of collection calculated from the date the payment was due.

[20.3.16.17 NMAC – N, 5/19/2002]

20.3.16.18 PERIODIC REVIEW. Beginning in calendar year 2004, the Department shall perform annual reviews of the fees required by this part, and shall provide a report of each review to the New Mexico Radiation Technical Advisory Council (RTAC).

[20.3.16.18 NMAC – N, 5/19/2002]

History of 20.3.16 NMAC: [RESERVED]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

**TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 5 P E T R O L E U M STORAGE TANKS
PART 1 GENERAL PROVISIONS**

20.5.1.1 ISSUING AGENCY: New Mexico Environmental Improvement Board.

[20.5.1.1 NMAC - Rp, 20 NMAC 5.1.100, 6/14/02]

20.5.1.2 SCOPE:

A. 20.5.1 through 20.5.16 NMAC apply to any owner and operator of storage tanks as defined in 20.5.1.7 NMAC except as otherwise provided in Subsections B and C of 20.5.1.2 NMAC.

B. Any UST system holding hazardous wastes that are listed or identified under Subtitle C of the Resource Conservation and Recovery Act, or a mix-

ture of such hazardous waste and other hazardous substances, is excluded from these regulations. This paragraph does not apply to any UST system containing petroleum.

C. Parts 20.5.2 through 20.5.16 NMAC do not apply to any of the following types of storage tank systems:

- (1) wastewater treatment tanks;
- (2) sumps;
- (3) UST systems containing radioactive waste;
- (4) electrical equipment;
- (5) hydraulic lift tanks; and
- (6) any UST system with a capacity of 110 gallons or less or any AST system with a capacity of 1,100 gallons or less.

D. Notwithstanding the foregoing exclusions, no person may install a storage tank system listed in Subsection C of 20.5.1.2 NMAC above for the purpose of storing regulated substances unless such storage tank system (whether of single or double wall construction):

(1) will prevent releases due to corrosion or structural failure for the operational life of the tank; and

(2) is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material or designed in a manner to prevent the release or threatened release of any stored substance; and

(3) the material used in the construction or lining of the tank is compatible with the substance to be stored.

E. Parts 20.5.4 through 20.5.9 NMAC shall not apply to an existing AST or UST system which has never contained a regulated substance until the system is placed in service.

[20.5.1.2 NMAC - Rp, 20 NMAC 5.1.101, 6/14/02]

20.5.1.3 STATUTORY AUTHORITY: Parts 20.5.1 through 20.5.16 NMAC are promulgated pursuant to the provisions of the Hazardous Waste Act, NMSA 1978, 74-4-1 through 74-4-14 (2001); the Ground Water Protection Act, as amended, NMSA 1978, 74-6B-1 through 74-6B-14 (2001); and the general provisions of the Environmental Improvement Act, NMSA 1978, 74-1-1 through 74-1-15 (1990).

[20.5.1.3 NMAC - Rp, 20 NMAC 5.1.102, 6/14/02]

20.5.1.4 DURATION :

Permanent.

[20.5.1.4 NMAC - Rp, 20 NMAC 5.1.103, 6/14/02]

20.5.1.5 EFFECTIVE DATE:

June 14, 2002, unless a later date is indicated in the bracketed history note at the end of

a section.

[20.5.1.5 NMAC - Rp, 20 NMAC 5.1.104, 06/14/02]

20.5.1.6 OBJECTIVE: The purpose of 20.5.1 through 20.5.16 NMAC is to regulate storage tank systems in order to protect the public health, safety and welfare and the environment of the state.

[20.5.1.6 NMAC - Rp, 20 NMAC.5.1.105, 6/14/02]

20.5.1.7 DEFINITIONS: As used in 20.5.1 through 20.5.16 NMAC, the following definitions apply.

A. "Above ground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the above ground portion of an underground storage tank system and releases associated with overfills and transfer operations during regulated substance deliveries to or dispensing from an UST system.

B. "Above ground storage tank" or "AST" means a single tank or combination of tanks, including pipes connected thereto, that is 1,100 gallons or more, is permanently installed, and is used to contain petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure of 60 degrees Fahrenheit and fourteen and seven tenths pounds per square inch absolute, and the volume of which is more than ninety percent above the surface of the ground. Tanks in vaults and special enclosures are ASTs. A compartment tank with combined total capacity greater than 1,100 gallons is an AST and for purposes of these regulations is considered to be one tank regardless of the number of compartments and the number of regulated substances contained. Above ground storage tank does not include (regardless of size) any:

(1) farm, ranch or residential tank used for storing motor fuel or heating oil for noncommercial purposes;

(2) pipeline facility, including gathering lines regulated under the federal Natural Gas Pipeline Safety Act of 1968 or the federal Hazardous Liquid Pipeline Safety Act of 1979, or that is an intrastate pipeline facility regulated under state laws comparable to either act;

(3) surface impoundment, pit, pond or lagoon;

(4) storm water or wastewater collection system;

(5) flow-through process tank;

(6) liquid trap, tank or associated gathering lines or other storage methods or devices related to oil, gas or mining exploration, production, transportation, refining, processing or storage, or the oil field service

industry operations;

(7) tank associated with an emergency generator system;

(8) tanks, bulk terminals, or related pipelines and facilities owned or used by a refinery, natural gas processing plant or pipeline company in the regular course of their refining, processing or pipeline business. Bulk plants are not included in the exemption;

(9) multiple tanks at a facility, that are individually less than 1,100 gallons, unless tanks that are siphoned together have a cumulative total capacity greater than 1,100 gallons;

(10) pipes connected to any tank exempted by Paragraphs (1) through (9) of this subsection.

C. "Accidental release" means any sudden or non-sudden release neither expected nor intended by the tank owner or operator of petroleum or other regulated substance from an underground storage tank that results in a need for corrective action and/or compensation for bodily injury or property damage.

D. "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that are used to distribute, meter, or control the flow of petroleum or other regulated substances from a storage tank.

E. "Applicable standards" means the most relevant target concentrations that legally apply to a site.

F. "AST system" means an above ground storage tank and its associated ancillary equipment and containment system, if any.

G. "Below ground release" means any release to the subsurface of the land and to groundwater. This includes, but is not limited to, releases from the below ground portions of a storage tank system and releases associated with overfills and transfer operations as the regulated substance is delivered to or dispensed from a storage tank.

H. "Beneath the surface of the ground" means beneath the ground surface or otherwise covered with materials so that physical inspection is precluded.

I. "Bodily injury" shall have the meaning given to this term by applicable state law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

J. "Bulk plant" means a facility which is not a bulk terminal, and which is used for the temporary storage of petroleum products prior to delivery to gasoline stations, convenience stores, and

commercial accounts, which is smaller than a bulk terminal and is not equipped with any processing equipment.

K. "Bulk terminal" means a large facility for storing and handling petroleum products that receives and stores bulk deliveries of gasoline and other products from a pipeline, barges, or directly from a nearby refinery. Equipment at the terminal facility is usually capable of further processing the product, including but not limited to: injection of additives or conversion of gasoline vapors received from transports after making deliveries using stage one vapor recovery back to liquid form.

L. "Bureau" means the New Mexico petroleum storage tank bureau.

M. "Cathodic protection" is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. A tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

N. "Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

O. "Certified individual-level A" means an individual who has been certified by the department under 20.5.14.1402 NMAC to install and repair UST systems in this state, and also mean an individual performing an on-site examination under a provisional certificate issued pursuant to 20.5.14.1405 NMAC but only for the purposes of that on-site examination.

P. "Certified individual-level B" means an individual who has been certified by the department under 20.5.14.1407 NMAC to replace or install equipment on a UST system such as: overfill and spill containment devices, line and tank leak detectors, submergible pumps and drop tubes, and spill containment devices. A certified individual-level B installer is not certified to install or repair UST tanks or lines, unless also certified under 20.5.14.1402 NMAC as level A.

Q. "Certified installer" refers generally to both certified individuals level A and level B.

R. "Certified scientist" means an individual who has been certified by the department pursuant to 20.5.16

NMAC to supervise or engage in corrective action activities.

S. "Chief financial officer," in the case of local government owners and operators, means the individual with the overall authority and responsibility for the collection, disbursement, and use of funds by the local government.

T. "Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for extended periods of time and under varied environmental conditions (i.e., at different temperatures).

U. "Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping which joins the two UST systems should be allocated equally between them.

V. "Consumptive use" with respect to heating oil means the oil is burned on the premises.

W. "Contain" means the stopping of further migration of a regulated substance from a release into or through groundwater, surface water and/or soil.

X. "Containment" means that contamination from a release has been contained and is not spreading, migrating, spilling, infiltrating or otherwise traveling into uncontaminated areas. Verification of containment requires the performance of physical measurements that provide positive proof that contamination is contained.

Y. "Contaminant" means any regulated substance as defined in this section, any constituent of a regulated substance, or any combination of a regulated substance or constituent thereof with any other substance or matter.

Z. "Contaminant of concern" means any contaminant which is suspected of being released at the site based on site history for which:

(1) the New Mexico water quality control commission has adopted standards pursuant to the Water Quality Act, NMSA 1978, sections 74-6-1- through 74-6-17 (as amended);

(2) the New Mexico environmental improvement board has adopted standards, action levels, risk-based screening levels or site specific target levels pursuant to the Hazardous Waste Act, the Ground Water Protection Act, or the Environmental Improvement Act; or

(3) the New Mexico environment department has established or approved site-specific target levels pursuant to the

Hazardous Waste Act, the Ground Water Protection Act, or the Environmental Improvement Act.

AA. "Contaminant saturated soil" means soil exclusive of the water table and capillary fringe in which non-aqueous phase liquid is observable in the soil or, if sufficiently liquid, drains from the soil when the soil is suspended on filter paper or its equivalent.

AB. "Contaminated soil" means soil containing detectable quantities of contaminants of concern.

AC. "Contracting company" means a corporation, partnership, or duly constituted individual proprietorship which contracts to install or repair UST systems for third parties.

AD. "Controlling interest" means direct ownership or other legal control of at least fifty percent of the voting stock of another entity.

AE. "Corrective action" means an action taken to investigate, minimize, eliminate, or clean up a release to protect the public health, safety, and welfare or the environment.

AF. "Corrective action fund" or "fund" means the fund created pursuant to the Ground Water Protection Act, NMSA 1978, Section 74-6B-7, to pay or reimburse for corrective action performed pursuant to 20.5 NMAC and the Ground Water Protection Act.

AG. "Corrective action system" means the treatment method and technology or combination of methods and technologies used to perform aquifer reclamation or remediation, soil cleanup or any other corrective action, containment or mitigation of contamination.

AH. "Corrosion expert" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

AI. "Critical junctures" means the steps of an installation, modification, repair or removal of a tank system which are important to the prevention of releases and which are described in 20.5.5 NMAC.

AJ. "Department" means

the New Mexico environment department also known as the New Mexico department of environment.

AK. "Director" means the director of the environmental protection division of the department.

AL. "Direct responsible supervisory control" means responsibility for the direction, control, and/or supervision of investigation and remediation activities to assure that the work is performed in accordance with appropriate industry and regulatory quality standards.

AM. "Effectively mitigating" means that the corrective action system has contained the release and is achieving reductions in contamination levels such that the standards described in 20.5.1.1219 NMAC will be met in a manner protective of human health, safety and welfare and the environment, which shall not exceed the period agreed upon in the remediation plan.

AN. "EIB" means environmental improvement board.

AO. "EIB standards" means standards set forth in 20.5.12 and 20.7.10 NMAC.

AP. "Electrical equipment" means underground equipment which contains dielectric fluid which is necessary for the operation of equipment such as transformers and buried electrical cable.

AQ. "Environmental improvement board" (EIB) means the board created in the Environmental Improvement Act, NMSA 1978, sections 74-1-1 through 74-1-14 (as amended).

AR. "Environmental Improvement Act" means the Environmental Improvement Act, NMSA 1978, sections 74-1-1 through 74-1-14 (as amended).

AS. "Excavation area" is defined as the area containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

AT. "Existing AST system" means an AST system which is used to contain an accumulation of regulated substances or for which installation commenced on or before June 14, 2002. Installation will be considered to have commenced if the owner or operator has obtained all federal, state and local approvals or permits necessary to begin physical construction at the site or installation of the tank system, and if either: (1) a continuous on-site physical construction or installation program has begun, or: (2) the owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction at the site or installa-

tion of the tank system to be completed within a reasonable time.

AU. "Existing UST system" means a UST system which is used to contain an accumulation of regulated substances or for which installation has commenced on or before 12-22-1988. Installation will be considered to have commenced if the owner or operator has obtained all federal, state and local approvals or permits necessary to begin physical construction of the site or installation of the tank system, and if either (1) a continuous on-site physical construction or installation program has begun, or (2) the owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction at the site or installation of the tank system to be completed within a reasonable time.

AV. "Exposed petroleum products" means petroleum that is present in the non-aqueous phase (i.e. not dissolved in water) on the surface of the ground, on surface water, or in any surface or subsurface structures such as utility corridors, basements and manholes.

AW. "Exposed regulated substance" means a regulated substance other than petroleum that is present on the surface of the ground, on surface water, or in any surface or subsurface structures such as utility corridors, basements or manholes.

AX. "Farm tank" is a tank located on a tract of land devoted to the production of crops, or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes fish hatcheries, range land and nurseries with growing operations.

AY. "Financial reporting year" means the latest consecutive twelve-month period for which any of the following reports used to support a financial test is prepared: (1) a 10-K report submitted to the SEC; (2) an annual report of tangible net worth submitted to Dun and Bradstreet; or (3) annual reports submitted to the Energy Information Administration or the Rural Electrification Administration. "Financial reporting year" may thus comprise a fiscal or a calendar year period.

AZ. "Flow-through process tank" is a tank that is integral to a production process through which there is a steady or uninterrupted flow of materials during the operation of the process.

BA. "Fund" means the Corrective Action Fund which was created pursuant to NMSA 1978, Section 74-6B-7, to pay or reimburse for corrective action required at leaking storage tank sites.

BB. "Gathering lines" means any pipeline, equipment, facility, or

building used in the transportation of oil or gas during oil or gas production or gathering operations.

BC. "Ground Water Protection Act" means the Ground Water Protection Act, NMSA 1978, sections 74-6B-1 through 74-6B-14 (as amended).

BD. "Guidelines for corrective action" means any written guidance developed by the New Mexico petroleum storage tank bureau, approved by the secretary for use and distribution to the public, and pertaining to the technical or financial requirements in 20.5.7, 20.5.12, 20.5.13 and 20.5.15 to 20.5.17 NMAC.

BE. "Hazardous substance tank system" or "hazardous substance UST" means an underground storage tank system that contains an accumulation of hazardous substances defined in Section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) other than any substance regulated as a hazardous waste under Subtitle C of the federal Resource Conservation and Recovery Act (RCRA) or a mixture of such substances and petroleum in which hazardous substances comprise greater than fifty percent of the weight or volume of the mixture.

BF. "Hazardous Waste Act" means the Hazardous Waste Act, NMSA 1978, sections 74-4-1 through 74-4-14 (as amended).

BG. "Heating oil" refers to a type of fuel oil that is one of eight technical grades. These grades are: No. 1; No. 2; No. 4--light; No. 4--heavy; No. 5-light; No. 5-heavy; No. 6; and residual. Heating oil also refers to fuel oil substitutes such as kerosene or diesel when used for heating purposes.

BH. "Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air and hydraulic fluid to operate lifts, elevators, and other similar devices.

BI. "Initiation of containment" means the point in time at which a system designed to achieve containment is put into continuous operation.

BJ. "Install" or "installation" means the work involved in placing a storage tank system or any part thereof in the ground and preparing it to be placed in service.

BK. "Institutional controls" means those legal mechanisms, such as covenants, easements, and deed restrictions, that may be used to ensure that exposure to contamination during or following remediation is reduced to the degree that protects public health, safety and welfare, and the environment, or to ensure that the public is

notified regarding possible exposure to contamination during or following remediation.

BL. "Interstitial monitoring" is a leak detection method which entails the surveillance of the space between an UST system walls and the secondary containment system for a change in steady state conditions. In a double-walled tank, this change may be indicated by a loss of vacuum, a drop in pressure, a drop in the fluid level in a visible reservoir, or the detection of the regulated substance and/or water in the interstitial space. In a secondary containment system consisting of a liner (natural or synthetic) or a vault, the surveillance consists of frequent to continuous sampling from a monitoring well between the UST and the liner to detect the presence of regulated substance in the well(s).

BM. "Inventory controls" are techniques used to identify a loss of product that are based on volumetric measurements in the tank and reconciliation of those measurements with product delivery and withdrawal records.

BN. "Landfarming" is the remediation of petroleum contaminated soils on or at ground surface using natural aeration and volatilization, disking and natural and enhanced bioremediation to reduce the concentrations of petroleum hydrocarbons to regulatory levels; requires a ground-water discharge permit.

BO. "Legal defense cost" is any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought:

(1) by EPA or a state to require corrective action or to recover the costs of corrective action;

(2) by or on behalf of a third party for bodily injury or property damage caused by an accidental release; or

(3) by any person to enforce the terms of a financial assurance mechanism.

BP. "Liquid" means any material that has a fluidity greater than that of 300 penetration asphalt when tested in accordance with ASTM D 5, *Test for Penetration for Bituminous Materials*. When not otherwise identified, the term liquid shall mean both flammable and combustible liquids.

BQ. "Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. Such liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

BR. "Local government" shall have the meaning given this term by applicable state law. The term is generally intended to include counties, municipalities, school districts, and special districts, including flood control and conservancy districts.

BS. "Lower explosive limit" means the lowest percentage of a substance in an airspace that is explosive.

BT. "LUST Ranking System" means the ranking or site prioritization system developed for and modified by the department using the Analytical Hierarchy Process to rank sites where a release from an underground storage tank has occurred based upon public health, safety and welfare, and environmental concerns.

BU. "Magnitude of contamination" means the maximum concentrations of contaminants of concern that resulted from a release.

BV. "Minimum site assessment" means the sum total of all of the following activities:

(1) reporting, investigating and confirming a release pursuant to 20.5.7 NMAC; and

(2) determining the on-site extent, magnitude and impact of contamination by conducting investigations and reporting to the department pursuant to 20.5.12.1204 NMAC or 20.5.13.1303 NMAC (initial abatement), 20.5.12.1205 NMAC or 20.5.13.1304 NMAC (report on initial abatement), 20.5.12.1209 NMAC (preliminary investigation) or 20.5.13.1305 NMAC (on-site investigation), , and 20.5.12.1210 NMAC (report on the preliminary investigation) or 20.5.13.1306 NMAC (report on the on-site investigation).

BW. "Monitored natural attenuation" means a methodology for remediation that relies upon a variety of naturally occurring chemical, physical and biological processes to achieve target concentrations in a manner that is equally as protective of public health, safety and welfare, and the environment as other more active methods, and that is accompanied by a program of sampling to document the progress and results of the above mentioned processes.

BX. "Motor fuel" is a petroleum-based fuel used in the operation of an engine that propels a vehicle for transportation of people or cargo.

BY. "NAPL" means non-aqueous phase liquid as defined in 20.5.1.7 NMAC.

BZ. "New AST system" means an AST system for which installation has commenced after June 14, 2002. Installation will be considered to have commenced if the owner or operator has

obtained all federal, state and local approvals or permits necessary to begin physical construction at the site or installation of the tank, and if either (1) a continuous on-site physical construction or installation program has begun, or (2) the owner or operator has entered into contractual obligations which cannot be canceled or modified without substantial loss for physical construction at the site or installation of the tank system to be completed within a reasonable time.

CA. "New storage tank system" means a new AST system or a new UST system.

CB. "New UST tank system" means an UST system for which installation has commenced after 12-22-1988. Installation will be considered to have commenced if the owner or operator has obtained all federal, state and local approvals, or permits necessary to begin physical construction at the site or installation of the tank, and if either: (1) a continuous on-site physical construction or installation program has begun, or (2) the owner or operator has entered into contractual obligations which cannot be canceled or modified without substantial loss for physical construction at the site or installation of the tank system to be completed within a reasonable time.

CC. "Non-aqueous phase liquid" (NAPL) means an interstitial body of liquid oil, petroleum product or organic solvent, including an emulsion containing such material; synonymous with "phase separated hydrocarbon" and "free product."

CD. "Non-commercial purposes" with respect to motor fuel means not for resale.

CE. "Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank. This definition is intended to assist in the understanding of 20.5.9 NMAC and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."

CF. "On the premises where stored" with respect to heating oil means storage tank systems located on the same property where the stored heating oil is used.

CG. "Operational life" is the period beginning from the time when the installation of the tank system is commenced until it is properly closed under 20.5.8.801 NMAC.

CH. "Operator" means any person in control of, or having responsibility for, the daily operation of a storage tank

system.

CI. "Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

CJ. "Owner" means, in the case of a storage tank in use on November 8, 1984 or brought into use after that date, any person who owns a storage tank used for storage, use, or dispensing of regulated substances; and in the case of a storage tank in use before November 8, 1984 but no longer in use after that date, any person who owned such tank immediately before the discontinuation of its use. For purposes of the registration requirements of 20.5.2 NMAC only, the term "owner" excludes any person who: (1) had a storage tank taken out of operation on or before January 1, 1974, or (2) had a storage tank taken out of operation after January 1, 1974 and removed from the ground prior to November 8, 1984.

CK. "Permanently installed AST" means an AST that is on site for more than 365 consecutive days, provided that tanks that are not permanently installed are removed when the construction is completed.

CL. "Person" means any individual, trust, firm, joint stock company, federal agency, corporation including a government corporation, partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body. "Person" includes a consortium, a joint venture, a commercial entity, and the United States Government.

CM. "Petroleum" means crude oil, crude oil fractions, and refined petroleum fractions, including gasoline, kerosene, heating oils, and diesel fuels.

CN. "Petroleum marketing facilities" include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

CO. "Petroleum marketing firms" are all firms owning petroleum marketing facilities. Firms owning other types of facilities with storage tank systems as well as petroleum marketing facilities are considered to be petroleum marketing firms.

CP. "Petroleum tank system," "petroleum storage tank" means a storage tank system that contains an accumulation of petroleum or a mixture of regulated substances in which petroleum comprises greater than fifty percent of the weight or volume of the mixture.

CQ. "Pipeline facilities, including gathering lines," are new and

existing pipe rights-of-way and any equipment, facilities, or buildings regulated under the federal Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. App. 1671, et seq., or the federal Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. App. 2001, et seq., or which is an intrastate pipeline facility regulated under state laws comparable to either act.

CR. "Positive sampling, testing, or monitoring results" refers to the results of sampling, testing, or monitoring using a method described in 20.5.6 NMAC that indicate a release from a storage tank system has occurred.

CS. "Potentially explosive levels of petroleum hydrocarbon vapors" means vapors which register in excess of twenty percent LEL (lower explosive limit) on a combustible gas indicator properly calibrated for pentane.

CT. "Potentially harmful petroleum hydrocarbon vapors" means vapors which register a reading of five whole units above ambient concentrations total aromatic hydrocarbons in any structure in the vicinity of the release site, on a photoionization detector, flame ionization detector or an equivalent device properly calibrated to detect hydrocarbon vapors at a minimum detection limit of at least one ppm.

CU. "Private water supply" means a system for the provision of water for human consumption or domestic purposes, if such system does not have at least 15 service connectors or does not regularly serve an average of 25 individuals at least 60 days during the year.

CV. "Professional engineer" is an individual licensed in New Mexico to engage in the practice of engineering under the New Mexico Engineering and Surveying Practices Act.

CW. "Property damage" shall have the meaning given this term by applicable state law. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

CX. "Provider of financial assurance" means an entity that provides financial assurance to an owner or operator of a storage tank system through one of the mechanisms listed in 20.5.905 through 20.5.916 NMAC, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a state-required mechanism, or a state.

CY. "Public water supply"

means a system for the provision to the public of water for human consumption if such system has at least 15 service connectors or regularly serves an average of at least 25 individuals at least 60 days out of the year.

CZ. "Qualified firm" means a company, firm, or sole proprietorship that uses certified scientists and, when required, professional engineers, pursuant to 20.5.16 NMAC, for the investigation and remediation of vadose and saturated zone contamination caused by releases from ASTs or USTs.

DA. "Qualified laboratory" means a laboratory which has participated in and passed the Environmental Protection Agency's (EPA's) WP Series proficiency tests or an equivalent third party EPA-approved test acceptable to the department for the parameter to be analyzed and which uses EPA-approved procedures, methods and quality control and submits to the department, at least every two years, proof of this approval along with quality assurance manuals and health and safety program documentation.

DB. "RBSL" means risk-based screening level as used in 20.5.12 NMAC.

DC. "Receptor" means a person, plant or animal community, structure, utility, surface water, designated well-head or source water protection area or water supply well that is or may be adversely affected by a release.

DD. "Regulated substance" means:

(1) for USTs: any substance defined in Section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, but not including any substance regulated as a hazardous waste under Subtitle C of the federal Resource Conservation and Recovery Act, as amended; and

(2) for ASTs and USTs: petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure of 60 degrees fahrenheit and fourteen and seven tenths pounds per square inch absolute. Asphalt is not a regulated substance.

DE. "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from a storage tank system into groundwater, surface water or soil.

DF. "Release detection" means determining whether a release of a regulated substance has occurred from the UST system into the environment or into the interstitial area between the UST system and a secondary barrier around it.

DG. "Remediation" is the process of reducing the concentration of

contaminants in air, water or soil to a level that poses an acceptable risk to public health, safety, and welfare and the environment.

DH. "Repair" means the correction or modification of an UST system, including but not limited to the placement of piping, valves, fillpipes or vents and any repairs to the tank. For purposes of 20.5.14 NMAC, the term does not include the process of relining a tank through application of such materials as epoxy resins.

DI. "Residential tank" is a tank located on property used primarily for dwelling purposes.

DJ. "Risk-based screening level" (RBSL) means an action level or target level for a contaminant of concern determined using default criteria set by the department and site specific data for thickness of the contaminated zone and depth to ground water in the tier one evaluation in accordance with 20.5.12 NMAC and the bureau's guidelines for corrective action.

DK. "Secondary containment" is a system installed around an UST that is designed to prevent a release from migrating beyond the secondary containment system outer wall (in the case of a double-walled tank system) or excavation area (in the case of a liner or vault system) before the release can be detected. Such a system may include, but is not limited to, impervious liners (both natural and synthetic), double-walls or vaults.

DL. "Secretary" means the secretary of the New Mexico environment department also known as the secretary of the environment.

DM. "Septic tank" is a watertight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

DN. "Site" means a place where there is or was at a previous time one or more storage tanks and/or above ground storage tanks and may include areas contiguous to the actual location or previous location of the tanks.

DO. "Site conceptual exposure scenario" means a qualitative evaluation of exposure information for a site that identifies the relevant contaminant source, release mechanisms, media of concern, complete and incomplete exposure pathways, and receptors.

DP. "Site-specific target level" (SSTL) means an action level or target level for a contaminant of concern determined using more site-specific data than the tier one evaluation in the tier two or tier

three evaluations in 20.5.12 NMAC.

DQ. "Spill" means:

(1) any spill or overflow of a regulated substance that exceeds its reportable quantity under CERCLA (40 CFR 302);

(2) any spill or overflow of petroleum that exceeds 25 gallons or causes a sheen on surface water or reaches groundwater; or

(3) any spill or overflow of petroleum of 25 gallons or less the clean up of which cannot be accomplished within 24 hours.

DR. "SSTL" means site-specific target level as used in 20.5.12 NMAC.

DS. "Storage tank" means any above ground storage tank or underground storage tank.

DT. "Storage tank fee" means fees required by NMSA 1978, Section 74-4-4.4 and NMSA 1978, Section 74-6B-9.

DU. "Storage tank system" means a storage tank and its associated ancillary equipment and containment system, if any.

DV. "Stormwater or wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur.

DW. "Substantial business relationship" means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

DX. "Substantial governmental relationship" means the extent of a governmental relationship necessary under applicable state law to make an added guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from a clear commonality of interest in the event of an UST release such as coterminous boundaries, overlapping constituencies, common ground-water aquifer, or other relationship other than monetary compensation that provides a motivation for the guarantor to provide a guarantee.

DY. "Sump" means any pit or reservoir that meets the definition of tank, including troughs or trenches connected to it, that serves to temporarily collect regulated substances.

DZ. "Surface impoundment" is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is designed to hold an accumulation of regulated substances and that is not an injection well.

EA. "Suspected release" means one of the following conditions has occurred:

(1) test, sampling, or monitoring results indicate a release of a regulated substance from an underground storage tank may have occurred;

(2) unusual operating conditions such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, an unexplained presence of water in the tank, or the physical presence of the regulated substance or an unusual level of vapors on the site that are of unknown origin;

(3) impacts in the surrounding area, such as evidence of regulated substances or resulting vapors in soils, basements, sewer and utility lines, and nearby surface water; or

(4) an indication from a gas chromatography or equivalent method that there is a concentration of at least 100 parts per million of total hydrocarbons in a soil sample.

EB. "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

EC. "Tank" is a stationary device designed to contain an accumulation of regulated substances which is constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

ED. "Target concentrations" means any concentration of a contaminant to which a medium is required to be remediated under any provision of 20.5 NMAC protective of human health, safety and welfare, and the environment.

EE. "Termination" under Subsections A and B of 20.5.9.957 NMAC means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

EF. "Tightness testing" means a procedure for testing the ability of a tank system to prevent an inadvertent

release of any stored substance into the environment (or, in the case of an UST system, intrusion of ground water into a tank system).

EG. "Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

EH. "Underground release" means any below-ground release.

EI. "Underground storage tank" or "UST" means a single tank or combination of tanks, including pipes connected thereto, that are used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes connected thereto, is ten percent or more beneath the surface of the ground. A compartment tank with combined total capacity greater than 110 gallons is a UST and for purposes of these regulations is considered to be one tank regardless of the number of compartments and the number of regulated substances contained. The term does not include any:

(1) farm, ranch or residential tank of 1,100 gallons or less capacity used for storing motor fuel or heating oil for non-commercial purposes;

(2) septic tank;

(3) pipeline facility, including gathering lines which are regulated under the federal Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. App. 1671, et seq., or the federal Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. App. 2001, et seq., or which is an intrastate pipeline facility regulated under state laws comparable to either act;

(4) surface impoundment, pit, pond or lagoon;

(5) storm water or wastewater collection system;

(6) flow-through process tank;

(7) liquid traps or associated gathering lines directly related to oil or gas production and gathering operations;

(8) storage tank situated in an underground area, such as a basement, cellar, mineworking drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the undesignated floor;

(9) tank associated with an emergency generator system;

(10) tank exempted by rule of the EIB after finding that the type of tank is adequately regulated under another federal or state law; or

(11) pipes connected to any tank exempted by Paragraphs (1) through (10) of this subsection.

EJ. "Unsaturated zone" is the subsurface zone containing water under

pressure less than that of the atmosphere, including water held by capillary forces within the soil and containing air or gases generally under atmospheric pressure. This zone is limited above by the ground surface and below by the upper surface of the zone of saturation (i.e., the water table).

EK. "USTR" means the environmental improvement board's underground storage tank regulations.

EL. "UST system" means an underground storage tank and its associated ancillary equipment and containment system, if any.

EM. "Vault" means a liquid-tight structure that completely surrounds a tank, that is above, below or partially above or below the ground surface.

EN. "Wastewater treatment tank" means a tank that is part of a wastewater treatment facility regulated under either section 402 or 307(b) of the federal Clean Water Act and which receives and treats or stores an influent wastewater which contains regulated substances.

EO. "WQCC" means the New Mexico water quality control commission.

EP. "WQCC standards" means standards set forth in 20.6.4 NMAC, standards for interstate and intrastate streams (as amended), and 20.6.2 NMAC, ground and surface water protection (as amended).

[20.5.1.7 NMAC - Rp, 20 NMAC.5.1.112, 6/14/02]

20.5.1.8 to 20.5.1.106

[RESERVED]

20.5.1.107 SAVINGS CLAUSE:

This rule shall not affect any administrative or judicial enforcement action pending on the effective date of 20.5.1 through 20.5.16 NMAC.

[20.5.1.107 NMAC - Rp, 20 NMAC.5.1.107, 6/14/02]

20.5.1.108 COMPLIANCE WITH OTHER REGULATIONS:

Compliance with 20.5 NMAC does not relieve a person of the obligation to comply with other applicable state and federal regulations.

[20.5.1.108 NMAC - Rp, 20 NMAC.5.1.108, 6/14/02]

20.5.1.109 CONSTRUCTION:

The underground storage tank regulations, 20.5 NMAC, shall be liberally construed to effectuate the purposes of the Hazardous Waste Act and the Ground Water Protection Act.

[20.5.1.109 NMAC - Rp, 20 NMAC.5.1.109, 6/14/02]

20.5.1.110 SEVERABILITY: If any part, section or application of 20.5 NMAC is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

[20.5.1.110 NMAC - Rp, 20 NMAC.5.1.110, 6/14/02]

20.5.1.111 to 199 [RESERVED]

HISTORY OF 20.5.1 NMAC:

Pre-NMAC History:

The material in this part was derived from that previously filed with the commission of public records - state records center and archives:

EIB/USTR-1, Underground Storage Tank Regulations - Part I - General Provisions, 3/15/88

EIB/USTR-1, Underground Storage Tank Regulations - Part I - General Provisions, 9/12/88

EIB/USTR-1, Underground Storage Tank Regulations - Part I - General Provisions, 2/14/89

EIB/USTR-1, Underground Storage Tank Regulations - Part I - General Provisions, 8/4/89

History of Repealed Material:

20 NMAC 5.1 Petroleum Storage Tank Regulations, General Provisions, 12/30/99
20 NMAC 5.1 Petroleum Storage Tank Regulations, General Provisions, 6/14/02

Other History:

EIB/USTR-1, Underground Storage Tank Regulations - Part I - General Provisions, 8/4/89 and EIB/USTR 11, Underground Storage Tank Regulations - Part XI - Miscellaneous, 9/12/88 were both renumbered, reformatted and replaced by 20 NMAC 5.1 Underground Storage Tanks, General Provisions, filed 10/06/95

20 NMAC 5.1 Underground Storage Tanks, General Provisions, filed 12/20/99 was renumbered, reformatted and replaced by 20.5.1 NMAC, Petroleum Storage Tanks, General Provisions, effective 6/14/02.

[20.5.2.1 NMAC - Rp, 20 NMAC 5.2.100, Recompiled 6/14/02]

20.5.2.2 SCOPE: This part applies to any owner and operator of a storage tank as provided in 20.5.1 NMAC.

[20.5.2.2 NMAC - Rp, 20 NMAC 5.2.101, 6/14/02]

20.5.2.3 STATUTORY AUTHORITY: This part is promulgated pursuant to the provisions of the Hazardous Waste Act, NMSA 1978, sections 74-4-1 through 74-4-14 (2001); and the general provisions of the Environmental Improvement Act, NMSA 1978, sections 74-1-1 through 74-1-15 (1990).

[20.5.2.3 NMAC - Rp, 20 NMAC 5.2.102, 6/14/02]

20.5.2.4 DURATION: Permanent:

[20.5.2.4 NMAC - Rp, 20 NMAC 5.2.103, 6/14/02]

20.5.2.5 EFFECTIVE DATE: June 14, 2002, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.2.5 NMAC - Rp, 20 NMAC 5.2.104, 6/14/02]

20.5.2.6 OBJECTIVE: The purpose of this part is to regulate storage tank systems in order to protect the public health, and safety and welfare and the environment of the state.

[20.5.2.6 NMAC - Rp, 20 NMAC.5.2.105, 6/14/02]

20.5.2.7 DEFINITIONS: [RESERVED]

20.5.2.8 to 20.5.2.199 [RESERVED]

20.5.2.200 EXISTING TANKS:

A. The owner of any underground storage tank, as those terms are defined in 20.5.1 NMAC, shall register such tank or tanks with the petroleum storage tank bureau of the department within three months after April 14, 1988, the effective date of this part as first adopted, except that any owner who has filed the form of notice entitled "Notification for Underground Storage Tanks," prescribed by the United States Environmental Protection Agency and described in 40 CFR Chapter 1, Section 280.3 (EPA Form 7530-1), is not required to register a tank for which a notice has been filed, provided that the information as stated therein is still current.

B. The owner of any above ground storage tank, as those terms are defined in 20.5.1 NMAC shall register such tank or tanks with the petroleum stor-

age tank bureau of the department within three months after June 14, 2002.

C. Registration becomes effective upon receipt of the first year's annual fee described in 20.5.3 NMAC. Registration shall be renewed annually by payment of the annual fee until the permanent closure of the tank pursuant to 20.5.8 NMAC.

[20.5.2.200 NMAC - Rp, 20 NMAC.5.2.200, 6/14/02]

20.5.2.201 TRANSFER OF OWNERSHIP:

A. No purported transfer of any storage tank system shall be effective to create, alter or extinguish any right or responsibility of any person subject to this part, unless the following transfer requirements are met.

(1) Prior to any transfer of ownership, control or possession, whether by lease, conveyance or otherwise, of a property with a registered storage tank system, the transferor shall notify the transferee in writing of the existence of the storage tank system and shall deliver or send by certified mail to the department a copy of such written notification, together with a certification or proof that such notification has in fact been received by the transferee.

(2) Upon receipt of such notification, the transferee shall re-register the tank with the department within 30 days of transfer of ownership, upon a form provided by the department. The transferee also shall have the duty to inquire into all of the provisions and requirements of this part.

(3) A transferor shall pay the tank fees for storage tank systems on the transferred property for the fiscal year of the transfer. A transferee shall pay the tank fees for storage tank systems on the transferred property starting the first July 1 after the transfer.

B. Nothing in this section or in this part shall be construed to relieve any person of responsibility or liability for any act or omission which occurred while that person owned, controlled or was in possession of the storage tank system.

[20.5.2.201 NMAC - Rp, 20 NMAC.5.2.201; 6/14/02]

20.5.2.202 NEW STORAGE TANK SYSTEMS: The owner shall notify the department in writing at least 30 days before any new above ground or underground storage tank system is installed, and shall register any new tank or storage tank system with the department prior to placing it in service.

[20.5.2.202 NMAC - Rp, 20 NMAC.5.2.202, 6/14/02]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

**TITLE 20 ENVIRONMENTAL
PROTECTION
CHAPTER 5 PETROLEUM
STORAGE TANKS
PART 2 REGISTRATION OF
TANKS**

20.5.2.1 ISSUING AGENCY:
New Mexico Environmental Improvement Board.

20.5.2.203 SUBSTANTIALLY MODIFIED STORAGE TANK SYSTEMS: Except as provided in Section 20.5.2.205 NMAC below, when an existing storage tank system is substantially modified or replaced, the owner shall notify the department in writing of such modification or replacement, at least 15 days prior to the modification or replacement. Emergency repairs or replacements made pursuant to 20.5.2.205 NMAC are exempt from the notification requirements of this section.
[20.5.2.203 NMAC - Rp, 20 NMAC.5.2.203, 6/14/02]

20.5.2.204 NOTIFICATION OF SPILL OR RELEASE:

A. Notice of any known or suspected release from a storage tank system, any spill or any other emergency situation must be given to the department in accordance with 20.5.7 NMAC.

B. Reserved.
[20.5.2.204 NMAC - Rp, 20 NMAC.5.2.204, 6/14/02]

20.5.2.205 EMERGENCY REPAIRS AND TANK REPLACEMENT: The owner or operator may make immediate repairs or replacement of a storage tank system in the event an emergency situation presents a threat to the public health, provided the owner or operator gives notice to the department as set forth in 20.5.2.204 NMAC.
[20.5.2.205 NMAC - Rp, 20 NMAC.5.2.205, 6/14/02]

20.5.2.206 REGISTRATION:

A. An owner or operator shall register all storage tanks unless EPA Form 7530-1 entitled "Notification for Underground Storage Tanks" has been submitted to the department and all information contained thereon is still accurate. The registration shall contain at a minimum the following for each location with tanks:

(1) Facility name and address, including county, zip code and telephone number;

(2) Tank system owner's name and address, including county, zip code and telephone number;

(3) Property owner's name and address, including county, zip code and telephone number;

(4) Facility contact person, job title and phone number;

(5) Type of facility: government (federal, state or local); individual; retail or non retail;

(6) Whether currently listed as a LUST site with the PSTB;

(7) Type of tank (list all that apply): AST, UST, steel double-wall, steel

with cathodic protection, horizontal, vertical, compartment, with secondary containment, convault, field erected, shop built, vaulted, fiberglass, fiberglass double wall;

(8) Products stored;

(9) Date of installation of each tank; and

(10) A statement under oath from the tank installer that the tank and tank system in compliance with 20.5.4 NMAC, which includes the tank installer's name, address, telephone number, and NMED certification number.

B. A registration submitted by a corporation shall be signed by a principal executive officer of at least the level of vice president or a duly authorized agent of the corporation with authority to represent the corporation in these matters. A registration submitted by a partnership or a sole proprietorship shall be signed by a general partner or proprietor. A registration submitted by a municipal, state or other public facility shall be signed by either a principal executive officer, ranking elected official or other duly authorized employee.

C. Registrations shall be sent to the environmental protection division, corrective action fund, office of finance and budget, New Mexico environment department, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico 87502.

[20.5.2.206 NMAC - Rp, 20 NMAC.5.2.206, 6/14/02]

[The department provides a form that may be used for registration.]

20.5.2.207 REGISTRATION CERTIFICATE:

A. No person shall operate a storage tank system without a current and valid registration certificate.

(1) The operator of any storage tank system shall display a current and valid registration certificate on the premises of the storage tank system at all times.

(2) Upon submittal to the department of a complete registration application or EPA Form 7530-1 and payment of the annual fee, the department shall issue an initial registration certificate. An initial registration certificate shall expire on the next succeeding June 30, regardless of its date of issuance.

(3) After issuance of the initial registration certificate, except as provided in Paragraph (4) of Subsection A of 20.5.2.207 NMAC, the department shall issue a renewed registration certificate upon payment of the annual fee on or before July 1 of each year. A renewed registration certificate shall expire on June 30 of each year.

(4) The registration certificate for any storage tank system for which any

annual fee or late fee, is delinquent as of June 30 of any year shall not be renewed until:

(a) All past due annual fees and late fees have been paid; or

(b) The department and the owner or operator have agreed to a schedule for payment, provided any renewed certificate issued to an owner or operator who has agreed to such a schedule shall be valid only so long as the owner or operator continues to make payments in accordance with the payment schedule.

B. In the event any information provided on the registration form or EPA Form 7530-1 changes or is no longer accurate, the change shall be reported within 30 days to the department.

[20.5.2.207 NMAC - Rp, 20 NMAC.5.2.207, 6/14/02]

HISTORY OF 20.5.2 NMAC:

Pre-NMAC History:

The material in this part was derived from that previously filed with the commission of public records - state records center and archives:

EIB/USTR-2, Underground Storage Tank Regulations - Part II - Registration of Tanks, 3/15/98

EIB/USTR-2, Underground Storage Tank Regulations - Part II - Registration of Tanks, 9/12/88

EIB/USTR-2, Underground Storage Tank Regulations - Part II - Registration of Tanks, 8/4/89

History of Repealed Material:

20 NMAC 5.2, Petroleum Storage Tank Regulations, Registration of Tanks, filed 02/27/97

Other History:

EIB/USTR-2, Underground Storage Tank Regulations - Part II - Registration of Tanks, 8/4/89 renumbered, reformatted and replaced by 20 NMAC 5.2, Underground Storage Tanks, Registration of Tanks, filed 10/06/95

20 NMAC 5.2, Underground Storage Tanks, Registration of Tanks, filed 10/06/95 **replaced** by 20 NMAC 5.2, Underground Storage Tanks, Registration of Tanks, filed 02/27/97

20 NMAC 5.2, Underground Storage Tanks, Registration of Tanks, filed 02/27/97 was renumbered, reformatted, and **replaced** by 20.5.2 NMAC, Petroleum Storage Tanks, Registration of Tanks, effective 6/14/02

**NEW MEXICO
ENVIRONMENTAL
IMPROVEMENT BOARD**

**TITLE 20 ENVIRONMENTAL
PROTECTION
CHAPTER 5 P E T R O L E U M
STORAGE TANKS
PART 3 ANNUAL FEE**

20.5.3.1 ISSUING AGENCY:
New Mexico Environmental Improvement Board.
[20.5.3.1 NMAC - Rp, 20 NMAC 5.3.100, 6/14/02]

20.5.3.2 SCOPE: This part applies to any owner and operator of a storage tank as provided in 20.5.1 NMAC.
[20.5.3.2 NMAC - Rp, 20 NMAC 5.3.101, 6/14/02]

20.5.3.3 S T A T U T O R Y AUTHORITY: This part is promulgated pursuant to the provisions of the Hazardous Waste Act, NMSA 1978, sections 74-4-1 through 74-4-14 (2001); provisions of the Ground Water Protection Act, NMSA 1978, 74-6B-1 through 74-6B-14 (2001); and the general provisions of the Environmental Improvement Act, NMSA 1978, sections 74-1-1 through 74-1-15 (1990).
[20.5.3 NMAC - Rp, 20 NMAC 5.3.102, 6/14/02]

20.5.3.4 D U R A T I O N :
Permanent.
[20.5.3.4 NMAC - Rp, 20 NMAC 5.3.103, 6/14/02]

20.5.3.5 EFFECTIVE DATE:
June 14, 2002, unless a later date is indicated in the bracketed history note at the end of a section.
[20.5.3.5 NMAC - Rp, 20 NMAC 5.3.104, 6/14/02]

20.5.3.6 OBJECTIVE: The purpose of this part is to regulate storage tank systems in order to protect the public health, safety and welfare and the environment of the state.
[20.5.3.6 NMAC - Rp, 20 NMAC.5.3.105, 6/14/02]

2.5.3.7 D E F I N I T I O N S :
[RESERVED]

20.5.3.8 to 20.5.3.299 [RESERVED]

20.5.3.300 PAYMENT OF FEE:
A. The owner or operator

shall pay an annual per tank fee to the department no later than July 1 for each current fiscal year (July 1 through June 30) or portion of a year that a tank is in use. A storage tank shall be deemed "in use" until notice is received by the department that the storage tank has been removed or otherwise permanently closed in a manner acceptable to the department.

B. For USTs, the owner or operator shall pay the annual fee for a new UST placed in service after June 1, 1988 for calendar year 1988, May 1, 1989 for calendar year 1989 or July 1 for any subsequent year within 30 days after the UST is placed in service. For ASTs in service on or after July 1, 2002, the owner or operator shall pay the annual fee at the time of registration, pursuant to Subsection B of 20.5.2.200 NMAC, and on July 1 for any subsequent year. For any subsequent year an AST is placed in service, the owner or operator shall pay the annual fee within 30 days after the AST is placed in service.

C. The department shall waive the annual tank fee for the current fiscal year for a storage tank system permanently closed in accordance with 20.5.8 NMAC on or before July 31.

D. When there is a transfer of ownership, control or possession, whether by lease, conveyance or otherwise, of a property with a registered storage tank system, the transferor shall pay the tank fees for storage tank systems on the transferred property for the fiscal year of the transfer. The transferee shall pay the tank fees for storage tank systems on the transferred property starting the first July 1 after any transfer. In addition, both parties shall comply with 20.5.2.201 NMAC.

[20.5.3.300 NMAC - Rp, 20 NMAC.5.3.300, 6/14/02]

20.5.3.301 AMOUNT OF FEE:

A. The annual fee for all underground storage tanks shall be:

(1) twenty-eight dollars (\$28.00) per UST in calendar year 1988;

(2) seventy-five dollars (\$75.00) per UST in calendar year 1989; and

(3) for subsequent years, one hundred dollars (\$100.00) per UST as established by NMSA 1978, Section 74-6B-9 NMSA 1978.

B. The annual fee for all above ground storage tanks shall be one hundred dollars (\$100.00) per AST as established by Section 74-6B-9 NMSA 1978, beginning July 1, 2002.

[20.5.3.301 NMAC - Rp, 20 NMAC.5.3.301, 6/14/02]

20.5.3.302 LATE PAYMENT FEES : In the event the annual fee is not

paid when due, the department shall impose a late fee of twenty-five dollars (\$25.00) or twenty-five percent of the unpaid fee, whichever is greater, which shall accumulate until the annual fee and all accrued late fees are paid.

[20.5.3.302 NMAC - Rp, 20 NMAC.5.3.302, 6/14/02]

20.5.3.303 DESIGNATION OF FEES:

All fees described in this part shall be designated to the Storage Tank Fund.

[20.5.3.303 NMAC - Rp, 20 NMAC.5.3.303, 6/14/02]

20.5.3.304 to 399 [RESERVED]

HISTORY OF 20.5.3 NMAC:

Pre-NMAC History:

The material in this part was derived from that previously filed with the commission of public records - state records center and archives:

EIB/USTR-3, Underground Storage Tank Regulations - Part III - Annual Fee, 3/15/88
EIB/USTR-3, Underground Storage Tank Regulations - Part III - Annual Fee, 2/14/89

History of Repealed Material:

20 NMAC 5.3, Underground Storage Tank Regulations, Annual Fee, filed 02/27/97

Other History:

EIB/USTR-3, Underground Storage Tank Regulations - Part III - Annual Fee, 2/14/89, renumbered, reformatted and replaced by 20 NMAC 5.3, Underground Storage Tank Regulations, Annual Fee, filed 10/06/95

20 NMAC 5.3, Underground Storage Tank Regulations, Annual Fee, filed 10/06/95
replaced by 20 NMAC 5.3, Underground Storage Tank Regulations, Annual Fee, filed 02/27/97

20 NMAC 5.3, Petroleum Storage Tank Regulations, Registration of Tanks, filed 02/27/97 was renumbered, reformatted and **replaced** by 20.5.3 NMAC, Petroleum Storage Tanks, Annual Fee, effective 6/14/02.

**NEW MEXICO
DEPARTMENT OF
GAME AND FISH**

This is an Amendment to 19.31.2 NMAC, section 9.

19.31.2.9 POINT CATEGORIES:

A. 20-Point Violations:
Any person who violates one of the following listed provisions shall accumulate twenty (20) points for each violation toward the revocation of his/her license, permit, or certificate and suspension of associated privi-

leges:

- (1) Illegally taking, attempting to take, killing, capturing or possessing any big game species outside of hunting season in violation of Section 17-2-7 or 17-3-33.
- (2) Except as otherwise provided by Sections 17-2-37 to 17-2-46, taking, possessing, transporting, exporting, processing, selling or offering for sale, or shipping any species or subspecies of wildlife listed on the state list of endangered species or the United States' list of endangered native and foreign fish and wildlife;
- (3) Signing a false statement to procure a resident hunting or fishing license when the applicant is residing in another state at the time of application, in violation of Section 17-3-6;
- (4) Selling, offering for sale, offering to purchase or purchasing any game animal, game bird or protected species, in violation of Section 17-2-7;
- (5) Hunting with the aid of an artificial light or spotlight, in violation of Section 17-2-31;
- (6) Hunting elk outside the ranch boundaries for which a ranch-only license is issued or otherwise hunting elk in the wrong area, in violation of Section 17-2-7.
- (7) Criminal trespass, in violation of Section 30-14-1, for a minimum of three (3) years;
- (8) For violations of Section 17-2-29, involving hunting or boating while intoxicated (revocation for a period of one (1) year, as prescribed by Section 17-2-30).
- (9) Buying of licenses, permits certificates or registration without sufficient funds to pay for same;
- (10) Buying or procuring a prohibited license or registration while on revocation;
- (11) flagrant violation of the provisions of any special use of wildlife permit issued by the Department pursuant to Chapter 17 and its implementing regulations.
- (12) Any person whose name appears on a Human Services Department certified list of obligors not in compliance with the Parental Responsibility Act;
- (13) Guiding and/or outfitting without being registered (17-2A-3);
- (14) Using an outfitter or guide license issued to another;
- (15) Accessory of any of the above.
- (16) Any person whose name appears on the Wildlife Violator Compact Certified List or has been revoked by another Wildlife Violator Compact member state and is in accordance with 17-2-10.3.B.
- (17) Any resident who fails to comply with the terms of a citation including failure to appear, from a Wildlife

Violator Compact member state. However re-instatement of licenses privileges shall occur once the Department receives a certified notice from the state that initiated this actions that the terms of the citation have been met.

B. 15-Point Violations:

Any person who violates one of the following listed provisions shall accumulate fifteen (15) points toward the revocation of his/her license, permit, or certificate and suspension of associated privileges:

(1) Unlawful hunting in violation of Subsection (A) of 19.31.10.17 NMAC;

(2) Unlawful hunting in violation of Subsection (B) of 19.31.10 .17 NMAC;

~~B.~~ C. 10-Point Violations:

Any person who violates one of the following listed provisions shall accumulate ten (10) points toward the revocation of his/her license, permit, or certificate and suspension of associated privileges:

- (1) hunting in a closed area;
- (2) exceeding the bag limit of game;
- (3) using a license issued to another;
- (4) illegal possession of fish;
- (5) procurement or possession of additional deer license;
- (6) fishing without a license;
- (7) exceeding the bag limit on fish;
- (8) fishing by an illegal method;
- (9) illegally taking, attempting to take, killing, or capturing of any big game species during hunting season, in violation of Section 17-2-7 (1);
- (10) illegal possession of any big game species during hunting season, in violation of Section 17-2-7 (2);
- (11) hunting without a license.

~~C.~~ D. 5-Point Violations:

Any person who violates any provision of Chapter 17 and its implementing regulations, that is not specifically listed herein, shall accumulate five (5) points toward the revocation of his/her license, permit, or certificate and suspension of associated privileges except violations of Section 17-2A-3 and its implementing regulations.

~~D.~~ E. Guide and Outfitter:

Any registered outfitter or guide who violates provisions of Section 17-2A-3 and its implementing regulations not already addressed in this section shall be assessed points towards the revocation or suspension of their guide and or outfitting registration as follows: Guides and outfitters shall be afforded a hearing before the assessment of points.

- (1) Failure to provide signed con-

tract pursuant to Subsection A of 19.30.8.11 NMAC (5pts)

(2) Failure to provide sufficient guides pursuant to Subsection B of 19.30.8.11 NMAC (10pts)

(3) Failure to supervise pursuant to Subsection C of 19.30.8.11 NMAC (10pts)

(4) Misconduct pursuant to Subsection D of 19.30.8.11 NMAC (20pts)

(5) Unregistered Services pursuant to Subsection E of 19.30.8.11 NMAC (10pts)

(6) Failure to report illegal activity pursuant to Subsection F of 19.30.8.11 NMAC (5pts)

(7) Failure to comply with and convicted of any local, state, or federal laws pursuant to Subsection G of 19.30.8.11 NMAC (10pts)

(8) Willfully allowing client misconduct pursuant to Subsection I of 19.30.8.11 NMAC (10pts)

(9) Breach of contract pursuant to Subsection J of 19.30.8.11 NMAC (10pts).

(10) Violation of conditions of registration pursuant to Subsection K of 19.30.8.11 NMAC (20pts).

(11) An outfitter knowingly (unlawfully) using an unregistered guide (10pts).

~~E.~~ E. Landowner Contracts and Agreements:

Landowner: Any landowner who breaches or violates the conditions of any Landowner Sportsman System (LOSS) agreement/contract entered into with the Department of Game and Fish shall be assessed points towards the revocation or suspension of their landowner permits as follows. Landowners shall be afforded a hearing before the assessment of points.

(1) Unit-wide option antelope: Failure to grant free and equal access, (to include vehicle access) to the ranch named on the contract only for the purpose of hunting antelope, to the licensed hunters, and some that may be accompanied with their outfitters/guides. The licenses must be valid for the same coded hunt and same management unit as the licenses authorized by the land owners contract. Hunters must carry written permission from a Department representative to move to another ranch. (20 points)

(2) Denying licensed public antelope hunters assigned to the ranch by the Department, some, who may be accompanied with their registered outfitter, the same access that private hunters have to the ranch for the purpose of hunting antelope. (20 points)

(3) Unit-wide option elk: Failure to grant free and equal access, including vehicular access, for the sole purpose of

hunting elk to any legally licensed person and their companions during all corresponding public hunt periods with their sporting arms and bag-limit restrictions in the same unit as the ranch. (20 points)

(4) Discriminating against those with whom he/she negotiates for the use of the private land licenses on the basis of race, color, religion, sex and origin. (20 points)

(5) Failure to provide reasonable access to include keys and /or combinations, if necessary, to locked gates for Department personnel during the entire hunt periods for elk and antelope for the purpose to record biological data and enforce laws and regulations. (20 points)

(6) Providing false documentation, records or falsifying a landowner hunting agreement/contract in any manner. (20 points)

(7) Failure of the Landowner, Manager or Lessee to inform the Department of any changes in ownership, acreage and/or address changes, etc. (5 points)

[4-1-95, 10-31-98, 11-14-98, 1-29-99; 19.31.2.9 NMAC - Rn & A, 19 NMAC 31.2.9, 12-14-01; A, 05-15-02]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an Amendment to 19.35.7 NMAC, sections 7, 9, 10, 12, 13, 15, and 19.

19.35.7.7 DEFINITIONS:

A. Isolation: A period of time imported animals are separated and observed. The observation pen must have fences at least eight (8) feet high. The isolation pen must prevent nose-to-nose contact with all wild ungulates during the observation period.

B. Animal Health Emergency: A situation in which people or animals are at risk of exposure to infectious or contagious diseases.

C. APHIS: Animal and Plant Health Inspection Service.

D. Accredited laboratory: A lab recognized for CWD testing by the New Mexico Department of Game and Fish with input from the National Veterinary Services Laboratory, Ames, IA.

E. CWD: Chronic Wasting Disease, a transmissible spongiform encephalopathy of cervids.

F. CWD exposed animal: An animal that is, or has been in the last 60 months, part of a CWD positive herd.

G. CWD Positive Animal: An animal that has had a diagnosis of CWD confirmed by means of an

official CWD test conducted by a laboratory certified by USDA/APHIS.

H. CWD Negative Animal: An animal that has had an official CWD test and that test resulted in a negative classification.

I. CWD Positive herd: A herd in which a CWD positive animal resided at the time it was diagnosed and which has not been released from quarantine.

J. CWD Suspect herd: A herd for which laboratory evidence or clinical signs suggest a diagnosis of CWD, but for which laboratory results have been inconclusive or not yet conducted.

K. CWD Exposed herd: A herd in which a CWD positive or CWD exposed animal has resided within the 60 months prior to the diagnosis.

L. CWD Trace-back herd: An exposed herd in which a CWD positive or CWD exposed animal resided in any of the 60 months prior to the diagnosis

M. CWD Trace-forward herd: An exposed herd that has received CWD positive or CWD

exposed animals from a positive herd within 60 months prior to the diagnosis of CWD in the positive herd.

N. Whole Herd or Complete Monitoring: Participation by Park owners or importers in a program requiring every brainstem (obex) from every animal that dies at the facility to be successfully submitted to an accredited laboratory for CWD testing, regardless whether the death is natural or not. Exception: No more than 2 deaths within a 60 month period may not have been successfully tested for CWD, if the cervid (carcasses) were inspected by a certified veterinarian and attested to show no clinical sign of CWD.

O. Mixed Herd: A herd comprised of animals from different sources and held to allow contact or commingling.

P. Mixed Herd Sales: Sales from sale barns, auctions, private arrangements, or other facilities that allow joint penning or adjacent penning of animals from more than one closed herd, or otherwise facilitate or permit commingling, direct contact, or holding, boarding, or sharing the premises by more than one herd simultaneous or successively in time.

Q. Closed Herd Sales: Sales of animals from a closed herd directly to the buyer in a manner that allows the buyer to transport the animals from the producer's premises directly to the buyer's premises without contact with animals from another herd, and

without contact with other pens or transport facilities used by any other herd.

R. USDA: United States Department of Agriculture

[19.35.7.7 NMAC - N, 3-31-00; A, 06-29-01; A, 05-15-02]

19.35.7.9 IMPORTATION CONDITIONS: All live protected wildlife species of the families Bovidae, Antilocapridae, and Cervidae imported in the State of New Mexico shall meet the following criteria:

A. ~~[Be tattooed or implanted with an electronic identification device and tagged with United States Department of Agriculture]~~ **Be permanently and uniquely tattooed in at least one ear and tagged with USDA** metal ear tags. The numbers shall be registered with the Department of Game and Fish;

B. Be examined by an accredited veterinarian prior to importation. Each animal shall be accompanied by a pre-approved health certificate, certifying a disease-free status;

C. Test negative for brucellosis. Serum testing shall be done not more than thirty (30) days prior to importation. All serum samples shall be tested by a cooperative state federal brucellosis laboratory.

D. Test negative for bovine tuberculosis not more than ninety (90) days prior to importation. Animals to be imported must originate from a herd that had a negative whole-herd tuberculosis test not more than (12) months prior to importation or have a current "tuberculosis free herd" certificate issued from the state of origin through a Department of Agriculture accreditation program. Bovine tuberculosis testing must be performed with the current U.S. Department of Agriculture approved method and be conducted by a federally accredited veterinarian.

E. Test negative for paratuberculosis (Johne's disease) with Serologic testing methods. Test results must be verified by the attending veterinarian.

F. All cervids to be imported into the State must come from a facility where ~~[the animals have been completely monitored for and]~~ **whole herd or complete monitoring occurs by verifiable proof, and the animal(s) must have** shown no sign of chronic wasting disease ~~[since 30 April 1999 or]~~ for sixty (60) months prior to time of importation. All cervids entering New Mexico must have the following statement signed by the owner: "The animals on this application originate from a herd **which has complete monitoring and** in which chronic wasting disease has not been diagnosed in the last sixty months. These ani-

imals originate from a herd that has not been identified as a trace or source herd for chronic wasting disease. These animals have no history and no evidence of ever having been exposed to chronic wasting disease."

(1) No cervid shall be allowed to enter the State if it has had any contact with a CWD suspect, exposed, positive, trace-forward or trace-back animal within 60 months prior to time of importation.

(2) No cervid coming through closed herd sales, a mixed herd or mixed herd sales shall be allowed to enter the State if the herd or auction facility has had any CWD suspect, exposed, positive, trace-forward or trace-back animal on the premises within 60 months prior to time of importation.

(3) No cervid shall enter the state in a conveyance that has held CWD suspect, exposed, positive, trace-forward or trace-back animal within 60 months prior to time of importation.

(4) No cervid shall enter the State, unless it comes from a herd which has complete monitoring.

G. All elk to be imported into the State of New Mexico shall be tested for genetic purity. Only Rocky Mountain Elk (*Cervus elaphus nelsoni*) will be allowed to be imported into the State of New Mexico. Any elk showing red deer hybridization or hybridization of other elk subspecies will not be allowed into the state. All testing shall be done ONLY by a New Mexico Department of Game and Fish approved laboratory;

H. All progeny from female elk impregnated prior to importation into New Mexico shall be tested for hybridization of red deer and other elk subspecies;

I. White-tailed deer subspecies to be imported into the State of New Mexico must have originated and must exist west of the 100th meridian and test negative for meningeal worm;

J. Be permitted in compliance with Subsection A of 19.31.1.10 NMAC:

(1) Cost of Testing: All testing will be at owner's expense;

(2) After entering the state, all animals shall be held in a separate facility by the owner and/or importer. All imported animals, prior to release, may be inspected at any time by a Department of Game and Fish official or designee.

(3) Owners/importers must notify the Department of Game and Fish within 24 hours of any disease indications or symptoms that manifest themselves among the imported animals prior to final inspection..

(4) Animals shall be held in isolation in the event of an animal health emergency as declared by the Director.

(5) Final Inspection / Permit Validation: No animals may be released from the separate facility into the class A park or other enclosure until the owner has received a release approval signed by a department of Game and Fish official.

[19.35.7.9 NMAC - Rp 19 NMAC 31.1.11, 03-31-00; A, 2-14-01; A, 06-29-01; A, 05-15-02]

19.35.7.10 I N T R A S T A T E TRANSPORTATION

A. Transporting Requirements - All live cervids transported within the State of New Mexico shall:

(1) be permanently identified with ~~any two of the following: tattooed, implanted with an electronic identification device tagged with a tamper proof eartag~~ **a unique tattoo and any one of the following electronic identification device, tamper-proof eartags, USDA metal ear tags.** The numbers shall be registered with the Department of Game and Fish;

(2) be legally possessed.

(3) The Director may suspend intrastate movement in an animal health emergency.

[19.35.7.10 NMAC - Rp 19 NMAC 31.1.12, 3-31-00; A, 06-29-01; A, 05-15-02]

19.35.7.12 APPROVED SUPPLIERS OF FISH OR FISH EGGS FOR IMPORTATION INTO NEW MEXICO:

A. The Department will maintain a listing of approved fish suppliers.

B. All approved fish suppliers or their agent must carry a Department-issued copy of the importation permit while transporting fish to the approved release site in New Mexico.

C. Approved supplier or their agent must notify the Department of intended Port of Entry for importation of fish or fish eggs into New Mexico.

D. Approved supplier may be required to provide a presence/absence disease history (e.g., Furunculosis bacterium, Enteric Redmouth bacterium, Proliferative Kidney Disease, Ceratomyxosis of salmonids, etc.) of the hatchery facility if requested by the New Mexico Department of Game and Fish.

E. Approved suppliers shall meet the criteria and provide pathogen-free certification as specified herein.

F. Salmonids:

(1) For the Infectious Hematopoietic Necrosis Virus (IHNV), Infectious Pancreatic Necrosis Virus

(IPNV), **and** Viral Hemorrhagic Septicemia (VHS), [~~and Bacterial Kidney Disease (BKD) pathogens~~];

(a) Disease testing will be conducted by another State Wildlife Agency, United States Fish and Wildlife Service; [~~United States Department of Agriculture~~] **USDA** certified source or other source approved by the New Mexico Department of Game and Fish;

(b) Disease testing on fish must use American Fisheries society (AFS) Blue Book procedures - "Suggested Procedures for the Detection and Identification of Certain Finfish and Shellfish Pathogens, 4th edition 1994";

(c) Disease testing will be conducted on an annual basis. Annual inspection must have occurred within the previous 12 months of application date;

(d) Sixty fish per lot will be sampled;

(e) For all lots of fish not originating on facility, supplier must provide a historical account documenting fish were reared only at New Mexico Department of Game and Fish approved aquaculture facilities.

(2) Salmonids -for the whirling disease pathogen and Bacterial Kidney Disease:

(a) Disease testing will be conducted by another State Wildlife Agency, United States Fish and Wildlife Service; [~~United States Department of Agriculture~~] **USDA** certified source or other source approved by the New Mexico Department of Game and Fish;

(b) Lots of fish older than six months will be sampled;

(c) Sixty fish per lot will be sampled;

(d) Inspection will include at least one lot of susceptible salmonids (rainbow trout, cutthroat trout, rainbow-cutthroat hybrids) which has been on the hatchery's water source for at least ten months;

(e) Disease testing will be conducted on an annual basis. Annual inspection must have occurred within the previous 12 months of application date;

(f) Positive findings of whirling disease by pepsin-trypsin digestion shall be considered presumptive; positive findings of whirling disease by histology shall be considered confirmatory;

(g) For all lots of fish not originating on facility, supplier must provide a historical account documenting fish were reared only at New Mexico Department of Game and Fish approved aquaculture facilities;

(h) Supplier may be required to provide a whirling disease history of the hatchery facility if requested by the New

Mexico Department of Game and Fish.

(i) Presumptive Findings: Any presumptive findings of disease with no confirmatory testing shall be deemed a positive finding of the disease.

(j) Positive Findings of Disease: Any facility deemed to have tested positive, by confirmatory findings or presumptive findings without confirmatory testing, under this rule shall be barred from importation into the State of New Mexico until the facility is shown to be pathogen free for a minimum of two (2) consecutive years and has met all other requirements.

(k) Renovated Facilities: A facility that has been deemed positive under this rule and has undergone complete renovation may apply for importation privileges as a new facility once it has had at least one annual inspection and has met all other requirements. Complete renovation for the purposes of this rule shall be defined as a facility that has: 1) closed, secured, and sanitized all water sources, 2) confined all water conveyance to closed sealed pipes, and 3) constructed all rearing spaces out of hard surfaced materials. Proof of renovation must be provided with the application for importation privileges. On-site inspection of the facility after renovation may be required prior to authorization to import.

G. Warm Water Fish: For channel catfish imported into New Mexico:

(1) Disease testing will be conducted by another State Wildlife Agency, United States Fish and Wildlife Service; ~~United States Department of Agriculture~~ **USDA** certified source or other source approved by the New Mexico Department of Game and Fish.

(2) Disease testing will be conducted on an annual basis. Annual inspection must have occurred within the previous 12 months of application date.

(3) Channel catfish will be tested for Edwardsiella ictaluri (hole in the head disease).

(4) Approved supplier will document whether fish on the facility have ever been diagnosed with Channel Catfish Virus.

H. Triploid Grass Carp: A notarized certificate of triploidy issued by another State Wildlife Agency, United States Fish and Wildlife Service, ~~United States Department of Agriculture~~ **USDA** certified source or other source approved by the New Mexico Department of Game and Fish must be provided for all grass carp imported into New Mexico.

[19.35.7.12 NMAC - N, 3-31-00; A, 05-15-02]

19.35.7.13 IMPORTATION OF NON-GAME WILDLIFE: Any applicant requesting an import permit for non-game wildlife must submit the following information with the application:

A. A containment or confinement plan indicating where and how the species will be maintained;

B. A certificate from an accredited veterinarian that each animal and/or rearing facility has been inspected and is in good general health, disease free and that each animal or rearing facility tests disease free for any specific disease listed on the application and following the testing procedures provided with the application;

C. Proof from the pertinent County and City where the animal will reside that possession or release of the animal is allowed;

D. Copies of ~~[U.S.D.A.] USDA~~ or ~~[U.S.F.W.S.] United States Fish and Wildlife Service~~ exhibitor or breeder permits if required;

E. Certification from an accredited veterinarian that any venomous reptile has been de-venomized.

[19.35.7.13 NMAC - N, 3-31-00; A, 05-15-02]

19.35.7.15 RECEIPT OF APPLICATION: When an application to import an animal is received by the Department, the application will be reviewed and the import allowed only if, in the determination of the Department:

A. The requested species will not compete with native wildlife for food, space, cover, breeding habits, or water and will not hybridize with native species, or otherwise conflict with management of New Mexico's wildlife;

B. The requested species does not pose a threat to human health or safety;

C. The requested species does not pose a threat to livestock;

D. The requested species will not be sold or distributed in any manner other than that listed on the permit;

E. All necessary Federal permits have been obtained;

F. The Department is satisfied that adequate public comment and notification has been completed in accordance with Subsections C of 19.35.7.13 NMAC and B of 19.35.7.14 NMAC;

G. The requested species does not possess or have the **immediate** potential to carry infectious or contagious diseases.

[19.35.7.15 NMAC - N, 3-31-00; A, 05-15-02]

19.35.7.19 Exceptions: ~~[The pro-~~

~~visions of this section do not apply to] Employees of the Department of Game and Fish **and other state agencies** acting in the course of their official duties **are not required to have a permit. However, all disease testing requirements specified in this rule must be met prior to importation.**~~

[19.35.7.19 NMAC - N, 3-31-00; A, 05-15-02]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an Amendment to 19.35.9 NMAC, sections 7, 9, & 10.

19.35.9.7 DEFINITIONS:

A. Facility: the area of a Class A Park surrounded by a fence, and all buildings, isolation pens, loading chutes, gates, waters, and other structures used in the Class A Park operation.

B. Feed: all forage grown outside the facility and transported in, all forages compounded and packaged for commercial distribution, and all dietary supplements.

C. Water: The system for delivering water to animals in a Class A Park including but not limited to wells, streams, ponds, troughs, and water catchments.

D. Animal health emergency: A situation in which people or animals are at risk of exposure to infectious or contagious diseases.

E. Quarantine: A status declared for any park in which an animal health emergency has occurred. No animal ingress or egress shall be permitted until the animal health emergency has ended.

F. Record: include all vital documents and computer data kept for each animal. These documents include but are not limited to breed registries, importation permits, bills of sale, health certificates, veterinary diagnoses, scheduled and unscheduled health management actions, reproductive outcomes, etc.

G. Permit owner: That person or persons to whom the Class A Park or Lake permit is issued. This person(s) may be a lessee on the land designated for the Class A Park or Lake.

H. CWD: Chronic Wasting Disease, a transmissible spongiform encephalopathy of cervids.

I. Positive herd: A herd in which a CWD positive animal resided at the time it was diagnosed and which has not

been released from quarantine.

J. Suspect herd: A herd for which laboratory evidence or clinical signs suggest a diagnosis of CWD, but for which laboratory results have been inconclusive or not yet conducted.

K. Exposed herd: A herd in which a CWD positive or exposed animal has resided 60 months prior to the diagnosis.

L. Trace-back-herd: An exposed herd in which a CWD positive animal resided in any of the 60 months prior to the diagnosis

M. Trace-forward herd: An exposed herd that has received exposed animals from a positive herd within 60 months prior to the diagnosis of CWD in the positive herd.

N. Shooter animals: Animals designated by an owner or his designee for hunting or harvesting in the park.

O. Single fence: A park surrounded by one continuous fence.

P. Double fence: A park surrounded by two (2) fences, each continuous with one fence surrounding the other and sufficient to prevent no nose to nose contact with similar species.

Q. Quarantine fence: A fence, inside or out of a park that is constructed in an animal health emergency.

R. CWD profile: a deer or elk that is at least ~~[+6]~~ **12** months of age (adult) that is emaciated and exhibits some combination of clinical signs including abnormal behavior, increased salivation, tremors, stumbling, incoordination, difficulty in swallowing, excessive thirst, and excessive urination.

S. Whole Herd or Complete Monitoring: Participation by Park owners or their designee, where every brainstem (obex) is successfully submitted to an accredited laboratory for CWD testing, regardless if the death is natural or not, following the Director's CWD Monitoring Standards.

T. Herd Monitoring: Voluntary participation by Park owners or their designee, where brainstem (obex) is successfully submitted to accredited laboratory for CWD testing, following the Director's CWD Monitoring Standards.

U. CWD Monitoring Oversight Committee: A volunteer committee/task force will be convened by the director if any owner shall challenge the ruling of Department as to their CWD monitoring status. The committee shall be comprised of the owner or his representative, another Class A Park Owner, the Director or his designee, veterinarian

from the State Livestock Board, veterinarian from US Department of Agriculture.

V. CWD Test Sample: shall be comprised of the brainstem containing the obex region and a sample of cerebellum both identified and preserved in 10% buffered formalin and not frozen. A second sample of cerebellum shall be identified and retained frozen for further testing if required.

[19.35.9.7 NMAC - N, 9-28-01; A, 05-15-02]

19.35.9.9 POSSESSION CONDITIONS AND HEALTH CERTIFICATION: All live protected species of the families Bovidae, Antilocapridae, and Cervidae retained in the State of New Mexico shall meet the following criteria:

A. All Class A parks with cervids must participate in a CWD monitoring program ~~[Herd status will be assigned by the Department according to the CWD program entered and the length of time the herd is monitored and remains free of CWD. These programs will be developed cooperatively with the New Mexico Department of Game and Fish, the Livestock Board and Class A Park representatives.]~~ **if any animal shows a CWD profile, or is identified to come from a positive herd, suspect herd, exposed herd, trace-back-herd or trace-forward. All other CWD testing will be voluntary. All voluntary participants in CWD testing will be able to choose either whole herd monitoring or herd monitoring. Regardless of the testing standard chosen, all participants must collect two (2) samples per animal for CWD testing. The formalin preserved brainstem and portion of cerebellum will be submitted for testing and the remaining cerebellum section will be retained frozen for further testing and verification or until written negative results from the submitted samples have been received. Participants must adhere to all of the Director's CWD Monitoring Standards, and when in compliance, will receive an annual certificate. Anyone not adhering to the standards will not receive a certificate and lose their herd status for CWD monitoring accreditation. An owner may appeal this loss of certification through a CWD Monitoring Oversight Committee.**

(1) Testing must be done at the expense of the park owner.

(2) Testing~~[may]~~ **shall** be done only at a lab certified for CWD testing by the National Veterinary Services Laboratory, Ames, IA.

(3) Official statements of CWD testing results from the laboratory must be

retained by owners and presented to the Department annually.

(4) CWD testing and monitoring shall be established by the Director and conform to the Director's CWD Monitoring Standards.

B. Any live cervid leaving the park must be accompanied by a health certificate by an accredited veterinarian.

C. Any protected wildlife leaving a park or lake must also be accompanied by a bill of sale or invoice.

D. Owners must maintain records of animals handled inside the park. Records must be available to the Department for inspection annually. These records shall include but not be limited to:

~~(1) [Each animal must have one form of permanent identification.]~~ **Each animal in parks enrolled in the whole herd program must have at least one unique tattoo inside the ear.**

(2) Each animal must have records of its origin and the records must be kept current and available for the lifetime of the animal:

(a) bill of sale if the animal was purchased or donation receipt

(b) importation permit if the animal was imported into New Mexico

(c) health certifications of the herd of origin

(d) birth date and parentage if know and born on the park

(e) registration records if applicable

(3) Each animal must have reproductive records if known:

(a) number of offspring produced

(b) dates of birth

(c) abortions detected

(d) failures to conceive

(4) Records must be kept of all deaths if known:

(a) date of death

(b) result of CWD testing. CWD testing is mandatory for all animals showing CWD profile in addition to any testing required for a CWD monitoring program.

(c) reason of death including records of veterinary treatment

(d) results of necropsy if applicable

(e) name and address of successful hunters for all shooter animals killed.

(5) Health Records must be kept and maintained if tested or treated:

(a) vaccinations received and dates

(b) sickness or disease, treatments, amounts of medications administered, and dates

(c) non-disease related treatments and dates, such as wormings or supplements

(6) Records of cut antler harvest-

ed:
 (a) amounts and dates of harvest.
 (b) lists of buyers and dates of sales

(7) Records of live animal sales
 (a) bills of sales.
 (b) names and addresses of buyers.

(c) destinations, dates, and modes of live animal transport away from the park.
 E. Feed containing animal products or by-products shall not be administered to cervids.

F. Any positive test for CWD shall constitute an animal health emergency. The Department must be notified within 24 hours of the diagnosis. This notification requirement will only be considered met if the owner or designee talks directly to the Department's Game and Fish dispatch at 1-505-827-9376.

(1) The park shall be under immediate indefinite quarantine. All gates shall remain closed, and all existing fences shall remain standing and maintained at the owner's expense.

(2) A committee shall be convened by the Director to determine what actions will be taken to contain, control, and prevent the spread of the animal health emergency. The committee will also determine the future status of the park and declare the degree of contamination. This committee shall be comprised of those listed in 19.35.9.10 NMAC.

(3) Owners shall submit all herd records to the Department within 72 hours of the diagnosis, and notify all owners of trace-forward and trace-back herds of the positive CWD diagnosis within 72 hour of the diagnosis.

G. Domestic sheep shall not be kept within the boundaries of the Park unless the herd is enrolled in the USDA Scrapies Program.

[G] H. All live protected species of the family Salmmonidae retained for propagation and sale outside of the Class A Lake shall meet the following criteria:

(1) Test annually meeting the same requirements as specified as 19.35.7 NMAC.

(2) Any positive test for any of the pathogens listed in 19.35.7 NMAC shall constitute an animal health emergency. The Department must be notified within 24 hours of the diagnosis. This notification requirement will only be considered met if the owner or designee talks directly to a department person either by phone or in-person.

(a) The lake shall be under immediate indefinite quarantine.

(b) Owners shall submit factual copies of all records to the Department

within 72 hours of the diagnosis, and notify all owners of trace-forward and trace-back lots of fish of the positive diagnosis within 72 hours of the diagnosis.
 [19.35.9.9 NMAC - N, 9-28-01; A, 05-15-02]

19.35.9.10 ANIMAL HEALTH

EMERGENCIES: Upon identification of an animal health emergency a committee will be convened by the Director to determine what actions will be taken to contain, control, and prevent spread of the animal health emergency giving due consideration and direction on quarantine, treatment, disinfection, isolation, indemnification and destruction. The committee will also determine the future status of the park and declare the degree of contamination. The committee should consist of at least:

A. The park owner or land management agency representative and/or their legal counsel

B. The Department of Game and Fish Director or the Director's designee

C. The Department's Assistant Attorney General representative

D. The State Veterinarian

E. The USDA Area Veterinarian in Charge

F. However, if in the opinion of the director, any escaped animal poses a health emergency it shall be captured by the Department of Game and Fish and if necessary destroyed.

[19.35.9.10 NMAC - N, 9-28-01; A, 05-15-02]

**NEW MEXICO
 GAMING CONTROL
 BOARD**

TITLE 15 GAMBLING AND LIQUOR CONTROL

CHAPTER 1 GAMES AND GAMING GENERAL PROVISIONS

PART 25 MANUFACTURER'S LICENSE WAIVER UNDER THE GAMING CONTROL ACT

15.1.25.1 ISSUING AGENCY:

New Mexico Gaming Control Board.
 [15.1.25.1 NMAC - N, 5/15/02]

15.1.25.2 SCOPE:

This rule applies to all persons who manufacture associated equipment who are seeking waiver for licensure as a manufacturer under the New Mexico Gaming Control Act.

[15.1.25.2 NMAC - N, 5/15/02]

15.1.25.3 S T A T U T O R Y

AUTHORITY: Section 60-2E-7(B)(3) of the Gaming Control Act authorized the board to develop, adopt and promulgate all regulations necessary to implement and administer the provisions of the Gaming Control Act. Section 60-2E-13(D) gives the board discretion to waive the licensing requirement for manufacturers of associated equipment.

[15.1.25.3 NMAC - N, 5/15/02]

15.1.25.4 D U R A T I O N :

Permanent.
 [15.1.25.4 NMAC - N, 5/15/02]

15.1.25.5 EFFECTIVE DATE:

May 15, 2002, unless a later date is cited at the end of a section.
 [15.1.25.5 NMAC - N, 5/15/02]

15.1.25.6 OBJECTIVE:

This rule establishes guidelines and procedures for obtaining a waiver of the license requirement for manufacturers of certain associated equipment.
 [15.1.25.6 NMAC - N, 5/15/02]

15.1.25.7 DEFINITIONS :

Unless other wise defined below, terms used in this rule have the same meanings as set forth in the Gaming Control Act:

A. "Act" means the New Mexico Gaming Control Act.

B. "associated equipment" means equipment or a mechanical, electromechanical or electronic contrivance, component or machine used in connection with gaming.

C. "board" means the Gaming Control Board or its designee.

D. "central monitoring system" means the hardware and software used by the board to control, monitor, and retrieve information from, all licensed gaming machines.

E. "component" means a part of a gaming machine that is necessary for the proper operation and essential function of the gaming machine, including but not limited to a hopper, coin acceptor, microprocessor and related circuitry, programmed EPROM, bill acceptor, progressive system, monitoring system, and meter and any other parts the board determines are components; a component is necessary for the proper operation and essential function of a gaming machine if it affects, directly or indirectly, the gaming machine's operation, game outcome, security, recordkeeping, or communication with the central monitoring system; parts such as light bulbs, buttons, wires, decorative glass, fuses, batteries, handles, springs, brackets, and locks are not components.

F. "EPROM" means erasable programmable read-only memory

used for storing program instructions in a gaming device, including game programs and video graphics.

G. "game outcome" means the final result of the wager.

H. "modification" means a change or alteration in the associated equipment or component that affects the manner or mode of its operation or function.

I. "principal" means a key person directly involved in day-to-day operations of the manufacturer.

J. "State" means the State of New Mexico.

K. "waiver" means a determination by the board to exempt a manufacture of associated equipment from the requirement to obtain a manufacturer's license under the Act.

[15.1.25.7 NMAC - N, 5/15/02]

15.1.25.8 W A I V E R REQUESTS - FORM AND GENERAL REQUIREMENTS:

A. Any person who manufactures associated equipment for use or play in the State or for sale, lease or distribution outside the State from any location within the State may request a waiver by filing a written waiver request form with the board.

B. Waiver requests must be submitted in writing on forms supplied or approved by the board and must contain such information and documents as specified. Every waiver request must include payment of a \$25.00 nonrefundable fee.

C. A separate waiver request must be submitted for each item of associated equipment or component the manufacturer intends to manufacture, fabricate, assemble, produce, program, or modify.

D. All information required to be included in the waiver request must be true and complete as of the date of board action sought.

E. By requesting a waiver or other approval of the board, the manufacturer is requesting review of the equipment and a waiver of licensing requirements as a manufacturer. In addition, by requesting the waiver, the manufacturer accepts all risks of adverse public notice, embarrassment, criticism, or damages relating to the request with the board.

F. Any waiver granted by the board is deemed revocable. No person holding such a waiver is deemed to have any rights therein.

G. By requesting a waiver, the holder agrees to abide by all provisions of the Act and the board's rule.

[15.1.25.8 NMAC - N, 5/15/02]

15.1.25.9 EVALUATION OF

ASSOCIATED EQUIPMENT:

A. The board will evaluate the equipment and information submitted pursuant to the waiver request and will determine whether the equipment is associated equipment.

B. The equipment will be deemed associated equipment if it affects a gaming machine's:

- (1) game outcome;
- (2) recordkeeping;
- (3) security; or
- (4) communication with the central monitoring system.

C. If the board determines that the equipment is not associated equipment, the board will notify the manufacturer in writing that no further action is required.

D. If the board determines that the equipment is associated equipment, the board will notify the manufacturer in writing that it must register as a manufacturer of associated equipment. Upon completion of the registration process, the board will either grant or deny the waiver request. [15.1.25.9 NMAC - N, 5/15/02]

15.1.25.10 REGISTRATION REQUIREMENTS:

A. Registration will be for a one-year period.

B. All manufacturers of associated equipment must register with the board on forms supplied and approved by the board and must provide all information and documents requested.

C. The registration form must be accompanied by payment of a \$100.00 nonrefundable registration fee.

D. The registration form will require the following information:

- (1) manufacturer's name;
- (2) manufacturer's business address;
- (3) name, title, date of birth and social security number for principals directly involved in operations of the manufacturer and owners;
- (4) disclosure of all other gaming licenses held by manufacturer; and
- (5) any other information deemed necessary by the board.

E. The information and documents provided will be used by the board for the purpose of conducting a limited background investigation.

F. Once a manufacturer is registered, it may submit additional waiver requests without re-registration as long as the registration is in effect.

[15.1.25.10 NMAC - N, 5/15/02]

15.1.25.11 CRITERIA FOR GRANTING A LICENSE WAIVER:

A. The decision to grant a waiver is within the absolute discretion of the board. Waivers will be granted on the terms and conditions the board deems necessary and provided the waiver is consistent with the purposes of the Act.

B. A waiver will be granted unless the manufacturer is manufacturing a combination of two or more categories of the components described in this paragraph B or any component described in paragraph C:

(1) an assembled electronic circuit that cannot reasonably be demonstrated to have any use other than in a gaming machine;

(2) a cabinet with electrical wiring and provisions for mounting a coin, token or currency acceptor and provisions for mounting a dispenser of coins, tokens or anything of value;

(3) a storage medium that contains source language or executable code of a computer program, other than a game, that cannot be reasonably demonstrated to have any use other than in a gaming machine

(4) an assembled video display unit;

(5) an assembled mechanical or electromechanical display unit intended for use in gaming;

(6) an assembled mechanical or electromechanical display unit that cannot be demonstrated to have any use other than in a gaming machine; or

(7) any combination of one or more of the components described in paragraphs 1 through 6 of Subsection B of 15.1.25.11 NMAC and any other component the board determines is associated equipment.

C. A waiver will not be granted if the manufacturer is manufacturing any of the following:

(1) a storage medium containing game source language or executable code of a computer program that cannot be reasonably demonstrated to have any use other than in a gaming machine;

(2) any mechanical, electrical, or other device that may be connected to or used with a gaming machine to alter the normal criteria of random selection or affect the outcome of a game;

(3) a system for the accounting or management of any game in which the result of the wager is determined electronically by using any combination of hardware or software for computers; or

(4) any other component that the board determines by regulation to be a gaming device used directly or remotely in connection with gaming or any game that affects the results of a wager by determining a win or loss.

[15.1.25.11 NMAC - N, 5/15/02]

**15.1.25.12 FINAL DECISION;
EFFECT OF WAIVER:**

A. The board will make the final decision to either grant or deny the waiver request. If the waiver request is granted, the manufacture will receive a written waiver indicating the specific associated equipment it may manufacture without obtaining a manufacturer's license from the board.

B. If the waiver request is denied the manufacture must obtain a full manufacturer's license pursuant to the provisions of the Act and board rules before manufacturing the associated equipment.

C. A manufacturer who has been issued a waiver may only manufacture the associated equipment or components that are specifically identified in the waiver.

D. The manufacture of or modification of any other associated equipment not listed on the waiver is a violation of the Act and is subject to criminal penalty and imposition of an administrative fine or both.

E. Associated equipment for which a waiver is granted is not subject to approval requirements set forth in 15.1.7.30 NMAC.

[15.1.25.12 NMAC - N, 5/15/02]

**HISTORY OF 15.1.25 NMAC:
[RESERVED]**

**NEW MEXICO
COMMISSION ON
HIGHER EDUCATION**

This is an amendment to 5.100.2 NMAC, Sections 6, 7, 10, 12, 16 and 27.

**5.100.2.6 OBJECTIVE AND
GENERAL PRINCIPLES:**

A. "The purpose of the Post-Secondary Educational Institution Act is to improve the quality of private post-secondary education, to prevent misrepresentation, fraud and collusion in offering educational programs to persons over the compulsory school attendance age and to protect consumers enrolled in private post-secondary educational institutions when those schools cease operation or fail to meet standards of quality established by the commission." [Section 21-23-2 NMSA 1978 as amended]

B. The purpose of 5.100.2 NMAC is to guide implementation of the Post-Secondary Educational Institution Act by defining clear expectations of institutions operating in the state while recognizing the varied purposes and clientele of those institutions. It is the intent of the New Mexico commission on higher education to

encourage sound institutional practices that result in high quality educational programs and expand the array of educational options available to New Mexico's citizens.

C. General principles:

(1) each private post-secondary institution providing on-site education within New Mexico or otherwise operating from a site within New Mexico may be classified by the New Mexico commission on higher education ("commission") as subject to or exempt from provisions of the Post-Secondary Educational Institution Act ("act"). An institution is subject to the act unless expressly exempted by the commission;

(2) career schools and non-accredited colleges and universities must be licensed by the commission and are subject to the standards and procedures for licensed institutions specified in 5.100.2 NMAC;

(3) private institutions in other states that pay agents to recruit students in New Mexico for attendance in other states must register with the commission pursuant to the Out-of-State Proprietary School Act (Sections 21-24-1 et seq. NMSA 1978 as amended) and 5.100.3 NMAC of the commission; and

(4) private, regionally accredited colleges or universities that provide academic instruction within New Mexico comparable to that provided by public colleges and universities are exempt from regulation by the commission, but must provide the commission with copies of their catalog and information about their curricula, enrollments, and financial condition, as specified in Section 5.100.2.8 NMAC, below. Such institutions are not subject to regulation by the commission. Such institutions may use the term exempt but may not refer to their status with the commission using terms such as "accredited", "licensed", "approved" or "endorsed".

D. Institutions that are not licensed, but meet the definition of presence in New Mexico, whether offering degrees, course credits, certificates or diplomas shall be notified by certified mail that they shall cease immediately to offer such until they obtain a license or exemption from the commission. The commission shall initiate appropriate legal action if institutions fail to comply. Whoever violates any provision of Chapter 21-23-10 of the Post-Secondary Educational Institution Act may be assessed a civil penalty not to exceed five hundred dollars (\$500) per day per violation.

[2-27-85, 6-30-92, 7-1-94, 9-30-96, 5.100.2.6 NMAC - Rn, 5 NMAC 100.2.6, 5-15-01; A, 5/15/02]

5.100.2.7 DEFINITIONS:

A. "accreditation" means a verified accreditation status with an accred-

iting agency recognized by the United States department of education.

B. "board" or "commission" means the New Mexico commission on higher education or its designated employee.

C. "branch facility" means a facility of a licensed school when all of the following occur:

(1) the facility has the same ownership, financial management or control as that of the main institution;

(2) all financial decisions regarding the branch facility are made at the main institution; and

(3) the curriculum offered at such facility is at the same academic credential level or less than the courses offered at the parent campus.

~~E~~D. "career school" means a private post-secondary educational institution offering a formal educational curriculum in New Mexico for a fee to members of the general public beyond compulsory school age, terminating in a certificate, diploma, associate degree, or comparable confirmation of completion of the curriculum.

~~D~~E. "college" or "university" means a private post-secondary educational institution offering a formal educational curriculum in New Mexico for a fee to members of the general public beyond compulsory school age, terminating in a baccalaureate degree, master's degree, or doctoral degree or comparable confirmation of completion of the curriculum.

~~E~~E. "continuing education" means only brief courses of instruction designed to teach specific skills that may be applicable in a work setting but are not sufficient in themselves to be considered a program of training for employment. Typically, a student only enrolls for one course rather than a sequence of courses or the courses are on-site or contract training.

~~F~~G. "degree" means any title, designation, mark, abbreviation, appellation, or series of letters or words, including "associate", "bachelor's", "master's", "doctor's" and their equivalents, which are generally taken to signify satisfactory completion of the requirements of a program of study designed to be comparable to those provided by institutions accredited by agencies recognized by the United States department of education.

~~G~~H. "exemption" means a written acknowledgment by the commission that an institution, organization, or other entity, has met requirements and filed pertinent information as required by the commission to provide educational services in New Mexico, without regulation by the commission.

~~H~~I. "license" means a writ-

ten acknowledgment by the commission that a private career school or non-accredited college or university has met the requirements of the commission for offering a formal educational curriculum in New Mexico.

[F-]J. "non-traditional instruction" means instruction provided in other than a traditional on-site manner involving direct contact between instructor and student(s), for example, instruction provided all or mostly through means such as correspondence, electronic delivery, or individualized or mentored study.

[F-]K. "post-secondary educational institution" includes an academic, vocational, technical, business, professional, or other school, college, or university or other organization or person offering or purporting to offer courses, instruction, training, or education, through correspondence or in person, to any person within New Mexico.

L. "presence" in the state is defined as offering courses, programs or degrees on site or from a geographical site in New Mexico or maintaining an administrative, corporate or other address in the state.

M. "qualified reviewer" means an individual who possesses educational credentials and/or experience compatible with the program being reviewed.

[K-]N. "regional accreditation" means a verified accreditation status with an accrediting agency recognized by the United States department of education that accredits degree granting institutions operating in a designated geographic region.

[F-]O. "registration" means a written acknowledgment by the commission that a private out-of-state institution, legally approved by its home state, has filed pertinent information as required by the commission to recruit students in New Mexico.

[M-]P. "work day" means a week day, Monday through Friday, that is not recognized as a federal holiday. [2-27-85, 6-30-92, 7-1-94, 9-30-96, 2-15-00, 5.100.2.7 NMAC - Rn, 5 NMAC 100.2.7, 5-15-01; A, 5/15/02]

5.100.2.10 GENERAL STANDARDS FOR LICENSURE:

A. New degree-granting institutions making application on or after September 30, 1996 will be required to obtain within three years, accreditation with the distance education and training council (DETC) or another accrediting agency recognized by the United States department of education and the commission as an authority on the quality of institutions awarding such degrees. Institutions operating prior to September 30, 1996 shall be exempt from

this requirement.

B. In addition to the information requirements specified in Section 5.100.2.9 NMAC, above, each institution licensed by the commission shall maintain and be able to produce within a time period specified by the commission any or all of the following lists for inspection by the commission or use by the commission in selecting samples to verify accuracy of the institution's files and reports:

(1) all students currently enrolled, by program of study, including separate counts for continuing education;

(2) all students admitted during each of the past two years; students on this list shall be classified as no longer enrolled, currently enrolled, and program completed as of the date that the list is prepared;

(3) all students who have been awarded government financial aid during each of the past two years, displaying the total amounts awarded to each student from grants and from loans;

(4) all students who have completed a program and received a certificate, diploma, or degree from the institution during each of the past two years, by program of study; and

(5) in the case of vocational/technical/occupational programs, a list of employers who have been active in hiring graduates of the institution during the past two years.

C. Upon approval of the commission, a licensed school may operate a branch facility in New Mexico under its current license without applying for a new license.

(1) Prior to the approval to operate a branch facility, the licensee shall provide to the commission the following information:

(a) documentation of the scope, purpose and mission of the branch facility;

(b) documentation of the geographical site of the branch facility;

(c) documentation demonstrating adequate financial support by the parent campus;

(d) evidence that all building fire and safety standards have been met;

(e) documentation of the branch manager's qualifications; and

(f) any other documentation requested in writing by the commission.

(2) The commission may deny the approval of a branch facility for any of the following reasons:

(a) failure to provide the above information;

(b) parent campus does not have adequate financial means to support a branch facility;

(c) building safety is in question;

and

(d) curriculum is substantially different from the curriculum offered at the parent campus.

(3) All branch facilities shall provide annual demographic information separate from the parent campus. [See Subsection C of 5.100.2.9 NMAC]

[2-27-85, 6-30-92, 7-1-94, 9-30-96, 2-15-00, 5.100.2.1 NMAC - Rn & A, 5 NMAC 100.2.9, 5-15-01; A, 5/15/02]

5.100.2.12 OWNERSHIP AND ADMINISTRATION OF THE INSTITUTION:

A. Principal owners and managers of institutions licensed under the act shall demonstrate their qualifications for their particular responsibilities. In assessing such qualifications, the commission will consider educational background, relevant work experience, and record of accomplishment in previous educational work settings.

B. No institution shall be licensed to operate in New Mexico that has filed bankruptcy during the past five years or that is under the control of or is managed by a person who has filed bankruptcy associated with the operation of an educational institution during the past five years.

C. An institution shall certify that no owner or manager of the institution:

(1) has been convicted of or has pled no contest or guilty to a crime involving abuse of public funds; or

(2) has controlled or managed an institution that has ceased operation during the past five years without providing for the completion of programs by its students. No institution shall be licensed to operate in New Mexico that does not provide such certification.

D. An institution shall notify the commission in writing within ten working days whenever the institution changes ownership, whenever there is a change in control of the institution, or whenever the management is changed. Following such changes continued licensure by the commission shall be subject to the commission's determination that the institution continues to meet standards for licensure.

E. No institution found to be operating illegally in another state shall be licensed to operate in New Mexico.

F. An institution which loses its legal authority to operate in another state shall be required to wait five years before making application in New Mexico.

G. Principal owners/administrators of an institution will be required to provide information regarding their prior or current association with any defunct private institutions.

H. For the purposes of the above paragraphs, "manager", "managed" and "management" shall include the chief executive officer, senior business or finance officer, senior financial aid administrator, and senior academic officer of an institution's New Mexico facility. Any institution failing to disclose information relevant to the above shall be subject to denial or revocation of its license.

[2-27-85, 6-30-92, 7-1-94, 9-30-96, 5.100.2.12 NMAC - Rn, 5 NMAC 100.2.12, 5-15-01; A, 5/15/02]

5.100.2.16 PROGRAMS, CURRICULUM, EQUIPMENT AND FACILITIES:

A. Non accredited institutions proposing to change existing programs or add new degree programs to their curriculum shall submit application to the commission for approval prior to enrolling students.

B. Accredited institutions shall be governed by their accrediting agencies in making changes or additions to their programs. The commission shall be formally notified of all program changes/additions.

C. A new applicant for licensure will be approved to offer no more than six degree programs during its first two years of operation.

D. ~~[A branch institution operating in New Mexico may only offer degree levels that can be supported by the parent campus or other branch campuses operated by the institution.]~~ Each branch which is not located in the same state as its parent campus or which does not offer substantially the same curriculum as is offered at the parent campus shall be considered to be a separate private institution and must obtain a separate license to operate.

E. For each program and course of instruction offered by an institution, a current, detailed outline, syllabus, or curriculum guide shall be available to students and to representatives of the commission from instructors or administrators of the institution. Such materials shall accurately describe the objectives, content, and methods of the program or course.

F. The objectives, content, and methods of each program and course of instruction shall meet generally accepted standards of quality, as demonstrated by endorsement of the institution's advisory committee(s) (see Section 15, above) ~~[accrediting agencies, and other qualified reviewers.]~~ and an authorized representative for an accrediting agency or other qualified reviewers as approved by the commission.

G. Any equipment and facilities utilized by a program shall be rea-

sonably current in comparison to those of other institutions and intended sites of employment, shall be sufficient for the number of students using them, and shall be appropriate to the objectives set for the program. Equipment and facilities shall meet all applicable standards for safety and sanitation.

H. For vocational/technical programs, institutions shall be able to demonstrate that each program is designed to provide training for an occupation that is recognized in New Mexico and that the training provided is sufficient in length and quality to prepare students for immediate employment in the occupation(s).

I. Evidence of satisfactory/appropriate health and fire inspections must be on file. Where inspections are not satisfactory, the institution shall have on file a corrective plan.

J. The institution should provide evidence of compliance with regulations pursuant to the American with Disabilities Act (ADA).

[2-27-85, 6-30-92, 7-1-94, 9-30-96, 5.100.2.16 NMAC - Rn, 5 NMAC 100.2.16, 5-15-01; A, 5/15/02]

5.100.2.27 ADDITIONAL STANDARDS FOR DEGREE-GRANTING INSTITUTIONS: "The commission shall promulgate and file, in accordance with the State Rules Act, rules and regulations that provide standards for the award of associate, baccalaureate, master's and doctoral degrees..." [Section 21-23-6.2.C NMSA 1978 as amended]. In addition to the general standards for licensure, institutions awarding degrees must meet the following standards.

A. Program requirements:

(1) new degree-granting institutions making application on or after September 30, 1996 will be required to obtain within three years, accreditation with the distance education and training council (DETC) or another accrediting agency recognized by the United States department of education and the commission as an authority on the quality of institutions awarding such degrees. Institutions operating prior to September 30, 1996 shall be exempt from this requirement;

(2) institutions proposing to add degree programs to their curriculum shall submit application to the commission for degree approval prior to enrolling students;

(3) associate degree programs must include both technical/vocational and general education instruction. No associate degree program shall consist of less than 60 semester credit hours of study or the equivalent;

(4) associate of applied science

degrees, associate of occupational studies degrees or comparable appellations must be based upon the institution's certification that the recipient is prepared for immediate employment in a specified career field and must be comprised primarily of technical/vocational study;

(5) associate of arts or associate of science degrees must be based upon the institution's certification that the recipient is prepared both for immediate employment in a specified career field and transfer to another institution for more advanced study. Associate of arts and associate of science degree programs will normally consist of approximately equal numbers of technical/vocational and general education courses;

(6) baccalaureate and graduate degree programs must be comparable in quality to those offered by institutions operating in New Mexico that are accredited by agencies recognized by the United States department of education as authorities regarding the quality of such degree programs. Award of degrees must be based upon the institution's certification that the recipient has met standards of performance and competency comparable to the standards of institutions so accredited;

(7) at a minimum, issuance of a baccalaureate degree shall require at least 120 semester hours of academic credit or the equivalent. The degree program must include at least 35 semester hours of general education core requirements;

(8) at a minimum, issuance of a master's degree shall require at least 30 semester hours of academic credit or the equivalent beyond a baccalaureate degree;

(9) at a minimum, issuance of a doctoral degree shall require at least 90 semester credit hours of academic credit or the equivalent beyond a baccalaureate degree or at least 60 semester credit hours or the equivalent beyond the master's degree and shall require successful completion and defense of a major independent project, involving original research or application of knowledge;

(10) the research/project shall include a review of the literature, bibliography, and citations and shall otherwise conform to a recognized writing style manual;

(11) a research/project committee composed of no fewer than three qualified readers shall review the project at various stages of development. Documentation shall be provided to support this requirement;

(12) a final defense of the project shall be required. The committee members shall be present and participate in the process. The final version of the research/project shall be accompanied by

the original signature of each committee member;

(13) the institution shall maintain a copy of the final report of the research/project and make it available upon request;

(14) the research component shall provide no more than 30 percent of the degree credit requirement; and

(15) all baccalaureate and graduate degree programs at an institution licensed by the commission must be reviewed and approved periodically by teaching faculty of the institution. In non-traditional institutions, the institution must be able to demonstrate that representatives of the teaching faculty designated by the teaching faculty have, at intervals no longer than five years, provided such review and approval for each program offered.

B. Academic support resources:

(1) an institution offering degrees shall provide or otherwise assist students in gaining access to resources needed for completion of their degree programs, including library materials, laboratories, equipment and materials, and relevant experiences needed to meet program requirements. No institution shall absolve itself from this requirement solely by referring students to the resources of other private or public institutions or facilities, except by written agreement with such institutions or facilities; and

(2) in assessing this requirement the following will apply:

(a) the institution shall have provisions for ensuring that students have access to appropriate learning resources;

(b) the institution shall ensure that resources are adequate to support the programs;

(c) the institution shall insure that students are adequately informed about learning resources available to them and how to access such resources and services;

(d) the institution shall make training available for accessing learning resources; and

(e) the institution shall ensure that resources are delivered within a reasonable period of time.

C. Credit for life experience: if an institution offers academic credit for life experience or employment related experience, the institution must have and adhere to the following requirements:

(1) applicable life experience shall be limited to work experience, military experience or a combination of the two;

(2) no more than 30 percent of the credit in a student's degree program may be awarded for life or work experience;

(3) the institution shall utilize the methodologies outlined by the council for

adult and experimental learning (CAEL) for evaluating life experience or shall have in place a comparable plan which describes procedures and requirements for the assessment of experiential learning;

(4) the institution shall maintain documentation for at least three years of all materials used to assess and award credit for experiential learning;

(5) the institution shall clearly indicate on the student degree plan the course(s) for which the experiential learning is being substituted;

(6) the institution shall evaluate extra institutional learning only in subject areas in which it has or can arrange for faculty expertise or where it can rely on nationally validated examinations or other procedures for establishing credit equivalencies; and

(7) no life experience credit shall be awarded toward the doctorate degree beyond master's level study.

D. Special requirements for non-campus-based instruction: when evaluating the suitability for licensure of institutions offering nontraditional instruction, the commission shall consider the extent to which instructional materials and procedures are:

(1) suitable for students to learn by self-direction within whatever guidance is provided by the institution;

(2) suitable for students typically admitted to the institution, considering students' reading ability, educational backgrounds, and interests;

(3) organized in a manner that assists students in mastery of the necessary information and skills required to meet the stated objectives of the program and the types of further learning or employment situations for which the student is being prepared;

(4) designed to assist students in gaining access to those materials, equipment, facilities, or experiences that are characteristic of comparable programs provided through traditional means and that are generally considered essential to earning an award for completion of such a program;

(5) designed to permit students to assess their progress and to apply knowledge learned, for example, by using student checklists, examinations, sample problems, exercises, internships or cooperative work experiences, or other means; and

(6) accompanied by valid and secure means of evaluating student performance, so that records of progress, grades, and/or awards for program completion remain comparable to those characteristic of sound traditional instructional programs.

E. Principles of good prac-

tice for electronically offered academic degree and certificate programs: quality is an essential component of the commission's agenda for higher education in New Mexico. The commission endorses the principles of good practice established by the western interstate commission for higher education (WICHE). It is expected that all distance learning courses and programs meet the following principles:

(1) each program of study results in learning outcomes appropriate to the rigor and breadth of the degree or certificate awarded;

(2) an electronically offered degree or certificate program is coherent and complete;

(3) the program provides for appropriate real-time or delayed interaction between faculty and students and among students;

(4) qualified faculty provide appropriate oversight of the program electronically offered;

(5) the program is consistent with the institution's role and mission;

(6) review and approval processes ensure the appropriateness of the technology being used to meet the program's objectives;

(7) the program provides faculty support services specifically related to teaching via an electronic system;

(8) the program provides training for faculty who teach via the use of technology;

(9) the program ensures that appropriate learning resources are available to students;

(10) the program provides students with clear, complete, and timely information on the curriculum, course and degree requirements, nature of faculty/student interaction, assumptions about technological competence and skills, technical equipment requirements, availability of academic support services and financial aid resources, and costs and payment policies;

(11) enrolled students have reasonable and adequate access to the range of student services appropriate to support their learning;

(12) accepted students have the background, knowledge and technical skills needed to undertake the program;

(13) advertising, recruiting, and admissions materials clearly and accurately represent the program and the services available;

(14) policies for faculty evaluation include appropriate consideration of teaching and scholarly activities related to electronically offered programs;

(15) the institution demonstrates a commitment to ongoing support, both

financial and technical, and to continuation of the program for a period sufficient to enable students to complete a degree/certificate;

(16) the institution evaluates the program's educational effectiveness, including assessments of student learning outcomes, student retention, and student and faculty satisfaction. Students have access to such program evaluation data; and

(17) the institution provides for assessment and documentation of student achievement in each course and at completion of the program.

F. Licensed, private degree-granting institutions may issue honorary degrees or certificates. An honorary degree/certificate shall identify in its title or name that it is an honorary degree/certificate and shall bear such on its face. [2-27-85, 6-30-92, 7-1-94, 9-30-96, 2-15-00, 5.100.2.27 NMAC - Rn & A, 5 NMAC 100.2.27, 5-15-01; A, 5/15/02]

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

This is an amendment to 8.100.130 NMAC, Section 13. This amendment repeals the prohibition of benefits to an individual convicted of a drug related felony.

8.100.130.13 VERIFICATION STANDARDS: This section details the specific types of documents to be used in establishing individual eligibility requirements.

A. Identity: Verification of identity for the individual making application is **mandatory** at application for the Food Assistance program and the financial assistance program. Documents that can be used to verify identity include:

(1) Photo ID; including driver's license

(2) Birth certificate

(3) School record

(4) Church record

(5) Hospital card

(6) Letter from community resources

(7) Additional items as listed in ISD 135. (Proof Checklist)

(8) If documentary evidence is not readily available, use other acceptable methods of verification as in 8.100.130.9 NMAC.

B. Non concurrent Receipt of Assistance

(1) Verification of nonconcurrent receipt of assistance is **mandatory**. The ISS has responsibility for verifying nonconcurrent receipt of benefits usually through government data systems or other state agencies. For Food Stamp purposes, non-receipt of Food Stamp benefits from this state or another state or receipt of Tribal commodities must be verified. For Medicaid, ineligibility to receive Medicaid benefits from this state or another state in the current month must be verified. For financial assistance, ineligibility for and non-receipt of assistance from the Supplemental Security Income (SSI) program and the Bureau of Indian Affairs - General Assistance (BIA-GA) program, TANF assistance from New Mexico tribal programs and adoption subsidies funded through Title IV-E of the Social Security Act must be verified. In addition, for Financial Assistance programs, ineligibility for and non-receipt of financial assistance from a **HSD administered program** must be verified. **NOTE:** Although not considered concurrent receipt of assistance, receipt of financial assistance benefits from another state must be considered when determining available income.

(2) Non-receipt of benefits from another state must be verified for applicants who indicate a recent move to New Mexico from another state and prior receipt of assistance from that state.

(3) Methods which can be used to verify nonconcurrent receipt of assistance include:

(a) ISD2 for non-receipt of assistance from ISD programs

(b) 198-C system for non-receipt of assistance from ISD programs

(c) State Data Exchange (SDX) for non-receipt of SSI

(d) Contact with Social Services Division for non-receipt of assistance

(e) Document from other state showing termination of benefits

(f) Collateral contact - oral statement from other state for termination of Food Stamps or Medicaid

(g) Collateral contact - oral statement from Bureau of Indian Affairs for non-receipt of BIA-GA

(h) Collateral contact - oral statement from other state for termination of Food Stamps or Medicaid

(i) Collateral contact - oral statement from Bureau of Indian Affairs for non-receipt of BIA-GA.

C. Enumeration:

(1) Verification that the enumeration requirement has been met is **mandatory**. Verification of the SSN which has been issued to the individual must be provided no later than 60 days following approval. The applicant or recipient has the responsibility

for providing the Social Security Number (SSN). The ISS has the responsibility for verifying the SSN through the following methods:

(2) When an SSN is provided:

First use the ISD2 system for verification of SSN. A tape for validation of SSN is submitted to SSA on a monthly basis. SSA returns the tape showing either validation of the SSN or a discrepancy. In the event a notification that a discrepancy exists is received from SSA, the cause for the discrepancy must be investigated. If the discrepancy, i.e., wrong name, birth date, or sex is ISD caused, the discrepancy will be corrected immediately and the SSN will be resubmitted automatically via the ISD2 system. If the discrepancy is SSA caused, the recipient should be referred to SSA to clear up the discrepancy. The recipient must clear up the discrepancy within 60 days of approval. Methods which can be used to verify that the enumeration requirement has been met include:

(a) ISD2 system validation.

(b) Social Security card (OA-702).

(c) ISD Social Security number validation report form (ISD 260).

(d) Original SSA document containing the SSN.

(e) **NOTE:** The individual who has provided his/her SSN **will not** be required to produce proof of SSN unless the SSN is found to be questionable.

(3) When an SSN is not provided: Verification that an application for SSN has been made is **mandatory**. The verification must show that an application was made prior to approval of the individual for assistance. The verification must be retained in the case record. Documents that can be used to verify an application for SSN include:

(a) SSA 2853 Enumeration at Birth form.

(b) Signed and dated statement from the hospital showing enumeration at birth has been done.

(c) Original SSA document showing an application for SSN has been made and accepted.

(d) Completed SS-5. The completed SS-5 must be dated and submitted prior to the date of approval. A copy of the completed and submitted SS-5 must be retained in the case record.

(4) **EXCEPTION:** There is no requirement of enumeration for Medicaid-Newborn (Category 31)

D. Citizenship or Eligible Alien Status:

(1) **Citizenship:** Citizenship will be verified only when questionable (as defined by Manual Section 8.100.130.12

NMAC). Documents that can be used to verify citizenship include:

- (a) Birth certificate
 - (b) Naturalization papers from the Immigration and Naturalization Service (INS) such as INS Forms I-179 or I-197.
 - (c) U.S. passport
 - (d) Military service papers
 - (e) Hospital record of birth
 - (f) Baptismal record, when place of birth is shown
 - (g) Indian census records
 - (h) INS 400 for alien children who can derive citizenship through citizen father or mother
 - (i) Additional items as listed on ISD 135, "Proof Checklist".
 - (j) If documentary evidence is not readily available, use other acceptable methods of verification as in 8.100.130.9 NMAC.
- (2) **Alien Status:** Verification of alien status is **mandatory**. Documents that can be used to verify alien status include:
- (a) INS Form I-151 or I-551, Alien Registration Receipt Card;
 - (b) Re-entry Permit, a passport booklet for lawful permanent resident aliens; INS Form I-181-B stamped with annotation "Processed for I-551, Temporary Evidence of Lawful Admission for Permanent Residence";
 - (c) INS Form I-94 if annotated with either (a) one of these sections: 207, 208, 212(d)(5) or 243(h) of the Immigration and Naturalization Act; or (b) one of or a combination of the following terms: refugee, parolee, paroled, or asylum;
 - (d) INS Form I-94 is annotated with Section 203(a)(7) of the Immigration and Naturalization Act if issued prior to April 1, 1980;
 - (e) INS Form G-641, Application for Verification of Information from Immigration and Naturalization Service Records when properly annotated at the bottom by an INS representative as evidence of lawful admission for permanent residence or parole for humanitarian reasons;
 - (f) Other forms of documentation or corroboration from INS that the alien is classified pursuant to section 101(a)(15), 101(a)(20), 203(a)(7), 207, 208, 212(d)(5), 243 or 249 of the Immigration and Naturalization Act;
 - (g) Other conclusive evidence such as a court order stating that deportation has been withheld pursuant to section 243(h) of the Immigration and Naturalization Act;
 - (h) INS Form I-94 if stamped "Cuban/Haitian Entrant (Status pending). Reviewable January 15, 1981".
 - (i) **NOTE:** An INS Form I-94 annotated with the letters (A) through (L) is

evidence of **ineligible alien status** unless the household can show other evidence from INS that indicates that the alien is eligible.

(j) If the INS Arrival-Departure Record does not bear any of the above annotation and the alien has no other verification of alien classification, he or she is to be advised that:

(i) an Application for Verification of Information from Immigration and Naturalization Service Records should be submitted to INS;

(ii) classification under Sections 203 (a)(7), 207, 208, 212(d)(5), or 243(h) of the Immigration and Nationality Act result in eligible status;

(iii) the alien may be eligible if acceptable verification is obtained; and

(iv) the alien may contact INS or otherwise obtain the necessary verification, or if the alien wishes and signs a written consent, the ISS may contact INS to obtain clarification of the alien's status; or

(v) if the alien does not wish to contact INS, the household is to be given the option of withdrawing the application or participating without the member.

(k) The ISS will accept the Application for Verification of Information from Immigration and Naturalization Services Record when the form is properly annotated at the bottom by an INS representative as evidence of lawful admission for permanent residence of parole for humanitarian reasons.

(3) Systematic Alien Verification for Entitlement

(a) For Food Stamps, financial assistance and Medicaid purposes, all applicants who indicate eligible alien status will be subject to verification through the Systematic Alien Verification Entitlement (SAVE) system. SAVE is a computerized access program which checks an alien's immigration documentation against the INS data base of information on legal permanent resident aliens.

(b) If the data corresponds to the information regarding alien status provided by the applicant, eligible alien status is considered to exist and no further information is necessary. If, however, the applicant's information does not correspond to SAVE data, additional verification of eligible alien status is required. The completion of additional verification guarantees that a denial is not based solely on the results of the SAVE program.

E. Residence

(1) Verification of New Mexico residence is **mandatory**. Usually residence can be verified through receipt of documentary evidence provided for the purpose of

verifying shelter and/or utilities expenses. In some circumstances, however, the applicant or recipient will not have a permanent shelter arrangement and documentary evidence of this sort will not be available. Lack of evidence of a permanent shelter arrangement shall not in itself be grounds to deny eligibility for lack of New Mexico residence.

(2) Other documents that can be used to verify residency include:

- (a) Rent or mortgage receipt
- (b) Statement from landlord
- (c) Utility bills
- (d) Statement from employer
- (e) Employment records
- (f) Tax office records
- (g) Post office records
- (h) Church or synagogue records
- (i) utility company records
- (j) School records
- (k) Proof of ownership of property

(l) Current driver's license

(m) Canceled letters

(n) Additional items as listed on ISD 135, "Proof Checklist"

(3) If documentary evidence is not readily available, use other acceptable methods of verification as in 8.100.130.9 NMAC.

F. Household

Composition: The applicant's/recipient's statement regarding household composition will be accepted **unless** the statement is determined to be questionable as defined by 8.100.130.12 NMAC. Only then will household composition be verified. Documents that can be used to verify household composition include:

- (1) Lease agreement listing household members
- (2) Landlord's written statement of household composition
- (3) Additional items as listed on ISD 135, "Proof Checklist"

(4) If documentary evidence is not readily available, use other methods of verification as in 8.100.130.9 NMAC.

G. Age / School Attendance

(1) **Age of Child:** Verification of age of children is **mandatory** for FA and Medical Assistance for Children programs

(a) **For Financial Assistance:** Age of the child is verified prior to approval.

(b) **For Medical Assistance for Children:** Age of the child is verified to determine if the child is under the specified age limit.

(2) **Age of Adults:** Age of adult members is verified in the following circumstances if age is questionable.

- (a) **Food Stamps**

(i) If the individual is claiming a medical deduction on the basis of age (60 and over);

(ii) If the individual is working and income is being disregarded due to age (under age 18)

(b) Financial Assistance

(i) If the parent/caretaker relative is being considered for work program participation on the basis of being a minor parent and the parent claims to be age 20 or over;

(ii) If the parent is living in his/her parent's home and is claiming emancipation on the basis of age (18 or over);

(iii) If the parent/caretaker relative is not living in his/her parents' home and cooperation with child support enforcement is an issue due to age of the specified relative (under 18);

(iv) If the caretaker relative, parent or other adult member claims exemption from work program participation requirements based on age (60 and over).

(c) General Assistance for the Disabled

(i) If the individual is claiming to be 18 or over and evidence is to the contrary;

(ii) If the individual is claiming to be under age 65 and evidence is to the contrary;

(d) For Medical Assistance for Pregnant Women:

(i) If the pregnant woman is living in his/her parent's home and is claiming emancipation on the basis of age (18 or over);

(ii) If the pregnant woman is under the age of 18 and is not living in his/her parents' home and cooperation with child support enforcement is an issue.

(e) Documents that can be used to verify age include:

(i) Birth certificate
 (ii) Adoption papers or records

(iii) Hospital or clinic records

(iv) Church records
 (v) Baptismal certificate

(vi) Bureau of Vital Statistics records

(vii) U.S. passport records
 (viii) Indian census records

(ix) Local government records

(x) Immigration and Naturalization records

(xi) Social Security records

(xii) School records

(xiii) Census records
 (xiv) Court support order

(xv) Physician's statement

(xvi) Juvenile Court records

(xvii) Voluntary social service agency records

(xviii) Insurance policy
 (xix) Minister's signed statement

(xx) Military records

(xxi) Driver's license
 (xxii) Additional items as listed on ISD-135, "Proof Checklist"

(xxiii) If documentary evidence is not readily available, use other acceptable methods of verification as in 8.100.130.9 NMAC.

(3) School Attendance:

Verification of school attendance for all children age 6 and older is **mandatory** for the financial assistance program. Documents that can be used to verify school attendance include:

(a) Written statement from school official

(b) Current report card

(c) Additional items as listed on ISD 135, "Proof Checklist"

(d) If the preceding documentary evidence is not readily available, other acceptable methods of verification are set forth in 8.100.130.9 NMAC.

H. Relationship:

Verification of relationship is **mandatory** in the financial assistance program.

The relationship between the parent or other caretaker relative and each child included in the benefit group must be verified. Documents that can be used to verify relationship include:

(1) Birth certificate

(2) Adoption papers or records

(3) Indian census records

(4) Bureau of Vital Statistics or local government records

(5) INS records

(6) Hospital or public health records of birth and parentage

(7) Baptismal records

(8) Marriage certificate showing legal marriage between parents

(9) Court records of parentage such as support orders, divorce decrees, etc.

(10) Juvenile Court records

(11) Paternity records from CSED

(12) ISD Acknowledgment of paternity form

(13) CSED Acknowledgment of Paternity packet for alleged or non-court ordered determined parents living with children

(14) Church records including a statement from a priest, minister, etc.

(15) Additional items as listed on ISD 135, "Proof Checklist"

(16) If documentary evidence is not readily available, use other acceptable methods of verification as set forth in 8.100.130.9 NMAC.

(a) The documentary evidence must contain the names of both the child and the specified relative. When the last name of the child differs from the specified relative, the difference must be resolved and documented in the case record. Divorce papers or marriage licenses can be used to help establish the relationship when the child's last name differs from the last name of the specified relative. For example, the child resides with a sister who uses her married name. The sister provides her birth certificate and the child's baptismal certificate. The sister also provides her marriage certificate to clearly resolve the difference in last names.

(b) If the relative is other than a parent, the relationship must be traced. **For example**, in a situation where the child is living with a maternal aunt, it will be necessary to verify the relationship of the child to the mother and the mother to her sister.

(c) In situations involving both parents in the home and the father is not the legal father, i.e., paternity has not been established by operation of law or determined **through a court order**, it will be necessary to establish relationship of the child to the father by completion of the CSED acknowledgment of paternity packet.

(d) If the child is living with a relative of the alleged father, it will also be necessary to establish the father-child relationship. The preferred method of proving the relationship will be through acknowledgment of paternity, although other documents will be acceptable means of establishing relationship.

I. Other

(1) Work Availability:

Eligibility with respect to work availability is established based on client statement, provided there is no evidence to the contrary. Evidence to the contrary would include any indication by the client that he or she is unable to participate in work program activities because of other commitments.

(2) Fraud Conviction for Dual State Receipt of Benefits:

The existence of a fraud conviction for simultaneous receipt of benefits from two states is determined based upon client statement on the application form. If the ISS receives other information indicating the existence of a dual state benefit fraud conviction, the worker will verify it by contacting appropriate authori-

ties.

~~[(3) Drug Related Felony: The existence of a drug related felony is determined based upon client statement on the application form. If the ISS receives other information indicating the existence of a drug related felony, the worker will verify it by contacting appropriate authorities.]~~

~~[(4) (3) Fleeing Felon and Probation or Parole Violator: Whether an individual is a fleeing felon or a probation/parole violator is determined based upon client statement on the application form. If the ISS receives other information indicating that the individual is a fleeing felon, the worker will verify it by contacting appropriate authorities. The worker need not notify the individual of the report, nor request his or her permission to verify the information with appropriate law enforcement agencies. [07/01/97, 04/01/98; 8.100.130.13 NMAC - Rn, 8 NMAC 3.ISD.136, 04/13/2001; A, 05/15/2002]~~

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

This is an amendment to 8.102.410 NMAC, Section 15. This amendment repeals the prohibition of cash assistance benefits to an individual convicted of a drug-related felony.

8.102.410.15 PROGRAM DISQUALIFICATIONS

A. Dual State Benefits: Any individual who has been convicted of fraud for receiving TANF, Food Stamps, Medicaid, or SSI in more than one state at the same time shall not be eligible for inclusion in the cash assistance benefit group for a period of 10 years following such conviction. The conviction must have occurred on or after August 22, 1996.

[B. Individuals Convicted of Drug Related Felony:

~~(1) An individual convicted of a drug related felony on or after August 22, 1996 shall not be eligible for inclusion in a cash assistance benefit group for a period of five years following the date of release from the correctional facility, or during the probation period, or for five years following the completion of the terms of probation.~~

~~(2) An individual who is ineligible due to a drug related felony may receive NMW work program services, but not cash assistance, if the Department, in consultation with the Corrections Department, determines that work program services would enhance the individual's rehabilita-~~

~~tion and employment success.]~~

~~[C.] B. Fugitive and Probation and Parole Violators: An individual who is a fugitive felon or who has been determined to be in violation of conditions of probation or parole shall not be eligible for inclusion in the cash assistance benefit group.~~

~~[8.102.410.15 NMAC - Rp 8.102.410.15 NMAC, 07/01/2001; A, 05/15/2002]~~

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

This is an amendment to 8.139.400 NMAC, Section 12. This amendment repeals the prohibition of Food Stamp benefits to an individual convicted of a drug related felony.

8.139.400.12 I N E L I G I B L E HOUSEHOLD MEMBERS: The following individuals shall be included as household members for the purpose of defining a household, but shall not be included as eligible members when determining the household's size, comparing the household's monthly income with the income eligibility standard, or assigning a benefit amount by household size.

A. Excluded Household Members:

(1) Ineligible Aliens: Individuals who do not meet citizenship or eligible alien status requirements, or eligible sponsored alien requirements. The income and resources of such individuals shall be counted in determining the household's eligibility and benefit amount in accordance with the requirements in Subsection C of 8.139.520.10 NMAC.

(2) Ineligible Students: Individuals enrolled in an institution of higher education who are ineligible because they do not meet the student eligibility requirements in Subsection A of 8.139.400.11 NMAC. Ineligible students are considered as non-household members in determining the household's eligibility and benefit amount. Income and resources are considered in accordance with the requirements in Subsection D of 8.139.520.10 NMAC.

B. D i s q u a l i f i e d Household Members:

(1) SSN Disqualified: Individuals who are disqualified for refusal or failure to provide a Social Security Number.

(2) Work Noncompliance: Individuals who have been disqualified for failure or refusal to comply with work

requirements.

(3) IPV: Individuals disqualified for an Intentional Program Violation.

~~[C. D r u g Disqualifications: An individual convicted under a federal or state law of any offense which is classified as a felony by the law of the jurisdiction involved, and which has as an element the possession, use, or distribution of a controlled substance (as defined in section 102(6) of the Controlled Substances Act [21 U.S.C. 802(6)]), shall be permanently ineligible to participate in the Food Stamp Program. An individual who receives SSI, and is ineligible to participate because of a drug related felony conviction, shall not be eligible and shall not be included in the household based on categorical eligibility requirements of the Food Stamp Program.~~

~~(1) Effective Date: Disqualification shall not apply to convictions which occurred on or before August 22, 1996.~~

~~(2) Household Declaration: Each applicant for food stamp benefits is required, during the application process, to state in writing whether the applicant or any other household member, has been convicted of possession, use or distribution of a controlled substance.~~

~~(3) Treatment of Income and Resources: The income and resources of a disqualified individual shall be considered in their entirety to the household while the individual remains in the home.]~~

~~[D.] C. Disqualification for Fleeing Felons and Probation/Parole Violators: No member of an otherwise eligible household shall be eligible to participate in the FSP as a member of the household during any period in which the individual is:~~

~~(1) Fleeing to avoid prosecution, or custody or confinement after conviction, under the law of the place from which the individual is fleeing, for a crime or attempt to commit a crime, that is a felony, or in New Jersey a high misdemeanor, under the law of the place from which the individual is fleeing; or~~

~~(2) Violating a condition of probation or parole imposed under a federal or state law.~~

(3) Treatment of Income and Resources: The income and resources of an individual described in Paragraphs (1) and (2) of Subsection [D] C of 8.139.400.12 NMAC shall be attributed in their entirety to the household while the individual is in the home.

[02/01/95, 10/01/95, 05/15/97; 8.139.400.12 NMAC - Rn, 8 NMAC 3.FSP.404, 05/15/2001; A, 02/01/2002; A, 05/15/2002]

**NEW MEXICO
HUMAN SERVICES
DEPARTMENT**

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.202.400 NMAC, Section 18, which will be effective on May 15, 2002. The Medical Assistance Division removed subsection B in section 18 in reference to individuals convicted of a drug related felony.

**8.202.400.18 PROGRAM DIS-
QUALIFICATIONS:**

A. Dual State Benefits:

Any individual who has been convicted of fraud for receiving TANF, Food Stamps, Medicaid, or SSI in more than one state at the same time is not eligible for inclusion in the JUL Medicaid assistance group for a period of 10 years following such conviction. The conviction must have occurred on or after August 22, 1996.

~~**B. Individuals Convicted of a Drug Related Felony:** Individuals convicted of a drug related felony on or after August 22, 1996, are not eligible for inclusion in a JUL Medicaid assistance group for a period of five years following the date of release or completion of the terms of probation.~~

~~**C. Fugitive and Probation and Parole Violators:** An individual who is a fugitive felon or who has been determined to be in violation of conditions of probation or parole is not eligible for inclusion in the JUL Medicaid assistance group.~~

**End of Adopted Rules and
Regulations Section**

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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
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Issue Number 20	October 16	October 31
Issue Number 21	November 1	November 14
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Issue Number 23	December 2	December 13
Issue Number 24	December 16	December 30

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