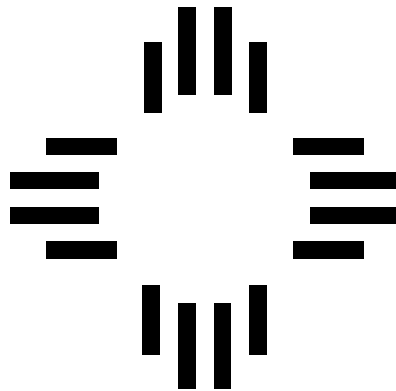


# **New Mexico Register**

**Volume XIII, Issue Number 15**  
**August 15, 2002**



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

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Administrative Law Division  
2002

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# New Mexico Register

Volume XIII, Number 15

August 15, 2002

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### Adopted Rules and Regulations

#### Effective Date and Validity of Rule Filings

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

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Please note that the (\*) entries obey the reformatting rules set forth in 1.24.10 NMAC, effective 2/29/00

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

## Notices of Rulemaking and Proposed Rules

### NEW MEXICO CONSTRUCTION INDUSTRIES COMMISSION

#### CONSTRUCTION INDUSTRIES COMMISSION

Notice is hereby given that the Construction Industries Commission will hold a regular meeting on Friday, August 23, 2002 at 9:30 a.m., at the RLD Main Conference Room, 725 St. Michael's Drive, Santa Fe, New Mexico. The Commission will consider pending agenda items and discuss such other business as may require formal action by the Commission. Anyone who requires special accommodations is requested to notify the Commission at 725 St. Michael's Drive, Santa Fe, New Mexico 87501 of such needs at least ten days prior to the meeting.

### NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

#### NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 1:30 p.m., on September 12, 2002, at the State Capitol, Room 303 (corner of Paseo de Peralta and Don Gaspar), Santa Fe, New Mexico. The subject of the hearing will be School-Based Services for Recipients Under Twenty-One Years of Age

School-Based Services for Recipients under Twenty-One Years of Age (MAD-747) will be changed to incorporate additional direct health care services by adding Registered Nurses (RNs), Licensed Professional Clinical Counselors (LPCCs), Licensed Marriage and Family Therapists (LMFTs), and Psychiatric Clinical Nurse Specialists (CNSs) to the list of direct service providers. Language has also been corrected for clarification.

Interested persons may testify or submit written comments no later than 5:00 p.m., September 12, 2002, to Robin Dozier Otten, Secretary-Designate, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in any HSD public hearing,

program or services, please contact the NM Human Services Department toll-free at 1-888-997-2583, in Santa Fe at 827-3156, or through the department TDD system, 1-800-609-4833, in Santa Fe call 827-3184. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

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

### NEW MEXICO BOARD OF INTERIOR DESIGN

#### Public Rule Hearing

The New Mexico Board of Interior Design will convene a public rule hearing on Monday, September 23, 2002. The hearing will begin at 1:00 pm, at the New Mexico State Bar, 5121 Masthead NE, Albuquerque, New Mexico. The purpose of the rule hearing is to amend Part 5 - Fees of the existing rules and regulations, renumbering and reformatting pursuant to NMAC.

### NEW MEXICO STATE PERSONNEL BOARD

#### NOTICE OF RULE MAKING AND PUBLIC HEARING STATE PERSONNEL BOARD

The State Personnel Board will hold a public hearing at the regular meeting on October 4, 2002, at 9:00 a.m., at the State Personnel Office, Auditorium, 2600 Cerrillos Road, Santa Fe, New Mexico, to consider formal repeal, replacement and adoption of new and reformatted rules to be included within *1.7.1 NMAC, General Provisions, 1.7.2 NMAC, Classified Service Appointments, 1.7.3 NMAC, Classification, 1.7.4 NMAC, Pay, 1.7.5 NMAC, Recruitment, Assessment and Selection 1.7.8 NMAC, Drug and Alcohol Abuse, 1.7.9 NMAC, Performance Appraisals, 1.7.10 NMAC, Furlough, Reduction in Force, Reemployment, 1.7.11 NMAC, Discipline and 1.7.12 NMAC, Adjudication*, pursuant to *1.7.13 NMAC*. Copies of the proposed rule amendments can be picked up at the State Personnel Office, or viewed on

the State Personnel Office web site: <http://www.state.nm.us/spo/>.

This meeting is being called in accordance with the Open Meetings Act and the State Personnel Board Open Meetings Resolution dated February 16, 2001.

All interested parties may attend and present their views or submit written comments. Written comments should be received no later than 5:00 p.m. on September 16, 2002, and should be directed to: Office of the Director, State Personnel Office, P.O. Box 26127, 2600 Cerrillos Road, Santa Fe, New Mexico 87505-0127, Phone Number (505) 476-7805, or e-mailed to: [linda.abeyta@state.nm.us](mailto:linda.abeyta@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 or meeting, please contact the Office of the Director, State Personnel Office at 476-7805 or 476-7761 at least one week prior to the meeting or as soon as possible. Public documents, including agenda and minutes, can be provided in various accessible formats. Please contact the Office of the Director if a summary of other type of accessible format is needed.

#### GIP BROWN

State Personnel Director

### NEW MEXICO COMMISSION OF PUBLIC RECORDS

#### NOTICE OF REGULAR MEETING

The New Mexico Commission of Public Records has scheduled a regular meeting for Tuesday, August 27, 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 August 13, 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**  
**The following record retention and dis-**

position schedules will be presented to the Commission of Public Records for consideration and adoption:

## NEW

1.18.605 NMAC, ERRDS, Martin Luther King, Jr. Commission

## AMENDMENTS

1.17.244 NMAC, JRRDS, Bernalillo County Metropolitan Court

1.19.3 NMAC, LGRDS, Office of the County Clerk

## REPEALS

1.18.379 NMAC, ERRDS, Public Employee Labor Relations Board

1.18.630 NMAC, ERRDS, Human Services Department

## REPLACE

1.18.630 NMAC, ERRDS, Human Services Department

**NEW MEXICO  
DEPARTMENT OF  
PUBLIC SAFETY**

TRAINING AND  
RECRUITING DIVISION  
LAW ENFORCEMENT ACADEMY

**NEW MEXICO DEPARTMENT OF  
PUBLIC SAFETY**  
NEW MEXICO LAW ENFORCEMENT  
ACADEMY  
TRAINING & RECRUITING DIVISION  
4491 CERRILLOS ROAD  
SANTA FE, NM 87507-9721

**NOTICE OF NMLEA BOARD MEET-  
ING AND PUBLIC HEARINGS**

The New Mexico Law Enforcement Academy Board will hold a regularly scheduled Board meeting on Thursday, September 19, 2002, at 10:00 a.m., at The University of New Mexico - Gallup (Gallup Campus Auditorium, 200 College Road), Gallup, New Mexico 87301.

In conjunction with the Board meeting, there will be Public Hearings regarding the following rules:

*Subsection C of 10.29.1.11  
NMAC (OFFICER MISCONDUCT  
REPORTING)*

Subsection A, B of 10.29.9.19  
NMAC (CONTINUATION OF CERTIFI-  
CATION AFTER SEPARATION)

Copies of proposed plans, standards, requirements, or rules may be obtained by calling Lee Lopez at (505) 827-9255.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or

any form of auxiliary aid or service to attend or participate in the hearing or meeting, please call, (505) 827-9255, as soon as possible. Public documents can be provided in various accessible formats.

Please contact the Law Enforcement Academy if additional information is needed.

**NEW MEXICO  
REGULATION AND  
LICENSING DEPARTMENT**

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

Public Meetings to receive comments regarding the adoption of:

1. 2000 International Residential Code, 2000 International Building Code and Proposed Amendments.
2. Multiplier to be applied to Exam Fees.

will be held as follows:

· **Santa Fe, NM** – September 16, 2002, 9:00 a.m. – 12:00 Noon  
At CID Conference Room, 725 St. Michael's Drive

· **Albuquerque, NM** – September 17, 2002, 9:00 a.m. – 12:00 Noon  
At CID Conference Room, 2nd Floor, 1650 University Blvd. NE

· **Las Cruces, NM** – September 18, 2002, 9:00 a.m. – 12:00 Noon  
At CID Conference Room, 505 S. Main, Suite 150

· **Roswell, NM** – September 19, 2002, 9:00 a.m. – 12:00 Noon  
At City Council Chambers, 425 N. Richardson

· **Farmington, NM** – September 20, 2002, 9:00 a.m. – 12:00 Noon  
Civic Center Board Room, 200 W. Arrington

You are invited to attend and express your opinion of the adoption of the above referenced draft codes. If you cannot attend the meeting, you may send your written comments to the General Construction Bureau, Construction Industries Division, 725 St. Michael's Drive, P.O. Box 25101, Santa Fe, New Mexico 87504. Telephone (505) 827-

7030. FAX (505) 827-7045. All comments must be received no later than 5:00 p.m., September 23, 2002.

Copies of the draft codes are available at the Construction Industries Division Offices at the above address.

**If you require special accommodations, please notify the Division of such needs no later than September 9, 2002.**

**End of Notices and Proposed  
Rules Section**

## Adopted Rules and Regulations

### NEW MEXICO DEPARTMENT OF AGRICULTURE

**TITLE 21 AGRICULTURE  
AND RANCHING  
CHAPTER 17 PEST, DISEASE,  
AND WEED CONTROL  
PART 43 SOUTH CENTRAL  
NEW MEXICO PINK BOLLWORM  
CONTROL COMMITTEE ASSESS-  
MENT**

**21.17.43.1 ISSUING AGENCY:** South Central New Mexico Pink Bollworm Control Committee.  
[21.17.43.1 NMAC - N, 08/15/2002]

**21.17.43.2 SCOPE:** This rule establishes the control committee assessment to be paid by cotton producers in the South Central New Mexico Pink Bollworm Control District.  
[21.17.43.2 NMAC - N, 08/15/2002]

**21.17.43.3 STATUTORY AUTHORITY:** Granted to the South Central New Mexico Pink Bollworm Control Committee under the Pink Bollworm Control Act, Chapter 76, Article 6B, Sections 1 through 12, NMSA 1978 Compilation.  
[21.17.43.3 NMAC - N, 08/15/2002]

**21.17.43.4 DURATION:** Until the South Central New Mexico Pink Bollworm Control District ceases to exist.  
[21.17.43.4 NMAC - N, 08/15/2002]

**21.17.43.5 EFFECTIVE DATE:** August 15, 2002, unless a later date is cited in the history note at the end of a section.  
[21.17.43.5 NMAC - N, 08/15/2002]

**21.17.43.6 OBJECTIVE:** The objective of Part 43, Chapter 17 is to establish the control district's assessment upon cotton producers for the support of the pink bollworm control district.  
[21.17.43.6 NMAC - N, 08/15/2002]

**21.17.43.7 DEFINITIONS:**

**A.** "Committee" means South Central New Mexico Pink Bollworm Control Committee.

**B.** "Control District" means South Central New Mexico Pink Bollworm Control District.

**C.** "Producer" means any person producing five or more acres of cotton plants.

**D.** "Bt cotton" means

genetically-engineered cotton that contains toxins derived from *Bacillus thuringiensis* effective against Pink Bollworm.  
[21.17.43.7 NMAC - N, 08/15/2002]

**21.17.43.8 ASSESSMENT:**

**A.** The committee assessment rate is set forth at 10 dollars (\$10) per bale of conventional cotton produced by producers in the control district. The assessment will be collected at the gin. No assessment is due for Bt cotton produced within the control district.

**B.** Bt cotton will be verified by the control district. Any discrepancies will be decided by the control committee.

**C.** Payment of the assessment levied by a local control committee against a cotton producer will be due and payable when the cotton producer receives an assessment statement from the control committee or their authorized agent.

**D.** Failure to comply with payment of assessment to the committee may result in the recording of a lien on the cotton crop and/or property in the County Clerk's office where the property is located. The lien will remain in effect until foreclosure or balance subject to the lien is paid in full. Interest may be assessed at a rate of 8 1/2 percent per annum on the balance unpaid after 30 days.  
[21.17.43.8 NMAC - N, 08/15/2002]

**HISTORY of 21.17.43 NMAC:**  
[RESERVED]

### NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.30.6 NMAC, section 11.

**19.30.6.11 PROCEDURES FOR CONDUCTING PREVENTIVE COUGAR CONTROL IN BIGHORN SHEEP RANGES.**

**A.** The New Mexico Department of Game and Fish will conduct preventive cougar control within bighorn sheep ranges in the Manzano, Ladron, Peloncillo, Hatchet, Animas, ~~and~~ Alamo Hueco, and San Andres Mountains for 5 years beginning October 1, 1999. Bighorn sheep ranges include Mesa Sarca and the entire Ladron Mountains to the south side of the Rio Salado in Game Management Unit 13 except that portion on the Sevilleta National Wildlife Refuge; that portion of the Manzano Mountains in Game

Management Unit 14 from Commanche Canyon south to US Highway 60 and from the western base of the mountains east to the ridge comprised of Capilla, Osha and Manzano peaks and all of Sand, Priest and Abo canyons; all of the San Andres Mountain Range within Unit 19; and all of Units 26 and 27.

**B.** The maximum number of cougars removed per year (October 1-September 30) from bighorn ranges will not be limited. Cougars taken from within the bighorn ranges by hunters during the sport harvest season will not be considered part of the quota.

**C.** The Department will obtain the services of houndsmen or trappers either from the Department's depredation list or through private contract to take up to the allowable number of cougars within the bighorn ranges that are not taken by hunters during the sport harvest season

**D.** A decision to hunt with hounds or to use snares will be made by Department personnel.

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

**F.** At the conclusion of the 5 year period, an evaluation of the effectiveness of preventive control of cougars in improving the condition of the bighorn sheep populations will be made.

[5-14-99, 9-15-99; 19.30.6.11 NMAC - Rn, 19 NMAC 30.6.11, 2-14-01; A, 11-30-01; A, 08-15-02]

### NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an emergency order to 19.31.4 NMAC.

**19.31.4.19 EMERGENCY ORDER FOR FISH SALVAGE:** Under authority of 19.31.10.18 promulgated by the State Game Commission on September 15, 1994, I, LARRY G. BELL, Director of the Department of Game and Fish, hereby declare that an emergency exists in Power Dam Lake in Guadalupe County and Bear Canyon Lake in Grant County to the extent that fish life will be destroyed by drying out of these lakes due to required water releases. Therefore, the method and manner of taking game fish will be relaxed to grappling, spears, gigs, bows, and seines for all licensed anglers and unlicensed juvenile anglers under the age of 12 years, with daily bag and possession limits mandated by regulation also being relaxed. Bag limits on sport fish will be unlimited. This relaxation

will go into effect at 12:01 a.m., August 1, 2002, and will remain in effect through 11:59 p.m., September 15, 2002.

**NEW MEXICO  
DEPARTMENT OF  
GAME AND FISH**

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

**19.31.5.1 ISSUING AGENCY:**  
New Mexico Department of Game and Fish.

[19.31.5.1 NMAC - Rp, 19.31.5.1 NMAC, 8-15-2002]

**19.31.5.2 SCOPE:** Hunters of Upland Game. Additional requirements may be found in Chapter 17 NMSA 1978 and Chapters 30 and 32 through 36 of Title 19.

[19.31.5.2 NMAC - Rp, 19.31.5.2 NMAC, 8-15-2002]

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

[19.31.5.3 NMAC - Rp, 19.31.5.3 NMAC, 8-15-2002]

**19.31.5.4 DURATION:** August 15, 2002-March 31, 2003.

[19.31.5.4 NMAC - Rp, 19.31.5.4 NMAC, 8-15-2002]

**19.31.5.5 EFFECTIVE DATE:**  
August 15, 2002 unless a different date is cited at the end of individual Sections.

[19.31.5.5 NMAC - Rp, 19.31.5.5 NMAC, 8-15-2002]

**19.31.5.6 O B J E C T I V E :**  
Establishing seasons on Blue-winged Teal, Green-winged Teal, Cinnamon Teal, pheasant, Blue Grouse, Lesser Prairie-Chicken, Montezuma quail, Northern Bobwhite, Scaled quail, Gambel's quail, Mourning dove, White-winged dove, Band-tailed Pigeon, Sandhill Crane, Abert's squirrel, Red squirrel, and setting Falconry seasons.

[19.31.5.6 NMAC - Rp, 19.31.5.6 NMAC, 8-15-2002]

**19.31.5.7 DEFINITIONS:**

A. "Area GS-1" (GS-1),

as used herein, shall mean the area bounded by the following: beginning at the New Mexico-Colorado border at I-25, south on I-25 to U.S. 285, south on U.S. 285 to N.M. 41, south on N.M. 41 to U.S. 60, west on U.S. 60 to I-25, north on I-25 to N.M. 44, northwest on N.M. 44 to the southeastern border of the Jicarilla Apache Indian Reservation, north on the Jicarilla Apache Indian Reservation border to the New Mexico-Colorado border, east to I-25.

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

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

D. "Area S-4" (S-4), as used herein, shall mean the area bounded by the following: beginning at the New Mexico-Arizona border at Four-corners south to I-40; east on I-40 to I-25; north on I-25 to N. M. 44; northwest on N. M. 44 to the southern reservation boundary of the Jicarilla Apache Reservation; north and west along the western reservation boundary to the New Mexico-Colorado border; west along the New Mexico-Colorado border to the Four-corners.

E. "Lesser Prairie-Chicken hunting area", as used herein, shall mean the area bounded by the following: beginning at the New Mexico-Texas border at U.S. 60, south along the New Mexico-Texas border to N.M. 234, west on N.M. 234 to N.M. 8, west on N.M. 8 to N.M. 176, west on N.M. 176 to U.S. 62-180, west on U.S. 62-180 to the Pecos River, north along the Pecos River to U.S. 60, east to the New Mexico-Texas Border, including all Lesser Prairie-Chicken management areas owned by the State Game Commission.

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

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

H. "Southwest New Mexico Sandhill Crane hunt area (South West)", as used herein, shall mean that area bounded on the south by the New Mexico/Mexico border; on the west by the

New Mexico/Arizona border north to Interstate 10; on the north by Interstate 10 east to U.S. 180, north to N.M. 26, east to N.M. 27, north to N.M. 152, and east to Interstate 25; on the east by Interstate 25 south to Interstate 10, west to the Luna County line, and south to the New Mexico/Mexico border.

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

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

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

L. "Non-toxic shot", as used herein, shall mean that non-toxic shot approved for use by the U. S. Fish and Wildlife Service.

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

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

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

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

[19.31.5.7 NMAC - Rp, 19.31.5.7 NMAC, 8-15-2002]

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



2002-2003 season: all dates are 2002 unless otherwise specified.

<u>SPECIES</u>	<u>OPEN AREAS</u>	<u>SEASON OPEN</u>	<u>DAILY BAG LIMIT</u>
Teal	Central Flyway portion of state	Sept. 21-29	4 (singly or in aggregate)
Pheasant	Statewide, excluding Valencia County	Dec. 12-15	3(males)
	Valencia County	Dec. 14	3(males)
Youth-only Pheasant hunt *See information; Section 19.31.5.14	Seven Rivers WMA	Dec. 7	3(males)
Pheasant (special permit) *See information; Section 19.31.5.14	Seven Rivers WMA and W.S. Huey WMA	Dec. 14	3(males)
Blue Grouse	GS-1	Sept. 1-30	3
	GS-2	Oct. 1-31	3
Lesser Prairie-Chicken	SEASON CLOSED		
Quail: Gambel's, scaled, Northern Bobwhite and Montezuma (Mearns)	Statewide	Nov. 15 - Feb. 15, 2003	15 (singly or in aggregate; no more than 5 shall be Mearns)
Sandhill Crane *Special permit required; See information Section 19.31.5.11	MRGV	Oct. 26-27	1 (2 per season)
	EV	Oct. 26-27	2 (4 per season)
	MRGV	Nov. 16-17	1 (2 per season)
	MRGV	Dec. 07-08	1 (2 per season)
	Southwest	Nov. 02-03 and Jan. 04-05, 2003	2 (8 per season)
	MRGV	Jan. 11-12, 2003	1 (2 per season) (Possession-6, regular and special seasons combined)
Sandhill Crane *Special permit required; See information Section 19.31.5.12	Eastern	Oct. 31- Jan. 31, 2003	3
Band-tailed Pigeon	Southwest. BPHA	Oct. 1-20	5
	Regular BPHA	Sept. 1-20	5
Dove	North zone	Sept. 1-Oct.30	15 (singly or in aggregate)
	South zone	Sept. 1-30 and Dec. 1-30	15 (singly or in aggregate)
Tree Squirrel	GS-1	Sept. 1-Oct. 31	8 (singly or in aggregate)
	GS-2	Oct. 1-Nov. 30	
	S-3	Sept. 1-Oct. 31	
	S-4	Sept. 1-Oct. 31	

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

**B.** The Brantley Wildlife Management Area (excluding the Seven Rivers Waterfowl Management Area portion, as posted) shall be open for dove, quail, pheasant, September teal, and Sandhill Crane hunting during established statewide seasons. Use of vehicles will be restricted to designated areas.

**C.** The Seven Rivers WMA shall be open for dove, quail, September teal, and Sandhill Crane hunting only on Monday, Wednesday, and Saturday during established statewide seasons. Use of vehicles will be restricted to designated areas.

[19.31.5.8 NMAC - Rp, 19.31.5.8 NMAC, 8-15-2002]

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

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

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

**C.** The Seven Rivers Waterfowl Management Area is open for hunting teal on Monday, Wednesday, and Saturday during the September Teal season.

**D.** The Brantley Wildlife Management Area is open for hunting teal each day of the September Teal season.

[19.31.5.9 NMAC - Rp, 19.31.5.9 NMAC, 8-15-2002]

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

**A.** The Edward Sargent, W. A. Humphries, Rio Chama, Urraca, Colin Neblett, Water Canyon, Marquez, and Elliot S. Barker Wildlife Management Areas shall be open for hunting species listed herein during established seasons.

**B.** The Sandia Ranger District of the Cibola National Forest shall be open to archery only hunting of species listed herein during established seasons.

**C.** The Lesser Prairie-Chicken Management Areas shall be open to hunt quail and dove during established seasons.

**D.** The Big Hatchet Mountain Wildlife Management Area shall be open for quail hunting.

[19.31.5.10 NMAC - Rp, 19.31.5.10 NMAC, 8-15-2002]

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

**A.** Six separate Sandhill Crane seasons are scheduled with up to a total of 320 permits available. The permits will be allocated by season as follows:

**(I)** 2002-2003 season:

Season Dates	Hunt Code	Hunt Location	No. of permits
October 26-27	SCR-0-101	MRGV	60
October 26-27	SCR-0-102	EV	40
November 16-17	SCR-0-103	MRGV	50
December 7-8	SCR-0-104	MRGV	50
November 2-3 and January 4-5, 2003	SCR-0-105	Southwest	60
January 11-12, 2003	SCR-0-106	MRGV	60

**(2)** [RESERVED]

**B.** Hunters participating in the MRGV seasons will be required to successfully pass a waterfowl identification examination prior to hunting. Hunters may take this examination only once per year. Hunters must have in their possession proof of successfully passing this examination while hunting.

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

**D.** While hunting Sandhill Cranes, hunters participating in these seasons must have in their possession a special permit issued by the Department.

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

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

**G.** Applications for Sandhill Crane permits shall be submitted on the appropriate application form. A six-dollar application fee shall be required by each applicant. Applicants may apply for a first and second choice of seasons. A maximum of one season will be awarded to successful applicants. The deadline date for application shall be the second Saturday in

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

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

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

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

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

[19.31.5.11 NMAC - Rp, 19.31.5.11 NMAC, 8-15-2002]

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

Hunters shall have in their possession a federal Sandhill Crane hunting permit. A person desiring a permit shall apply in person to the Department in Santa Fe, Albuquerque, Raton, Las Cruces, or Roswell, or by mail only to the Santa Fe office. Applicants shall submit their name, address, and the number of their general hunting license, or general hunting and fishing license, or small game license, or senior general hunting license, or handicapped general hunting license. There

shall be no limit on the number of federal permits available for issue.

[19.31.5.12 NMAC - Rp, 19.31.5.12 NMAC, 8-15-2002]

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

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

[19.31.5.13 NMAC - Rp, 19.31.5.13 NMAC, 8-15-2002]

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

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

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

**C.** Applications for the PHE-0-001 Youth-only, PHE-0-002 Seven Rivers WMA and PHE -0-003 W.S. Huey WMA permits shall be submitted on the appropriate application form. A six-dollar application fee shall be required by each applicant. The deadline date for application shall be the second Saturday in September. All applications must be mailed to the Santa Fe office. Applications that have been mailed and postmarked but not delivered by the deadline date will be accepted by the Santa Fe office up to 5 working days after that deadline.

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

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

**F.** It shall be unlawful to submit more than one application for a permit for the Youth-only pheasant or the spe-

cial permit Seven Rivers WMA and W.S. Huey WMA pheasant hunts. If any permits remain after the original deadline, the Director may authorize a new deadline. A person who is not awarded a permit for which he applied may submit a new application for a permit if such permits remain available.

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

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

[19.31.5.14 NMAC - Rp, 19.31.5.14 NMAC, 8-15-2002]

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

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

**B.** Hunters shall be requested to checkout at the close of each hunt date at designated check stations.

**C.** The season for the Lesser Prairie-Chicken is closed for the 2001-2002 season.

[19.31.5.15 NMAC - Rp, 19.31.5.15 NMAC, 8-15-2002]

**19.31.5.16 FALCONRY SEASONS:**

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

**(1)** 2002-2003 season, all dates are 2002 unless otherwise specified.

**(a)** The season for pheasants, Blue Grouse, quail, Abert's squirrel, and red squirrel shall be statewide and shall be open September 1 through February 28, 2003.

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

**(c)** The season for Band-tailed Pigeon shall be September 1 through December 16 for the regular hunting area and October 1 through January 15, 2003 for the southwest hunting area.

**(d)** The season for Sandhill Crane shall be in the eastern New Mexico Sandhill Crane hunt area and shall be open from October 17 through January 31, 2003.

**(e)** The season for any duck species and American Coot during the September Teal season within the Central Flyway portion of the state shall be open September 21-29.

**(2)** [RESERVED]

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

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

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

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

[19.31.5.16 NMAC - Rp, 19.31.5.16 NMAC, 8-15-2002]

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

**A.** Special Middle Rio Grande Valley and southwest Sandhill Crane seasons, hunting hours shall be sunrise to sunset.

**B.** On State Game Commission owned or managed Waterfowl Management Areas (WMA)s, as listed herein, hunting hours shall mean from one-half hour before sunrise to 1:00 p.m. except for hunting September Teal on Bernardo and La Joya WMAs where hunting hours are from one-half hour before sunrise to sunset; and for the special permit pheasant hunts on the Seven Rivers WMA, W.S. Huey WMA and the Youth-only pheasant hunt, hunting hours shall be from one-half hour before sunrise to 4pm.

[19.31.5.17 NMAC - Rp, 19.31.5.17 NMAC, 8-15-2002]

**19.31.5.18 PARTS TO REMAIN WITH EACH BIRD UNTIL STORAGE AT PERSONAL ABODE OR IN STORAGE FACILITY:** One foot shall remain attached to each quail taken until the bird

has arrived at the personal abode of the possessor or storage facility.  
[19.31.5.18 NMAC - Rp, 19.31.5.18 NMAC, 8-15-2002]

**NEW MEXICO**  
**DEPARTMENT OF HEALTH**  
HEALTH IMPROVEMENT DIVISION

7 NMAC 1.9, Caregivers Criminal History Screening Requirements, filed 8/3/98, is hereby repealed and replaced by 7.1.9 NMAC, effective 8/15/02.

**NEW MEXICO**  
**DEPARTMENT OF HEALTH**  
HEALTH IMPROVEMENT DIVISION

**TITLE 7 HEALTH**  
**CHAPTER 1 HEALTH GENERAL**  
**PROVISIONS**  
**PART 9 CAREGIVERS**  
**CRIMINAL HISTORY SCREENING**  
**REQUIREMENTS**

**7.1.9.1 ISSUING AGENCY:**  
New Mexico Department of Health.  
[7.1.9 1 NMAC - Rp 7 NMAC 1.9.1, 08/15/02]

**7.1.9.2 SCOPE:** This rule has general applicability to all caregivers and care providers in New Mexico as set forth in Subsection D of 7.1.9.7 NMAC and care providers as set forth in Subsection E of 7.1.9.7 NMAC. This rule does not apply to caregivers as set forth in Paragraph 2 of Subsection D of 7.1.9.7 NMAC and does not apply to care providers as set forth in Paragraph 2 of Subsection E. of 7.1.9.7 NMAC.  
[7.1.9 2 NMAC - Rp 7 NMAC 1.9.2, 08/15/02]

**7.1.9.3 STATUTORY AUTHORITY:** Sections 29-17-2 through 29-17-5, NMSA 1978 Amended.  
[7.1.9 3 NMAC - Rp 7 NMAC 1.9.3, 08/15/02]

**7.1.9.4 DURATION:** Permanent.  
[7.1.9 4 NMAC - Rp 7 NMAC 1.9.4, 08/15/02]

**7.1.9.5 EFFECTIVE DATE:** 08/15/02, unless a later date is cited at the end of a section.  
[7.1.9 5 NMAC - Rp 7 NMAC 1.9.5, 08/15/02]

**7.1.9.6 OBJECTIVE:** The objective of this part of Chapter 1, General

Provisions, under Title 7, Health, is to establish the requirements for complying with the Caregivers Criminal History Screening Act. Generally included within these rules are the requirements and procedures for submission of applicant and caregiver fingerprints, payment of fees, and administrative reconsideration for caregivers with a disqualifying conviction. These rules are intended to have all covered care providers meeting the requirements of the Act.

[7.1.9 6 NMAC - Rp 7 NMAC 1.9.6, 08/15/02]

**7.1.9.7 DEFINITIONS:**

**A. "act"** means the Caregivers Criminal History Screening Act, Sections 29-17-2 to 29-17-5, NMSA 1978.

**B. "applicant"** means a person who applies, and is offered employment or contractual service with, a care provider to provide services as a caregiver, whether as an employee or contractor.

**C. "care"** means the therapy, services, treatment, support, supervision, assistance with the activities of daily living, or management of a care recipient.

**D. "caregiver"** means any person whose employment or contractual service with a care provider includes direct care or routine and unsupervised physical or financial access to any care recipient serviced by that provider.

**(1) "caregiver"** includes:

(a) Compensated persons such as employees, contractors, and employees of contractors;

(b) Guardianship service providers and case management entities that provide services to people with developmental disabilities; and,

(c) Administrators or operators of facilities who are routinely on site.

**(2) "caregiver"** does not include:

(a) Persons who provide natural supports;

(b) Independent health care professionals, licensed or Medicaid certified in good standing, who are not otherwise associated with the care provider as an administrator, operator or employee, and who are involved in the treatment or management of the medical care of a care recipient such as attending or treating physicians or other health care professionals providing consultation or ancillary services; or

(c) A person who has undergone a nationwide criminal history screening by the New Mexico Children's and Juvenile Facility Criminal Records Screening Act, Sections 32A-15-1 to 32A-15-4, NMSA 1978.

**E. "care provider"** includes:

**(1) Care provider or provider** includes State owned or operated health care facilities, Intermediate care facilities for the mentally retarded, Long-term care hospitals, Psychiatric hospitals, Rehabilitation hospitals, Hospice services, Guardianship providers, Adult residential care facilities, Adult community residential facilities, Adult limited diagnostic treatment centers, Case management entities providing services to persons with developmental disabilities, Adult boarding homes, Adult day care centers, Adult family care homes, Adult halfway homes, Care providers operating respite, companion or personal care programs funded by the State Agency on Aging, Care providers funded through the New Mexico Children Youth and Families Department providing homemaker and adult care services, Disabled and Elderly residential care providers providing services paid for in whole or in part by state funds, home health agencies, all residential, habilitation service or respite service care providers authorized to be reimbursed in whole or in part by state funds or under any Medicaid or Medicaid Waiver program, Nursing home facilities, any other care provider entity which is licensed or Medicaid certified and which is not specifically identified herein.

**(2) "care provider"** does not include: Care provider or provider does not include general acute care hospitals, outpatient treatment facilities, diagnostic and treatment facilities, ambulatory surgical centers and facilities, end-stage renal dialysis and treatment facilities, rural health clinics, private physicians' offices or other clinics that operate in the same manner as private physicians' offices in group practice settings, and any care facility located at or performing services exclusively for any correctional facility.

**F. "conditional employment"** means employment pursuant to a bona fide offer of employment by a care provider to an applicant, which is contingent upon the receipt of notice from the Department that the applicants' nationwide criminal history screening indicates no existence of a disqualifying conviction, or notice from the Department following an administrative reconsideration that the applicant may be employed. This includes that period of employment during the time allowed for responding to the Departments' request for additional information in cases where the applicants' criminal history record indicates an arrest, without a clear disposition, for a crime included in the list of disqualifying convictions.

**G. "consent"** is the written acknowledgment of permission to conduct a nationwide criminal history screen-

ing. Consent also includes, with respect to the criminal history record, permission for the Department, following an attempt to obtain clarifying information from the applicant, to attribute, as a rebuttable presumption, disqualifying conviction status to any arrest for crimes that would constitute a disqualifying conviction and for which the arrest appearing on the nationwide criminal history record lacks a clear disposition.

**H. "department"** means the New Mexico Department of Health, Criminal History Screening Program.

**I. "disqualifying conviction"** means a plea, judgment or verdict of guilty or a conviction following a plea of nolo contendere, conditional plea of guilty or nolo contendere, or an *Alford* plea, in this state or from any other state to a felony crime listed in 7.1.9.11 NMAC. If a conviction may be considered in or used for sentence enhancement in a subsequent proceeding, then it is a disqualifying conviction under these rules if the conviction is for a crime listed in 7.1.9.11 NMAC.

**J. "DPS"** means the New Mexico Department of Public Safety.

**K. "nationwide criminal history screening"** means a criminal history background investigation of an applicant through the use of fingerprints reviewed by the Department of Public Safety and submitted to the Federal Bureau of Investigation, resulting in the generation of a nationwide criminal history record for that applicant.

**L. "nationwide criminal history record"** means information concerning a person's arrests, indictments, or other formal criminal charges, and any dispositions arising therefrom, including convictions, dismissals, acquittals, sentencing, and correctional supervision, collected by criminal justice agencies and stored in the computerized databases of the Federal Bureau of Investigation, the National Law Enforcement Telecommunications System, the New Mexico Department of Public Safety, or the repositories of criminal history information of other states.

**M. "natural supports"** means those resources, systems and persons that are readily available to the general community, including a care recipient, without regard to the care provider.

**N. "routine"** means, in the context of care provision or financial access by an applicant, that which is non-episodic and regularly scheduled or assigned.

**O. "unsupervised"** means, in the context of care provision or financial access, that which occurs without the on-site, visual or physical presence of another caregiver, or of a family member of

the care recipient or of another individual representing the care provider.

[7.1.9.7 NMAC – Rp 7 NMAC 1.9.7, 08/15/02]

#### **7.1.9.8 CAREGIVER EMPLOYMENT REQUIREMENTS:**

**A. General:** The responsibility for compliance with the requirements of the Caregivers Criminal History Screening Act applies to both the care provider and to all applicants and caregivers. Pursuant to the requirements of NMSA, 1978 Section 29-17-5 (Amended) Caregivers Criminal History Screening Act a Care Provider's failure to comply is grounds for the state agency having enforcement authority with respect to the care provider to impose appropriate administrative sanctions and penalties.

**B. Conditional Employment:** All applicants for employment to whom an offer of employment is made, or employees and caregivers employed by or contracted to a care provider must consent to and submit consent form documents, personal identification documents, fingerprints and fees required for a nationwide criminal history screening. Applicants who have submitted all completed documents and paid all applicable fees for a nationwide criminal history screening may be deemed to have conditional employment pending receipt of written notice given by the Department as to whether the applicant has a disqualifying conviction.

**C. Exception:** Excepted from the requirement for a nationwide criminal history screening are applicants for whom a determination was made under the requirements of the Caregivers Criminal History Screening Act within the previous 12 months that the applicant's criminal history record did not reflect a disqualifying conviction; or applicants for whom an employment clearance determination was made under the requirements of the Caregivers Criminal History Screening Act pursuant to a request for administrative reconsideration within the previous 12 months.

**D. Application:** In order for a nationwide criminal history record to be obtained and processed, the following must be submitted to the Department on forms provided by the Department:

(1) a form containing personal identification which has a photograph of the person and which meets the requirements for employment eligibility in accordance with the Immigration and Nationality Act as amended. A reasonable xerographic copy of a drivers license photograph will suffice under Subsection D of 7.1.9.8 NMAC.

(2) signed authorization for Release of Information; and

(3) two (2) complete sets of readable fingerprint cards (or other Department approved media) acceptable to DPS and the FBI; and

(4) the fee specified by the Department, to include fees imposed by DPS and the FBI, which shall not exceed seventy-four dollars (\$74).

(5) All documentation submitted to the Department of Health for the purposes of criminal history screening and for the purposes set forth in 7.1.9.9 NMAC and 7.1.9.10 NMAC shall become the sole property of the Department of Health with the exception of fingerprint cards which shall be destroyed pursuant to Subparagraph a below.

(a) Upon clearance by both the FBI and DPS, fingerprint cards shall be destroyed.

(b) All submitted documentation shall be retained by the Department for a period of one year from the final date of closure and thereafter shall be archived.

**E. Fees:** The FBI has a mandatory processing fee with no exceptions. The Department and DPS impose a state processing and administrative fee. The fee payment must accompany the fingerprint application, or otherwise be credited to the Department prior to or contemporaneous with the Departments' receipt of the application documents. The manner of payment of the fee is by bank cashier check payable to the New Mexico Department of Health, or other method of funds transfer acceptable to the Department. Business checks will be accepted unless the business tendering the check has previously tendered a check to the Department unsupported by sufficient funds. Neither cash nor personal checks will be accepted. The fee may be paid by the care provider or by the applicant.

(1) The applicant must submit another, readable set of fingerprint cards upon notice that the fingerprint cards previously submitted were found unreadable, as determined by the FBI or DPS. When the submission of a second set of a fingerprint cards is required, a separate fee will not be charged. A fee shall be charged for submission of third and subsequent fingerprint sets.

(2) If the applicant has a physical or medical condition which prevents the applicant from producing readable fingerprints using commonly available fingerprinting techniques, the applicant shall submit the fingerprint cards with an notarized affidavit signed by the applicant which provides:

(a) identification of the appli-

cant;

(b) an explanation of, or a statement describing, the applicants' or caregivers' good faith efforts to supply readable fingerprints;

(c) the physical or medical reason that prevents the applicant from producing readable fingerprints using commonly available fingerprinting techniques; and,

(d) An applicant meeting the conditions of this section and who has resided in the State of New Mexico for less than ten (10) years must also submit a ten (10) year work history in addition to the required affidavits.

(3) The Department will set a fee in addition to the fees imposed by DPS and the FBI that will fully and completely cover costs incurred by the Department to support activities required by the Act and these rules, not to exceed forty dollars (\$40). The fees will not be applied to any other activity or expense undertaken by the Department.

**F. Timely Submission:**

Individuals are required to agree to a nationwide criminal history screening pursuant to the Act upon offer of employment or at the time of entering into a contractual relationship with the provider. Providers must submit all fees and pertinent application information for all individuals who meet the definition of a caregiver, as described in Subsection D of 7.1.9.7 NMAC, no later than thirty (30) calendar days from the caregivers' first day of employment or effective date of a contractual relationship with the provider.

**G. Maintenance of**

**Records:** Care providers must maintain documentation relating to all employees and contractors evidencing compliance with the Act and these rules.

(1) During the term of employment, care providers must maintain evidence of each caregiver's clearance, pending reconsideration, or disqualification.

(2) Care providers must maintain evidence showing the basis for any determination by the care provider that an employee or contractor performs job functions that do not fall within the scope of the requirement for nationwide criminal history screening. A memorandum in an employees' file stating "This employee does not provide direct care or have routine unsupervised physical or financial access to care recipients served by [name of care provider]," together with the employees' job description, shall suffice for record keeping purposes.

[7.1.9.8 NMAC - Rp 7 NMAC 1.9.8, 08/15/02]

7.1.9.9

CAREGIVERS AND

**APPLICANTS WITH DISQUALIFYING CONVICTIONS.**

**A. Prohibition on**

**Employment:** A care provider shall not hire or contract with any applicant, or continue the employment or contractual services of any caregiver, for whom the care provider has received notice of a disqualifying conviction, except as provided in Paragraph 2 of Subsection A of 7.1.9.9 NMAC.

(1) In cases where the criminal history record lists an arrest for a crime that would constitute a disqualifying conviction and no disposition is listed for the arrest, the Department will attempt to notify the applicant and request information from the applicant within a reasonable time as set forth in the Departments' notice regarding the disposition of the arrest.

(2) An applicant's failure to respond within the required timelines shall result in that applicant's disqualification from employment as a caregiver in the State of New Mexico. ["Timelines" refers to the thirty (30) days as described in Subparagraph a of Paragraph 1 of Subsection B of 7.1.9.10.]

**B. Employment Pending**

**Reconsideration Determination:** At the discretion of the care provider, a caregiver whose nationwide criminal history record reflects a disqualifying conviction and who has requested administrative reconsideration may continue to be employed pending a determination on reconsideration.

**C. Notice of Final**

**Determination of Disqualification:** Upon receipt of a notice of Final Determination of Disqualification a care provider must:

(1) Immediately and permanently remove a caregiver from any position of employment that meets the definition of caregiver as set forth in Subsection D of 7.1.9.7NMAC.

(2) Notify the department of the date and type of action taken to satisfy the removal requirements of as set forth in Subsection C subparagraph 1of 7.1.9.9 NMAC via written documentation signed by an authorized agent of the care provider. [7.1.9.9 NMAC - Rp 7 NMAC 1.9, 08/15/02]

**7.1.9.10 ADMINISTRATIVE RECONSIDERATION.**

**A. Availability:**

The applicant whose nationwide criminal history record reflects a disqualifying conviction may request an informal administrative reconsideration from the Department.

**B. Procedure for Requesting Administrative Reconsideration:**

(1) an applicant given notice of a

disqualifying conviction must submit a written request for an administrative reconsideration. To be effective, the written request must:

(a) be made within thirty (30) days, as determined by the postmark, from the date of the notice issued by the Department;

(b) be properly addressed to the Caregivers Criminal History Screening Program;

(c) state applicants' name, home and work address, telephone;

(d) applicants' employer or proposed employer name, address and telephone;

(e) state the date of hire;

(f) state the position title;

(g) describe the duties of the position; and,

(h) describe the care recipients.

(2) If the applicant wishes to submit and have considered additional documentation (as specified in Paragraph 1 of Subsection C of 7.1.9.10 NMAC) that additional documentation must be included with the request for an administrative reconsideration.

(3) An applicant requesting reconsideration must include a signed declaration identifying with specificity any criminal felony convictions.

**C. Written**

**Documentation:** The documentation submitted with the request for an administrative reconsideration may include information on the following:

(1) Credible and reliable evidence of the actual disposition of any arrest for which the nationwide criminal history record was incomplete. This could be evidence, for example, of the certified copies of an acquittal, a dismissal, or conviction of a lesser included crime, submitted to refute or rebut the presumption of a disqualifying conviction created because the nationwide criminal history record was incomplete in not showing the disposition of an arrest for a crime that constitutes a disqualifying conviction.

(2) The person's age at the time of each disqualifying conviction.

(3) Any mitigating circumstances when the offense was committed.

(4) Any court imposed sentence or punishment and, if completed, when completed.

(5) Any rehabilitation since the offense.

(6) The person's full employment history since the disqualifying convictions.

(7) And other relevant materials the applicant may wish to submit.

**D. Reconsideration**

**Proceeding:** The reconsideration proceed-

ing is intended to be an informal review of written documentation; it is non-adversarial and administrative. It will be conducted by a reconsideration committee designated for that purpose by the Department. The reconsideration committee will issue an employment clearance determination based upon the completed request for reconsideration and all supporting documents submitted. In cases where the reconsideration committee finds the need for additional or clarifying information, the reconsideration committee may request that the applicant supply such additional information within the time set forth in the reconsideration committees' request.

**E. Factors in Determination:** In determining whether an applicant whose nationwide criminal history record reflects a disqualifying conviction may be employed, the reconsideration committee shall take into account the requirements of the Criminal Offender Employment Act, sections 28-2-1 to 28-2-6, NMSA 1978. However, that act is not dispositive. The following factors may be considered.

- (1) Total number of disqualifying convictions;
- (2) Time elapsed since last disqualifying conviction or since discharge of sentence;
- (3) Circumstances of crime including whether violence was involved;
- (4) Activities evidencing rehabilitation, including but not limited to substance abuse or other rehabilitation programs;
- (5) Whether conviction was expunged by the court or whether an unconditional pardon was granted;
- (6) False or misleading statement(s) about any conviction in the signed declaration;
- (7) Evidence that applicant poses no risk of harm to the health and safety of care recipients; and,
- (8) Age of applicant at time of disqualifying conviction.

**F. Grounds for Reconsideration Employment Clearance Determination:** An applicant will be issued a reconsideration employment clearance determination by the Department where the request for reconsideration and accompanying documentation clearly demonstrates that the applicant has satisfied one of the following three grounds for a reconsideration employment clearance determination.

(1) **Inaccuracy:** The nationwide criminal history record inaccurately reflects a disqualifying conviction. This ground for a reconsideration employment clearance determination applies:

(a) In instances of factual error in the nationwide criminal history record, from any source;

(b) In instances of error arising from the Departments' application or use of the inappropriate criminal statute or standard to the disqualifying conviction at issue; and

(c) In instances where the Department, pursuant to the applicants' or caregivers' required consent, applies a rebuttable presumption of a disqualifying conviction to an arrest for a felony that lacks a clear disposition in the nationwide criminal history record.

(2) **No Risk of Harm:** The employment or contractual services provided by an applicant with a disqualifying conviction presents no risk of harm to a care recipient. The reconsideration employment clearance determination issued by the reconsideration committee under this ground may be limited, in certain cases, based upon the evidence in the request for reconsideration and the accompanying documentation.

(a) The reconsideration determination whether the applicant presents no risk of harm to a care recipient is based upon the risk arising from the disqualifying conviction.

(3) **No Bearing on Fitness:** The disqualifying conviction does not directly bear upon applicants' or caregivers' fitness for employment.

[7.1.9.10 NMAC - Rp 7 NMAC 1.10, 08/15/02]

**7.1.9.11 DISQUALIFYING CONVICTIONS.** The following felony convictions disqualify an applicant from employment as a caregiver.

- A. Homicide.
- B. Trafficking in controlled substances.
- C. Kidnapping, False Imprisonment, Aggravated Assault or Aggravated battery.
- D. Rape, Criminal Sexual Penetration, Criminal Sexual Contact, Incest, Indecent Exposure, or Other Related Sexual Offenses.
- E. Crimes involving Adult Abuse, Neglect or Financial Exploitation.
- F. Crimes involving Child Abuse or Neglect.
- G. Crimes involving Robbery, Larceny, Extortion, Forgery, Embezzlement, Credit Card Fraud, or Receiving Stolen Property.

[7.1.9.11 NMAC - Rp 7 NMAC 1.9.12, 08/15/02]

**History of 7.1.9. NMAC:**  
Pre NMAC History: None.

History of Repealed Material: 7 NMAC 1.9, Caregivers Criminal History Screening Requirements, filed 08-03-1998, repealed 08/15/02.

## NEW MEXICO RACING COMMISSION

Explanatory paragraph: this is an amendment to Paragraphs (3) and (4) of Subsection C of 15.2.6.9 NMAC clarifying the wording for permitted dosage levels of therapeutic medications allowed in urine specimens of race horses and an amendment to Paragraphs (1), (2) and (3) of Subsection D of 15.2.6.9 NMAC amending the levels of therapeutic medications in urine specimens of race horses to correspond with the amendments in Subsection C.

### 15.2.6.9 MEDICATIONS AND PROHIBITED SUBSTANCES

#### C. MEDICATION RESTRICTIONS:

(3) Except as otherwise provided by this part, a person may not administer or cause to be administered by any means to a horse a prohibited drug, medication, chemical or other substance, including any restricted medication pursuant to this part during the 24-hour period before post time for the race in which the horse is entered.

(a) **Phenylbutazone:** The use of Phenylbutazone shall be permitted under the following conditions: Any horse to which Phenylbutazone has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative Phenylbutazone level(s) and/or the presence of other drugs which may be present in the blood or urine sample(s). The permitted quantitative test level of Phenylbutazone or Oxyphenbutazone shall be administered in such dosage amount that the official test sample shall ~~test less than~~ **not exceed** 5 micrograms per milliliter of plasma.

(b) **Furosemide (Salix):** Furosemide (Salix) may be administered intravenously to a horse, which is entered to compete in a race. Except under the instructions of the official veterinarian for the purpose of removing a horse from the veterinarian's list or to facilitate the collection of a post-race urine sample, Furosemide (Salix) shall be permitted only after the trainer enters the horse on the bleeder list by so declaring it as a bleeder on the entry card.

(i) The use of Furosemide (Salix) shall be permitted under the following circumstances on association grounds where a detention barn is utilized: Furosemide (Salix) shall be administered

no less than three hours prior to post time for the race for which the horse is entered. A horse qualified for a Furosemide (**Salix**) administration must be brought to the detention barn within time to comply with the three-hour administration requirement specified above. The dose administered in such dosage amount that the official test sample shall ~~test less than~~ **not exceed** 250 milligrams nor be less than 100 milligrams. After treatment, the horse shall be required by the Commission to remain in the detention barn in the care, custody and control of its trainer or the trainer's designated representative under association and/or Commission security supervision until called to the saddling paddock.

(ii) The use of Furosemide (**Salix**) shall be permitted under the following circumstances on association grounds where a detention barn is not utilized: Furosemide (**Salix**) shall be administered no less than three hours prior to post time for the race for which the horse is entered; the Furosemide (**Salix**) dosage administered shall ~~test less than~~ **not exceed** 250 milligrams nor be less than 100 milligrams; the trainer of the treated horse shall cause to be delivered to the official veterinarian or his/her designee no later than one hour prior to post time for the race for which the horse is entered the following information under oath on a form provided by the Commission: the racetrack name, the date and time the Furosemide (**Salix**) was administered to the entered horse; the dosage amount of Furosemide (**Salix**) administered to the entered horse; the printed name and signature of the attending licensed veterinarian who administered the Furosemide (**Salix**).

(c) **Flunixin:** In addition to Phenylbutazone and Furosemide, Flunixin may be administered in such dosage amount that the official test sample shall ~~test less than~~ **not exceed** 1.0 microgram per milliliter of the drug substance, its metabolites, or analogs, per milliliter of blood plasma.

(d) **Meclofenamic Acid:** In addition to Phenylbutazone and Furosemide, Meclofenamic Acid may be administered in such dosage amount that the official test sample shall ~~test less than~~ **not exceed** 1.0 microgram per milliliter of the drug substance, its metabolites, or analogs, per milliliter of blood plasma.

(4) The official urine test sample may contain one of the following drug substances, their metabolites or analogs, in any amount that does not exceed the specified levels:

(i) **Clenbuterol:** The use of Clenbuterol shall be permitted under the following conditions: Any horse to which Clenbuterol has been administered shall be

subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of Clenbuterol shall be administered in such dosage amount that the official test sample shall ~~test less than~~ **not exceed** 5 nanograms per milliliter of urine, or its blood equivalent.

#### 15.2.6.9 MEDICATIONS AND PROHIBITED SUBSTANCES

##### D. PENALTY RECOMMENDATIONS (in the absence of mitigating circumstances):

(1) A verbal warning for the first positive test within a 12-month period in the following levels:

(a) ~~5.0~~ **5.1** micrograms per milliliter to 5.5 micrograms per milliliter in one drug of Phenylbutazone or Oxyphenbutazone; or

(b) ~~1.0~~ **1.1** microgram per milliliter to ~~1.1~~ **1.2** microgram per milliliter of Flunixin; or

(c) ~~1.0~~ **1.1** microgram per milliliter to ~~1.1~~ **1.2** microgram per milliliter of Meclofenamic Acid.

(d) 50.1 nanograms per milliliter of Ketoprofen.

(2) A written warning for one positive test within a 12-month period in the following levels:

(a) 5.6 micrograms per milliliter to 9.9 micrograms per milliliter in one drug of Phenylbutazone or Oxyphenbutazone; or

(b) ~~1.1~~ **1.2** microgram per milliliter to ~~1.2~~ **1.3** microgram per milliliter of Flunixin; or

(c) ~~1.1~~ **1.2** microgram per milliliter to ~~1.2~~ **1.3** microgram per milliliter of Meclofenamic Acid.

(d) 60.0 nanograms per milliliter of Ketoprofen.

(3) A fine for one positive test within a 12-month period in the following levels:

(a) \$200 for 10.0 micrograms per milliliter and above for combined total amount of Phenylbutazone and Oxyphenbutazone; or

(b) \$200 for ~~1.2~~ **1.3** micrograms per milliliter of Flunixin; or

(c) \$200 for ~~1.2~~ **1.3** micrograms per milliliter of Meclofenamic Acid; or

(d) \$300 for ~~5.0~~ **5.1** micrograms per milliliter or more of either Phenylbutazone or Oxyphenbutazone in combination with ~~1.2~~ **1.3** micrograms or more of either Flunixin or Meclofenamic Acid; or

(e) \$200 for 5.6 to 5.9 micro-

grams per milliliter in one drug of Phenylbutazone, or Oxyphenbutazone, and ~~1.0 to 1.1~~ **1.1 to 1.2** micrograms per milliliter of Flunixin or Meclofenamic Acid.

(f) \$200 for 75.0 nanograms per milliliter of Ketoprofen.

## NEW MEXICO WATER QUALITY CONTROL COMMISSION

This is an amendment to 20.6.2 NMAC Sections 7, 3106, 3108, 3109, 5003, and 5101.

#### 20.6.2.7 DEFINITIONS:

Terms defined in the Water Quality Act, but not defined in this Part, will have the meaning given in the Act. As used in this Part:

**A. "abandoned well"** means a well whose use has been permanently discontinued or which is in a state of disrepair such that it cannot be rehabilitated for its intended purpose or other purposes including monitoring and observation;

**B. "abate" or "abatement"** means the investigation, containment, removal or other mitigation of water pollution;

**C. "abatement plan"** means a description of any operational, monitoring, contingency and closure requirements and conditions for the prevention, investigation and abatement of water pollution, and includes Stage 1, Stage 2, or Stage 1 and 2 of the abatement plan, as approved by the secretary;

**D. "adjacent properties"** means properties that are contiguous to the discharge site or property that would be contiguous to the discharge site but for being separated by a public or private right of way, including roads and highways.

**[D]E. "background"** means, for purposes of ground-water abatement plans only and for no other purposes in this Part or any other regulations including but not limited to surface-water standards, the amount of ground-water contaminants naturally occurring from undisturbed geologic sources or water contaminants which the responsible person establishes are occurring from a source other than the responsible person's facility. This definition shall not prevent the secretary from requiring abatement of commingled plumes of pollution, shall not prevent responsible persons from seeking contribution or other legal or equitable relief from other persons, and shall not preclude the secretary from exercising enforcement authority under any applicable statute, regulation or common law;

**[E]E. "casing"** means pipe or tubing of appropriate material, diameter and



weight used to support the sides of a well hole and thus prevent the walls from caving, to prevent loss of drilling mud into porous ground, or to prevent fluid from entering or leaving the well other than to or from the injection zone;

**[F]G. "cementing"** means the operation whereby a cementing slurry is pumped into a drilled hole and/or forced behind the casing;

**[G]H. "cesspool"** means a "drywell" that receives untreated domestic liquid waste containing human excreta, and which sometimes has an open bottom and/or perforated sides. A large capacity cesspool means a cesspool that receives greater than 2,000 gallons per day of untreated domestic liquid waste;

**[H]I. "collapse"** means the structural failure of overlying materials caused by removal of underlying materials;

**[I]J. "commission"** means:

(1) the New Mexico Water Quality Control Commission or

(2) the Department, when used in connection with any administrative and enforcement activity;

**[J]K. "confining zone"** means a geological formation, group of formations, or part of a formation that is capable of limiting fluid movement from an injection zone;

**[K]L. "conventional mining"** means the production of minerals from an open pit or underground excavation. Underground excavations include mine shafts, workings and air vents, but does not include excavations primarily caused by in situ extraction activities;

**[L]M. "daily composite sample"** means a sample collected over any twenty-four hour period at intervals not to exceed one hour and obtained by combining equal volumes of the effluent collected, or means a sample collected in accordance with federal permit conditions where a permit has been issued under the National Pollutant Discharge Elimination System or for those facilities which include a waste stabilization pond in the treatment process where the retention time is greater than twenty (20) days, means a sample obtained by compositing equal volumes of at least two grab samples collected within a period of not more than twenty-four (24) hours;

**[M]N. "department", "agency", or "division"** means the New Mexico Environment Department or a constituent agency designated by the commission;

**[N]O. "discharge permit modification"** means a change in requirements of a discharge permit as requested by the discharger as a result of past, present or anticipated changes in the quality or quanti-

ty of effluent or the location of the discharge; or as required by the secretary;

**[O]P. "discharge plan"** means a description of any operational, monitoring, contingency, and closure requirements and conditions for any discharge of effluent or leachate which may move directly or indirectly into ground water;

**[P]Q. "discharge permit"** means a discharge plan approved by the department;

**R. "discharge site"** means the entire site where the discharge and associated activities will take place.

**[Q]S. "disposal"** means to abandon, deposit, inter or otherwise discard a fluid as a final action after its use has been achieved;

**[R]T. "domestic liquid waste"** means human excreta and water-carried waste from typical residential plumbing fixtures and activities, including but not limited to waste from toilets, sinks, bath fixtures, clothes or dishwashing machines and floor drains;

**[S]U. "domestic liquid waste treatment unit"** means a watertight unit designed, constructed and installed to stabilize only domestic liquid waste and to retain solids contained in such domestic liquid waste, including but not limited to aerobic treatment units and septic tanks;

**[T]V. "drywell"** means a well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so that its bottom and sides are typically dry except when receiving fluids;

**[U]W. "experimental technology"** means a technology which has not been proven feasible under the conditions in which it is being tested;

**[V]X. "fluid"** means material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state;

**[W]Y. "ground water"** means interstitial water which occurs in saturated earth material and which is capable of entering a well in sufficient amounts to be utilized as a water supply;

**[X]Z. "hazard to public health"** exists when water which is used or is reasonably expected to be used in the future as a human drinking water supply exceeds at the time and place of such use, one or more of the numerical standards of Subsection A of 20.6.2.3103 NMAC, or the naturally occurring concentrations, whichever is higher, or if any toxic pollutant affecting human health is present in the water. In determining whether a discharge would cause a hazard to public health to exist, the secretary shall investigate and

consider the purification and dilution reasonably expected to occur from the time and place of discharge to the time and place of withdrawal for use as human drinking water;

**[Y]AA. "improved sinkhole"** means a naturally occurring karst depression or other natural crevice found in volcanic terrain and other geologic settings which have been modified by man for the purpose of directing and emplacing fluids into the subsurface;

**[Z]BB. "injection"** means the subsurface emplacement of fluids through a well;

**[AA]CC. "injection zone"** means a geological formation, group of formations, or part of a formation receiving fluids through a well;

**[BB]DD. "motor vehicle waste disposal well"** means a well which receives or has received fluids from vehicular repair or maintenance activities;

**[CC]EE. "non-aqueous phase liquid"** means an interstitial body of liquid oil, petroleum product, petrochemical, or organic solvent, including an emulsion containing such material;

**[DD]FF. "operational area"** means a geographic area defined in a project discharge permit where a group of wells or well fields in close proximity comprise a single Class III well operation;

**GG. "owner of record"** means an owner of property according to the property records of the tax assessor in the county in which the discharge site is located.

**[EE]HH. "packer"** means a device lowered into a well to produce a fluid-tight seal within the casing;

**[FF]II. "person"** means an individual or any other entity including partnerships, corporation, associations, responsible business or association agents or officers, the state or a political subdivision of the state or any agency, department or instrumentality of the United States and any of its officers, agents or employees;

**[GG]JJ. "petitioner"** means a person seeking a variance from a regulation of the commission pursuant to Section 74-6-4(G) NMSA 1978;

**[HH]KK. "plugging"** means the act or process of stopping the flow of water, oil or gas into or out of a geological formation, group of formations or part of a formation through a borehole or well penetrating these geologic units;

**[II]LL. "project discharge permit"** means a discharge permit which describes the operation of similar Class III wells or well fields within one or more individual operational areas;

**[JJ]MM. "refuse"** includes food,

swill, carrion, slops and all substances from the preparation, cooking and consumption of food and from the handling, storage and sale of food products, the carcasses of animals, junked parts of automobiles and other machinery, paper, paper cartons, tree branches, yard trimmings, discarded furniture, cans, oil, ashes, bottles, and all unwholesome material;

**[KK]NN. "responsible person"** means a person who is required to submit an abatement plan or who submits an abatement plan pursuant to this Part;

**[LL]OO. "secretary"** or "director" means the secretary of the New Mexico Department of Environment or the director of a constituent agency designated by the commission;

**[MM]PP. "sewer system"** means pipelines, conduits, pumping stations, force mains, or other structures, devices, appurtenances or facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal;

**[NN]QQ. "sewerage system"** means a system for disposing of wastes, either by surface or underground methods, and includes sewer systems, treatment works, disposal wells and other systems;

**[OO]RR. "significant modification of Stage 2 of the abatement plan"** means a change in the abatement technology used excluding design and operational parameters, or re-location of 25 percent or more of the compliance sampling stations, for any single medium, as designated pursuant to Paragraph (4) of Subsection E of 20.6.2.4106 NMAC;

**[PP]SS. "subsurface fluid distribution system"** means an assemblage of perforated pipes, drain tiles, or other mechanisms intended to distribute fluids below the surface of the ground;

**[QQ]TT. "subsurface water"** means ground water and water in the vadose zone that may become ground water or surface water in the reasonably foreseeable future or may be utilized by vegetation;

**[RR]UU. "TDS"** means total dissolved solids as determined by the "calculation method" (sum of constituents), by the "residue on evaporation method at 180 degrees" of the "U.S. Geological Survey Techniques of Water Resource Investigations," or by conductivity, as the secretary may determine;

**[SS]VV. "toxic pollutant"** means a water contaminant or combination of water contaminants in concentration(s) which, upon exposure, ingestion, or assimilation either directly from the environment or indirectly by ingestion through food chains, will unreasonably threaten to injure human health, or the health of animals or plants which are commonly hatched, bred,

cultivated or protected for use by man for food or economic benefit. As used in this definition injuries to health include death, histopathologic change, clinical symptoms of disease, behavioral abnormalities, genetic mutation, physiological malfunctions or physical deformations in such organisms or their offspring. In order to be considered a toxic pollutant a contaminant must be one or a combination of the potential toxic pollutants listed below and be at a concentration shown by scientific information currently available to the public to have potential for causing one or more of the effects listed above. Any water contaminant or combination of the water contaminants in the list below creating a lifetime risk of more than one cancer per 100,000 exposed persons is a toxic pollutant.

acrolein  
acrylonitrile  
aldrin  
benzene  
benzidine  
carbon tetrachloride  
chlordane  
chlorinated benzenes  
    monochlorobenzene  
    hexachlorobenzene  
    pentachlorobenzene  
1,2,4,5-tetrachlorobenzene  
chlorinated ethanes  
    1,2-dichloroethane  
    hexachloroethane  
    1,1,2,2-tetrachloroethane  
    1,1,1-trichloroethane  
    1,1,2-trichloroethane  
chlorinated phenols  
    2,4-dichlorophenol  
    2,4,5-trichlorophenol  
    2,4,6-trichlorophenol  
chloroalkyl ethers  
    bis (2-chloroethyl) ether  
    bis (2-chloroisopropyl) ether  
    bis (chloromethyl) ether  
chloroform  
DDT  
dichlorobenzene  
dichlorobenzidine  
1,1-dichloroethylene  
dichloropropenes  
dieldrin  
2,4-dinitrotoluene  
diphenylhydrazine  
endosulfan  
endrin  
ethylbenzene  
halomethanes  
    bromodichloromethane  
    bromomethane  
    chloromethane  
    dichlorodifluoromethane  
    dichloromethane  
    tribromomethane  
    trichlorofluoromethane

heptachlor  
hexachlorobutadiene  
hexachlorocyclohexane (HCH)  
    alpha-HCH  
    beta-HCH  
    gamma-HCH  
    technical HCH  
hexachlorocyclopentadiene  
isophorone  
nitrobenzene  
nitrophenols  
    2,4-dinitro-o-cresol  
    dinitrophenols  
nitrosamines  
    N-nitrosodiethylamine  
    N-nitrosodimethylamine  
    N-nitrosodibutylamine  
    N-nitrosodiphenylamine  
    N-nitrosopyrrolidine  
pentachlorophenol  
phenol  
phthalate esters  
    dibutyl phthalate  
    di-2-ethylhexyl phthalate  
    diethyl phthalate  
    dimethyl phthalate  
polychlorinated biphenyls (PCB's)  
polynuclear aromatic hydrocarbons (PAH)  
    anthracene  
    3,4-benzofluoranthene  
    benzo (k) fluoranthene  
    fluoranthene  
    fluorene  
    phenanthrene  
    pyrene  
tetrachloroethylene  
toluene  
toxaphene  
trichloroethylene  
vinyl chloride  
xylenes  
    o-xylene  
    m-xylene  
    p-xylene  
1,1-dichloroethane  
ethylene dibromide (EDB)  
cis-1,2-dichloroethylene  
trans-1,2-dichloroethylene  
naphthalene  
1-methylnaphthalene  
2-methylnaphthalene  
benzo-a-pyrene

**[FF]WW. "vadose zone"** means earth material below the land surface and above ground water, or in between bodies of ground water;

**[UU]XX. "wastes"** means sewage, industrial wastes, or any other liquid, gaseous or solid substance which will pollute any waters of the state;

**[VV]YY. "water"** means all water including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not com-

bine with other surface or subsurface water; ~~WWZZ~~. "water contaminant" means any substance that could alter if discharged or spilled the physical, chemical, biological or radiological qualities of water. "Water contaminant" does not mean source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954;

~~XXAAA~~. "water course" means any river, creek, arroyo, canyon, draw, or wash, or any other channel having definite banks and beds with visible evidence of the occasional flow of water;

~~YYBBB~~. "water pollution" means introducing or permitting the introduction into water, either directly or indirectly, of one or more water contaminants in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or the use of property;

~~ZZCCC~~. "well" means: (1) A bored, drilled, or driven shaft; (2) A dug hole whose depth is greater than the largest surface dimension; (3) An improved sinkhole; or (4) A subsurface fluid distribution system;

~~AAA~~~~DDD~~. "well stimulation" means a process used to clean the well, enlarge channels, and increase pore space in the interval to be injected, thus making it possible for fluids to move more readily into the injection zone. Well stimulation includes, but is not limited to, (1) surging, (2) jetting, (3) blasting, (4) acidizing, (5) hydraulic fracturing.

[1-4-68, 4-20-68, 11-27-70, 9-3-72, 4-11-74, 8-13-76, 2-18-77, 6-26-80, 7-2-81, 1-29-82, 9-20-82, 11-17-84, 3-3-86, 8-17-91, 8-19-93, 12-1-95; 20.6.2.7 NMAC – Rn, 20 NMAC 6.2.I.1101, 1-15-01; A, 1-15-01; A, 12-1-01; A, 9-15-02]

#### **20.6.2.3106 APPLICATION FOR DISCHARGE PERMITS AND RENEWALS:**

**A.** Any person who, before or on June 18, 1977, is discharging any of the water contaminants listed in Section 20.6.2.3103 NMAC or any toxic pollutant so that they may move directly or indirectly into ground water shall, within 120 days of receipt of written notice from the secretary that a discharge permit is required, or such longer time as the secretary shall for good cause allow, submit a discharge plan to the secretary for approval; such person may discharge without a discharge permit until 240 days after written notification by the secretary that a discharge permit is required or such longer time as the secretary shall for good cause allow.

**B.** Any person who

intends to begin, after June 18, 1977, discharging any of the water contaminants listed in Section 20.6.2.3103 NMAC or any toxic pollutant so that they may move directly or indirectly into ground water shall notify the secretary giving the information enumerated in Subsection B of Section 20.6.2.1201 NMAC; the secretary shall, within 60 days, notify such person if a discharge permit is required; upon submission, the secretary shall review the discharge plan pursuant to Sections 20.6.2.3108 and 20.6.2.3109 NMAC. ~~for good cause shown, the secretary may allow such person to discharge without a discharge permit for a period not to exceed beyond February 18, 1978; after February 18, 1978, for] For good cause shown the secretary may allow such person to discharge without a discharge permit for a period not to exceed 120 days.~~

**C.** A proposed discharge plan shall set forth in detail the methods or techniques the discharger proposes to use or processes expected to naturally occur which will ensure compliance with this Part. At least the following information shall be included in the plan:

(1) Quantity, quality and flow characteristics of the discharge;

(2) Location of the discharge and of any bodies of water, watercourses and ground water discharge sites within one mile of the outside perimeter of the discharge site, and existing or proposed wells to be used for monitoring;

(3) Depth to and TDS concentration of the ground water most likely to be affected by the discharge;

(4) Flooding potential of the site;

(5) Location and design of site(s) and method(s) to be available for sampling, and for measurement or calculation of flow;

(6) Depth to and lithological description of rock at base of alluvium below the discharge site if such information is available;

(7) Any additional information that may be necessary to demonstrate that the discharge permit will not result in concentrations in excess of the standards of Section 20.6.2.3103 NMAC or the presence of any toxic pollutant at any place of withdrawal of water for present or reasonably foreseeable future use. Detailed information on site geologic and hydrologic conditions may be required for a technical evaluation of the applicant's proposed discharge plan; and

(8) Additional detailed information required for a technical evaluation of underground injection control wells as provided in Sections 20.6.2.5000 through 20.6.2.5299 NMAC,

**D.** An applicant for a dis-

charge permit shall pay fees as specified in Section 20.6.2.3114 NMAC.

**E.** An applicant for a permit to dispose of or use septage or sludge, or within a source category designated by the commission, may be required by the secretary to file a disclosure statement as specified in 74-6-5.1 of the Water Quality Act.

**F.** If the holder of a discharge permit submits an application for discharge permit renewal at least 120 days before the discharge permit expires, and the discharger is not in violation of the discharge permit on the date of its expiration, then the existing discharge permit for the same activity shall not expire until the application for renewal has been approved or disapproved. A discharge permit continued under this provision remains fully effective and enforceable. An application for discharge permit renewal must include and adequately address all of the information necessary for evaluation of a new discharge permit. Previously submitted materials may be included by reference provided they are current, readily available to the secretary and sufficiently identified to be retrieved.

[2-18-77, 6-26-80, 7-2-81, 9-20-82, 8-17-91, 12-1-95; 20.6.2.3106 NMAC – Rn, 20 NMAC 6.2.III.3106, 1-15-01; A, 12-1-01; A, 9-15-02]

#### **20.6.2.3108 PUBLIC NOTICE AND PARTICIPATION:**

**A.** Within 30 days of submission of an application for discharge permit, modification or renewal:

(1) The applicant shall provide notice, in accordance with the requirements of Section E of this Section, to the general public in the locale of the proposed discharge in a form provided by the department by each of the three methods listed below:

(a) prominently posting a synopsis of the public notice, in English and in Spanish, at a conspicuous public location, approved by the department, at or near the existing or proposed facility for 30 days; and

(b) providing written notice of the discharge by certified mail, return receipt requested, to owners of record of all adjacent properties; and

(c) providing notice by certified mail, return receipt requested, to the owner of the discharge site if the applicant is not the owner;

(2) In lieu of the public notice requirements of Subparagraph (b) of Paragraph (1) of Subsection A above, the applicant may publish a synopsis of the notice in a display ad at least two inches by three inches in a newspaper of general cir-

ulation in the location of the proposed discharge.

(3) In lieu of the public notice requirements of Subparagraph (a) and (b) of Paragraph (1) of Subsection A above, the applicant may provide notice of the discharge by certified mail, return receipt requested, to property owners of record within 1/2 mile of the discharge site on a form provided by the department.

(4) If there are no adjacent properties other than properties owned by the discharger, the applicant shall, in lieu of the requirements in Subparagraph (b) of Paragraph (1) of Subsection A above, publish a synopsis of the notice in a display ad at least two inches by three inches in a newspaper of general circulation in the location of the facility.

**B.** Within fifteen days of completion of the public notice requirements in Subsection A of this Section, the applicant shall submit to the department proof of notice, including certified mail receipts and an affidavit of posting, as appropriate. If the department determines that the notice provided pursuant to Subsection A of this Section is inadequate, the department may require additional notice in accordance with Subsection A of this Section.

**[A]C.** Within ~~sixty (60)~~ 30 days of receipt of an application for a discharge permit, modification or renewal ~~[of a discharge permit]~~, the department shall review the application for administrative completeness. To be deemed administratively complete, an application must provide all of the information required ~~[for purposes of issuing a public notice pursuant to Subsection C of 20.6.2.3108 NMAC]~~ by Paragraphs (1) through (5) of Subsection E of this Section. The department shall notify the applicant in writing when the application is deemed administratively complete. If the department determines that the application is not administratively complete, the department shall notify the applicant of the deficiencies in writing within 30 days of receipt of the application and state what additional information is necessary.

**D.** Within 30 days of determining an application for a discharge permit, modification or renewal is administratively complete, the department shall post a notice on its web site and shall mail notice to any affected local, state, federal, tribal or pueblo governmental agency, political subdivisions, ditch associations and Land Grants, as identified by the department. The department shall also mail or e-mail notice to those persons on a list maintained by the department who have requested notice of discharge permit applications. The notice shall include the information

listed in Subsection E of this Section.

**E.** The notice provided under Subsection A and D of this Section shall include:

(1) The name and address of the proposed discharger;

(2) The location of the discharge, including a street address, if available, and sufficient information to locate the facility with respect to surrounding landmarks;

(3) A brief description of the activities that produce the discharge described in the application;

(4) A brief description of the expected quality and volume of the discharge;

(5) The depth to and total dissolved solids concentration of the ground water beneath the discharge site;

(6) The address and phone number within the department by which interested persons may obtain information, submit comments, and request to be placed on a facility-specific mailing list for future notices; and

(7) A statement that the department will accept comments and statements of interest regarding the application and will create a facility-specific mailing list for persons who wish to receive future notices.

**F.** All persons who submit comments or statements of interest to the department and who provide a mail or e-mail address shall be placed on a facility-specific mailing list and the department shall send those persons the public notice issued pursuant to Subsection G of this Section, and notice of any public meeting or hearing scheduled on the application.

**[B]G.** ~~[Within thirty (30) days of deeming the application administratively complete, the department shall notify the applicant and the following persons:]~~ Within 60 days after the department makes its administrative completeness determination and all required technical information is available, the department shall make available a proposed approval or disapproval of the application for a discharge permit, modification or renewal, including conditions for approval proposed by the department or the reasons for disapproval. The department shall mail or deliver a copy of the proposed approval or disapproval to the applicant, and shall provide notice of the proposed approval or disapproval of the application for a discharge permit, modification or renewal by:

(1) Posting on the department's website;

~~[(+) (2) [the public, who shall be notified through publication of a]~~ Publishing notice in a newspaper of general circulation in this state and a newspaper of general circulation in the location of the facility;

~~[(2)] (3) Mailing or e-mailing to those persons on a facility-specific mailing list [who have requested notification, who shall be notified by mail];~~

~~[(3)] (4) Mailing to any affected local, state, or federal [tribal or pueblo] governmental agency [affected which shall be notified by certified mail], as identified by the department; and~~

~~[(4)] (5) Mailing to the Governor, Chairperson, or President of each Indian Tribe, Pueblo or Nation within the state of New Mexico, as identified by the department [shall be notified by mail].~~

**[E]H.** The public notice issued under Subsection G shall include the information in Subsection E of this Section and the following information:

~~[(1) name of the proposed discharger;~~  
~~(2) location of the discharge;~~  
~~(3) brief description of the activities which produce the discharge described in the application;~~  
~~(4) quantity, quality and flow characteristics of the discharge;~~  
~~(5) depth to and TDS concentration of the ground water most likely to be affected by the discharge;]~~

~~[(6)] (1) A brief description of the procedures to be followed by the secretary in making a final determination;~~

~~[(7)] (2) A statement ~~[on]~~ of the comment period and description of the procedures for a person to request a hearing on the application; and~~

~~[(8)] (3) The address and telephone number at which interested persons may obtain a copy of the proposed approval or disapproval of an application for a discharge permit, modification or renewal [further information].~~

**I.** In the event that the proposed approval or disapproval of an application for a discharge permit, modification or renewal is available for review within 30 days of deeming the application administratively complete, the department may combine the public notice procedures of Subsections D and G of this Section.

**[D]J.** Following the public notice of the application and proposed approval or disapproval of an application for a discharge permit, modification or renewal, and prior to ~~[ruling on any proposed discharge permit or its modification or renewal]~~ a final decision by the secretary, there shall be a period of at least ~~[thirty (30)]~~ 30 days during which written comments may be submitted to the department and/or a public hearing may be requested in writing. All comments will be considered by the department. Requests for a hearing shall be in writing and shall set forth the reasons why a hearing should be held. A public hearing shall be held if the secretary

determines there is significant public interest. The department shall notify the applicant and any person requesting a hearing of the decision whether to hold a hearing and the reasons therefor in writing.

~~[E]K.~~ If a hearing is held, pursuant to Subsection ~~[D]~~ of this Section, notice of the hearing shall be given by the department at least ~~[thirty (30)]~~ 30 days prior to the hearing in accordance with Subsection ~~[B]~~ G of this section. The notice shall include the information identified in Subsection ~~[C]~~ H of this section in addition to the time~~;~~ and place of the hearing and a brief description of the hearing procedures. The hearing shall be held pursuant to Section 20.6.2.3110 NMAC.

[2-18-77, 12-24-87, 12-1-95, 11-15-96; 20.6.2.3108 NMAC – Rn, 20 NMAC 6.2.III.3108, 1-15-01; A, 12-1-01; A, 9-15-02]

**20.6.2.3109 SECRETARY APPROVAL, DISAPPROVAL, MODIFICATION OR TERMINATION OF DISCHARGE PERMITS, AND REQUIREMENT FOR ABATEMENT PLANS:**

A. The department shall evaluate the ~~[proposed discharge plan,]~~ application for a discharge permit, modification or renewal based on information contained in the department's administrative record. The department may request from the discharger, either before or after the issuance of [the] any public notice, additional information necessary for the evaluation of the application. The administrative record shall consist of the application, any additional information required by the [secretary] department, any information submitted by the discharger or the general public, other information considered by the department, the proposed approval or disapproval of an application for a discharge permit, modification or renewal prepared pursuant to Subsection G of Section 20.6.2.3108 NMAC, and, if a public hearing is held, all of the documents filed with the hearing clerk, all exhibits offered into evidence at the hearing, ~~and~~ the written transcript or tape recording of the hearing, any hearing officer report, and any post hearing submissions.

B. The secretary shall, within ~~[sixty (60)]~~ 30 days after the administrative record is complete and all required information is available, approve, approve with conditions or disapprove the proposed discharge ~~[plan] permit,~~ modification or renewal based on the administrative record. The secretary shall give written notice of the action taken to the applicant or permittee and any other person who participated in the permitting action who requests a copy in

writing.

C. Provided that the other requirements of this Part are met and the proposed discharge plan, modification or renewal demonstrates that neither a hazard to public health nor undue risk to property will result, the secretary shall approve the proposed discharge plan, modification or renewal if the following requirements are met:

(1) ground water that has a TDS concentration of 10,000 mg/l or less will not be affected by the discharge, or

(2) the person proposing to discharge demonstrates that approval of the proposed discharge plan, modification or renewal will not result in either concentrations in excess of the standards of Section 20.6.2.3103 NMAC or the presence of any toxic pollutant at any place of withdrawal of water for present or reasonably foreseeable future use, except for contaminants in the water diverted as provided in Subsection D of Section 3109 NMAC, or

(3) the proposed discharge plan conforms to either Subsection a or b below and Subsection c below.

(a) Municipal, Other Domestic Discharges, and Discharges from Sewerage Systems Handling Only Animal Wastes. The effluent is entirely domestic, is entirely from a sewerage system handling only animal wastes or is from a municipality and conforms to the following:

(i) the discharge is from an impoundment or a leach field existing on February 18, 1977 which receives less than 10,000 gallons per day and the secretary has not found that the discharge may cause a hazard to public health; or

(ii) the discharger has demonstrated that the total nitrogen in effluent that enters the subsurface from a leach field or surface impoundment will not exceed 200 pounds per acre per year and that the effluent will meet the standards of Section 20.6.2.3103 NMAC except for nitrates and except for contaminants in the water diverted as provided in Subsection D of Section 20.6.2.3109 NMAC.; or

(iii) the total nitrogen in effluent that is applied to a crop which is harvested shall not exceed by more than 25 percent the maximum amount of nitrogen reasonably expected to be taken up by the crop and the effluent shall meet the standards of Section 20.6.2.3103 NMAC except for nitrates and except for contaminants in the water diverted as provided in Subsection D of Section 20.6.2.3109 NMAC.

(b) Discharges from industrial, mining or manufacturing operations.

(i) the discharger has demonstrated that the amount of effluent that enters the subsurface from a surface

impoundment will not exceed 0.5 acre-feet per acre per year; or

(ii) the discharger has demonstrated that the total nitrogen in effluent that enters the subsurface from a leach field or surface impoundment shall not exceed 200 pounds per acre per year and the effluent shall meet the standards of Section 20.6.2.3103 NMAC except for nitrate and contaminants in the water diverted as provided in Subsection D of Section 20.6.2.3109 NMAC; or

(iii) the total nitrogen in effluent that is applied to a crop that is harvested shall not exceed by more than 25 percent the maximum amount of nitrogen reasonably expected to be taken up by the crop and the effluent shall meet the standards of Section 20.6.2.3103 NMAC except for nitrate and contaminants in the water diverted as provided in Subsection D of Section 20.6.2.3109 NMAC.

(c) All Discharges.

(i) the monitoring system proposed in the discharge plan includes adequate provision for sampling of effluent and adequate flow monitoring so that the amount being discharged onto or below the surface of the ground can be determined.

(ii) the monitoring data is reported to the secretary at a frequency determined by the secretary.

D. The secretary shall allow the following unless he determines that a hazard to public health may result:

(1) the weight of water contaminants in water diverted from any source may be discharged provided that the discharge is to the aquifer from which the water was diverted or to an aquifer containing a greater concentration of the contaminants than contained in the water diverted; and provided further that contaminants added as a result of the means of diversion shall not be considered to be part of the weight of water contaminants in the water diverted;

(2) the water contaminants leached from undisturbed natural materials may be discharged provided that:

(a) the contaminants were not leached as a product or incidentally pursuant to a solution mining operation; and

(b) the contaminants were not leached as a result of direct discharge into the vadose zone from municipal or industrial facilities used for the storage, disposal, or treatment of effluent;

(3) the water contaminants leached from undisturbed natural materials as a result of discharge into ground water from lakes used as a source of cooling water.

E. If data submitted pursuant to any monitoring requirements spec-

ified in the discharge permit or other information available to the secretary indicates that this Part is being or may be violated or that the standards of Section 20.6.2.3103 NMAC are being or will be exceeded, or a toxic pollutant as defined in Section ~~[20.6.2.1104]~~20.6.2.7 NMAC is present, in ground water at any place of withdrawal for present or reasonably foreseeable future use, or that the Water Quality Standards for Interstate and Intrastate Streams in New Mexico are being or may be violated in surface water, due to the discharge, except as provided in Subsection D of Section 20.6.2.3109 NMAC:

(1) the secretary may require a discharge permit modification within the shortest reasonable time so as to achieve compliance with this Part and to provide that any exceeding of standards in ground water at any place of withdrawal for present or reasonably foreseeable future use, or in surface water, due to the discharge except as provided in Subsection D of Section 20.6.2.3109 NMAC will be abated or prevented. If the secretary requires a discharge permit modification to abate water pollution:

(a) the abatement shall be consistent with the requirements and provisions of Sections 20.6.2.4101, 20.6.2.4103, Subsection C and E of Section 20.6.2.4106, Section 20.6.2.4107 and Section 20.6.2.4112 NMAC; and

(b) the discharger may request of the secretary approval to carry out the abatement under Sections 20.6.2.4000 through 20.6.2.4115 NMAC, in lieu of modifying the discharge permit. The discharger shall make the request in writing and shall include the reasons for the request.

(2) the secretary may terminate a discharge permit when a discharger fails to modify the permit in accordance with Paragraph 1 of Subsection E of this section.

(3) the secretary may require modification, or may terminate a discharge permit for a Class I non-hazardous waste injection well, a Class III well or other type of well specified in Subsection A of Section 20.6.2.5101 NMAC, pursuant to the requirements of Subsection I of Section 20.6.2.5101 NMAC.

**F.** If a discharge permit expires or is terminated for any reason and the standards of Section 20.6.2.3103 NMAC are being or will be exceeded, or a toxic pollutant as defined in Section ~~[20.6.2.1104]~~20.6.2.7 NMAC is present in ground water, or that the Water Quality Standards for Interstate and Intrastate Streams in New Mexico are being or may be violated, the secretary may require the discharger to submit an abatement plan pursuant to Sections 20.6.2.4104 and

Subsection A of Section 20.6.2.4106 NMAC.

**G.** At the request of the discharger, a discharge permit may be modified in accordance with Sections 20.6.2.3000 through 20.6.2.3114 NMAC.

**H.** The secretary shall not approve a proposed discharge plan, modification, or renewal for:

(1) any discharge for which the discharger has not provided a site and method for flow measurement and sampling;

(2) any discharge that will cause any stream standard to be violated;

(3) the discharge of any water contaminant which may result in a hazard to public health; or

(4) a period longer than five years, except that for new discharges, the term of the discharge permit approval shall commence on the date the discharge begins, but in no event shall the term of the approval exceed seven years from the date the permit was issued. For those permits expiring more than five years from the date of issuance, the discharger shall give prior written notification to the department of the date the discharge is to commence. The term of the permit shall not exceed five years from that date.

[2-18-77, 6-26-80, 9-20-82, 7-2-81, 3-3-86, 12-1-95, 11-15-96; 20.6.2.3109 NMAC – Rn, 20 NMAC 6.2.III.3109, 1-15-01; A, 12-1-01; A, 9-15-02]

[Subsection 3109.A was added and subsection subsections renumbered 11-15-96]

**20.6.2.5003 NOTIFICATION AND GENERAL OPERATION REQUIREMENTS FOR ALL UNDERGROUND INJECTION CONTROL WELLS:**

All operators of underground injection control wells, except those wells regulated under the Oil and Gas Act, the Geothermal Resources Conservation Act, and the Surface Mining Act, shall:

**A.** For existing underground injection control wells, submit to the secretary the information enumerated in Subsection C of Section 20.6.2.1201 NMAC of this Part ~~[no later than September 20, 1983]~~; provided, however, that if the information in Subsection C of Section 20.6.2.1201 NMAC has been previously submitted to the secretary and acknowledged by him, the information need not be resubmitted; and

**B.** Operate and continue to operate in conformance with Sections 20.6.2.1 through 20.6.2.5299 NMAC.

**C.** For new underground injection control wells, submit to the secretary the information enumerated in Subsection C of Section 20.6.2.1201

NMAC of this Part at least 120 days prior to well construction.

[9-20-82, 12-1-95; 20.6.2.5300 NMAC – Rn, 20 NMAC 6.2.V.5300, 1-15-01; 20.6.2.5003 NMAC – Rn, 20.6.2.5300 NMAC, 12-1-01; A, 12-1-01; A, 9-15-02]

**20.6.2.5101 DISCHARGE PERMIT AND OTHER REQUIREMENTS FOR CLASS I NON-HAZARDOUS WASTE INJECTION WELLS AND CLASS III WELLS:**

**A.** Class I non-hazardous waste injection wells and Class III wells must meet the requirements of Sections 20.6.2.5000 through 20.6.2.5299 NMAC in addition to other applicable requirements of the commission regulations. The secretary may also require that some Class IV and Class V wells comply with the requirements for Class I non-hazardous waste injection wells in Sections 20.6.2.5000 through 20.6.2.5299 NMAC if the secretary determines that the additional requirements are necessary to prevent the movement of water contaminants from a specified injection zone into ground water having 10,000 mg/l or less TDS. No Class I non-hazardous waste injection well or Class III well may be approved which allows for movement of fluids into ground water having 10,000 mg/l or less TDS except for fluid movement approved pursuant to Section 20.6.2.5103 NMAC, or pursuant to a temporary designation as provided in Paragraph (2) of Subsection C of Section 20.6.2.5101 NMAC.

**B.** Operation of a Class I non-hazardous waste injection well or Class III well must be pursuant to a discharge permit ~~[according to the schedules in the following paragraphs:-~~

~~(1) Any person who before September 20, 1982, is injecting fluids into a Class I non-hazardous waste injection well or Class III well without a discharge permit, may continue to inject without a discharge permit until December 19, 1982. No person who intends to begin discharging into a Class I non-hazardous waste injection well or Class III well after September 20, 1982 shall discharge except in conformance with a discharge permit.~~

~~(2) Any person who, before December 19, 1982, has a discharge permit pursuant to Sections 20.6.2.3000 through 20.6.2.3999 NMAC for the injection of fluids into a Class I non-hazardous waste injection well or a Class III well, may inject according to the discharge permit until the expiration of the current discharge permit. Upon application for renewal of the discharge permit, such person shall comply with the requirements of Sections 20.6.2.3000 through 20.6.2.3999 NMAC~~

~~and Sections 20.6.2.5000 through 20.6.2.5299 NMAC in the renewal application.~~

~~(3) After December 19, 1982, any person who does not have a discharge permit pursuant to Paragraph (2) of Subsection B of Section 20.6.2.5101 NMAC shall not discharge into a Class I non-hazardous waste injection well or a Class III well without a discharge permit meeting the requirements of Sections 20.6.2.3000 through 20.6.2.3999 NMAC and Sections 20.6.2.5000 through 20.6.2.5299 NMAC.~~

C. Discharge permits for Class I non-hazardous waste injection wells, or Class III wells affecting ground water of 10,000 mg/l or less TDS submitted for secretary approval shall:

(1) Receive an aquifer designation if required in Section 20.6.2.5103 NMAC prior to discharge permit issuance; or

(2) For Class III wells only, address the methods or techniques to be used to restore ground water so that upon final termination of operations including restoration efforts, ground water at any place of withdrawal for present or reasonably foreseeable future use will not contain either concentrations in excess of the standards of Section 20.6.2.3103 NMAC or any toxic pollutant. Issuance of a discharge permit or project discharge permit for Class III wells that provides for restoration of ground water in accordance with the requirements of this Subsection shall substitute for the aquifer designation provisions of Section 20.6.2.5103 NMAC. The approval shall constitute a temporary aquifer designation for a mineral bearing or producing aquifer, or portion thereof, to allow injection as provided for in the discharge permit. Such temporary designation shall expire upon final termination of operations including restoration efforts.

D. The exemptions from the discharge permit requirement listed in Section 20.6.2.3105 NMAC do not apply to underground injection control wells except as provided below:

(1) Wells regulated by the Oil Conservation Division under the exclusive authority granted under Section 70-2-12 NMSA 1978 or under other Sections of the "Oil and Gas Act";

(2) Wells regulated by the Oil Conservation Division under the "Geothermal Resources Act";

(3) Wells regulated by the New Mexico Coal Surface Mining Bureau under the "Surface Mining Act";

(4) Wells for the disposal of effluent from systems which receive less than 2,000 gallons per day of domestic sewage effluent and are regulated under the "Liquid

Waste Disposal Regulations" (20 NMAC 7.3) [20.7.3 NMAC] adopted by the Environmental Improvement Board under the "Environmental Improvement Act".

E. Project permits for Class III wells.

(1) The secretary may consider a project discharge permit for Class III wells, if the wells are:

(a) Within the same well field, facility site or similar unit,

(b) Within the same aquifer and ore deposit,

(c) Of similar construction,

(d) Of the same purpose, and

(e) Operated by a single owner or operator.

(2) A project discharge permit does not allow the discharger to commence injection in any individual operational area until the secretary approves an application for injection in that operational area (operational area approval).

(3) A project discharge permit shall:

(a) Specify the approximate locations and number of wells for which operational area approvals are or will be sought with approximate time frames for operation and restoration (if restoration is required) of each area; and

(b) Provide the information required under the following Sections of this Part, except for such additional site-specific information as needed to evaluate applications for individual operational area approvals: Subsection C of Section 20.6.2.3106, Sections 20.6.2.3107, 20.6.2.5204 through 20.6.2.5209, and Subsection B of Section 20.6.2.5210 NMAC.

(4) Applications for individual operational area approval shall include the following:

(a) Site-specific information demonstrating that the requirements of this Part are met, and

(b) Information required under Sections 20.6.2.5202 through 20.6.2.5210 NMAC and not previously provided pursuant to Subparagraph (b) of Paragraph (3) of Subsection [F]E of this Section.

(5) Applications for project discharge permits and for operational area approval shall be processed in accordance with the same procedures provided for discharge permits under Sections 20.6.2.3000 through 20.6.2.3114 NMAC, allowing for public notice on the project discharge permit and on each application for operational area approval pursuant to Section 20.6.2.3108 NMAC with opportunity for public hearing prior to approval or disapproval.

(6) The discharger shall comply

with additional requirements that may be imposed by the secretary pursuant to this Part on wells in each new operational area.

F. If the holder of a discharge permit for a Class I non-hazardous waste injection well, or Class III well submits an application for discharge permit renewal at least 120 days before discharge permit expiration, and the discharger is in compliance with his discharge permit on the date of its expiration, then the existing discharge permit for the same activity shall not expire until the application for renewal has been approved or disapproved. An application for discharge permit renewal must include and adequately address all of the information necessary for evaluation of a new discharge permit. Previously submitted materials may be included by reference provided they are current, readily available to the secretary and sufficiently identified to be retrieved.

G. Discharge Permit Signatory Requirements: No discharge permit for a Class I non-hazardous waste injection well or Class III well may be issued unless:

(1) The application for a discharge permit has been signed as follows:

(a) For a corporation: by a principal executive officer of at least the level of vice-president, or a representative who performs similar policy-making functions for the corporation who has authority to sign for the corporation; or

(b) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(c) For a municipality, state, federal, or other public agency: by either a principal executive officer who has authority to sign for the agency, or a ranking elected official; and

(2) The signature is directly preceded by the following certification: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment."

H. Transfer of Class I non-hazardous waste injection well and Class III well Discharge Permits.

(1) The transfer provisions of Section 20.6.2.3111 NMAC do not apply to a discharge permit for a Class I non-hazardous waste injection well or Class III well.

(2) A Class I non-hazardous waste

injection well or Class III well discharge permit may be transferred if:

(a) The secretary receives written notice 30 days prior to the transfer date; and

(b) The secretary does not object prior to the proposed transfer date. The secretary may require modification of the discharge permit as a condition of transfer, and may require demonstration of adequate financial responsibility.

(3) The written notice required by Subparagraph (b) of Paragraph (2) of Subsection I above shall:

(a) Have been signed by the discharger and the succeeding discharger, including an acknowledgement that the succeeding discharger shall be responsible for compliance with the discharge permit upon taking possession of the facility; and

(b) Set a specific date for transfer of discharge permit responsibility, coverage and liability; and

(c) Include information relating to the succeeding discharger's financial responsibility required by Paragraph (17) of Subsection B of Section 20.6.2.5210 NMAC.

**I.** Modification or Termination of a Discharge Permit for a Class I non-hazardous waste injection well or Class III well: If data submitted pursuant to any monitoring requirements specified in the discharge permit or other information available to the secretary indicate that this Part are being or may be violated, the secretary may require modification or, if it is determined by the secretary that the modification may not be adequate, may terminate a discharge permit for a Class I non-hazardous waste injection Well, or Class III well or well field, that was approved pursuant to the requirements of this under Sections 20.6.2.5000 through 20.6.2.5299 NMAC for the following causes:

(1) Noncompliance by the discharger with any condition of the discharge permit; or

(2) The discharger's failure in the discharge permit application or during the discharge permit review process to disclose fully all relevant facts, or the discharger's misrepresentation of any relevant facts at any time; or

(3) A determination that the permitted activity may cause a hazard to public health or undue risk to property and can only be regulated to acceptable levels by discharge permit modification or termination.

[9-20-82, 12-1-95, 11-15-96; 20.6.2.5101 NMAC – Rn, 20 NMAC 6.2.V.5101, 1-15-01; A, 12-1-01; A, 9-15-02]

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## End of Adopted Rules and Regulations Section

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**2002**  
**SUBMITTAL DEADLINES AND PUBLICATION DATES**

<b>Volume XIII</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
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
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Issue Number 20	October 16	October 31
Issue Number 21	November 1	November 14
Issue Number 22	November 15	November 27
Issue Number 23	December 2	December 13
Issue Number 24	December 16	December 30

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