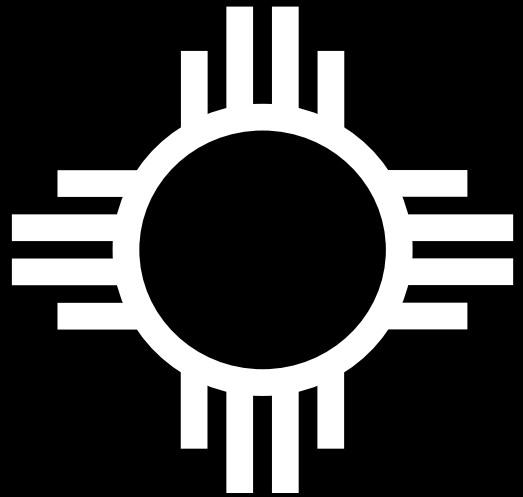


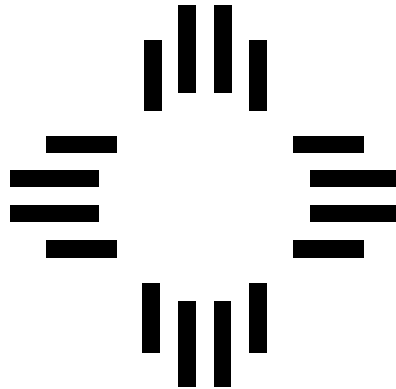
**NEW
MEXICO
REGISTER**



Volume XIV
Issue Number 23
December 15, 2003

New Mexico Register

**Volume XIV, Issue Number 23
December 15, 2003**



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

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Santa Fe, New Mexico
2003

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New Mexico Register

Volume XIV, Number 23

December 15, 2003

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

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

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Notices of Rulemaking and Proposed Rules

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 2:00 p.m., on January 13, 2004, at the New Mexico State Library, Room 2027 at 1205 Camino Carlos Rey, Santa Fe, New Mexico. The subject of the hearing will be Clinical Nurse Specialists.

This proposed regulation will be revised to reflect changes in Senate Bill 475 that was signed into law on April 5, 2001. The Bill states that the department shall recognize clinical nurse specialist (CNS) as mid-level providers in the Medicaid program, provided that the clinical nurse specialist complies with the requirements for licensure under the Nursing Practice Act, and that the service provided by the clinical nurse specialist is covered and reimbursable in accordance with Title XIX or Title XXI of the Social Security Act.

The Department has determined that if the proposed regulations are approved and promulgated, CNSs would be reimbursed directly by Medicaid for services rendered in a Federal Qualified Health Center's (FQHC), Rural Health Center's (RHC), and other free-standing clinical settings. Services that are rendered by a CNS in a hospital setting would be reimbursed under the Diagnosis Related Group (DRG) methodology, not directly to the CNS. The exception is CNSs certified in psychiatric nursing who provide psychiatric nursing services as mid-level providers in free-standing psychiatric hospitals or psychiatric units in acute care hospitals. These CNSs will be reimbursed directly.

Interested persons may submit written comments no later than 5:00 p.m., January 13, 2004, to Pamela S. Hyde, J.D., Secretary, 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/register. 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.

End of Notices and Proposed Rules Section

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Adopted Rules and Regulations

ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

TITLE 20 ENVIRONMENTAL PROTECTION CHAPTER 11

ALBUQUERQUE/BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

PART 46 SULFUR DIOXIDE EMISSIONS INVENTORY REQUIRE- MENTS; WESTERN BACKSTOP SUL- FUR DIOXIDE TRADING PROGRAM

20.11.46.1 ISSUING AGENCY:
Albuquerque/Bernalillo County Air Quality
Control Board, P.O. Box 1293,
Albuquerque, New Mexico 87103.
[20.11.46.1 NMAC - N, 12/31/03]

20.11.46.2 SCOPE:
A. This Part is applicable
to all geographic areas within Bernalillo
county, New Mexico and within the juris-
diction of the Albuquerque/Bernalillo coun-
ty air quality control board.

B. Exempt: This Part
does not apply to sources within Bernalillo
county that are located on Indian lands over
which the Albuquerque/Bernalillo county
air quality control board lacks jurisdiction.
[20.11.46.2 NMAC - N, 12/31/03]

**20.11.46.3 STATUTORY
AUTHORITY:** This part is adopted pur-
suant to the authority provided in the New
Mexico Air Quality Control Act, NMSA
1978 Sections 74-2-4, 74-2-5; the Joint Air
Quality Control Board Ordinance;
Bernalillo County Ordinance No. 94-5,
Sections 4 and 5; and the Joint Air Quality
Control Board Ordinance, Revised
Ordinances of Albuquerque 1994 Sections
9-5-1-3 and 9-5-1-4.
[20.11.46.3 NMAC - N, 12/31/03]

20.11.46.4 DURATION :
Permanent, except as provided in Section
20.11.46.5 NMAC.
[20.11.46.4 NMAC - N, 12/31/03]

20.11.46.5 EFFECTIVE DATE:
December 31, 2003, except where a later
date is cited at the end of a section, or as
provided in 20.11.46.10 NMAC. However,
if the EPA disapproves the *Section 309
Regional Haze State Implementation Plan
Element: Albuquerque/Bernalillo County,
New Mexico* this entire Part will no longer
be effective on the date of official notifica-
tion by the EPA to the Governor of New

Mexico that the *Section 309 Regional Haze
State Implementation Plan Element:
Albuquerque/Bernalillo County, New
Mexico* has been disapproved.
[20.11.46.5 NMAC - N, 12/31/03]

20.11.46.6 OBJECTIVE:

A. 20.11.46 NMAC imple-
ments the western backstop SO₂ trading
program ("WEB trading program") provi-
sions required under the federal Regional
Haze Regulation, 40 CFR 51.309, the
Albuquerque/Bernalillo county element of
the state of New Mexico's regional haze
implementation plan and related require-
ments associated with the time period prior
to the WEB trading program trigger date.

B. Nothing in 20.11.46
NMAC waives any requirement otherwise
in effect or subsequently required under
another program, including regulations gov-
erning new sources.
[20.11.46.6 NMAC - N, 12/31/03]

20.11.46.7 DEFINITIONS: In
addition to the definitions in 20.11.46.7
NMAC, the definitions in 20.11.1 NMAC
apply unless there is a conflict between def-
initions, in which case the definition in this
part shall govern.

**A. "Account certificate
of representation"** means the completed
and signed submission required to designate
an account representative for a WEB source
or an account representative for a general
account.

**B. "Account representa-
tive"** means the individual who is author-
ized through an account certificate of repre-
sentation to represent owners and operators
of the WEB source with regard to matters
under the WEB trading program or, for a
general account, who is authorized through
an account certificate of representation to
represent the persons having an ownership
interest in allowances in the general account
with regard to matters concerning the gen-
eral account.

C. "Act" means the feder-
al Clean Air Act, as amended, 42 U.S.C.
7401, et seq.

D. "Actual emissions"
means the total annual sulfur dioxide emis-
sions determined in accordance with
20.11.46.16 NMAC, or determined in
accordance with 20.11.46.9 NMAC for
sources that are not subject to 20.11.46.16
NMAC.

**E. "Air quality control
board" or "AQCB"** means the
Albuquerque/Bernalillo county air quality
control board.

F. "Allocate" means to
assign allowances to a WEB source through

Section F(1) of Chapter VI of the SO₂ mile-
stones and backstop trading program imple-
mentation plan element.

G. "Allowance" means
the limited authorization under the WEB
trading program to emit one ton of SO₂ dur-
ing a specified control period or any control
period thereafter subject to the terms and
conditions for use of unused allowances as
established by 20.11.46 NMAC.

**H. "Allowance limita-
tion"** means the tonnage of SO₂ emissions
authorized by the allowances available for
compliance deduction for a WEB source for
a control period under 20.11.46.19 NMAC
on the allowance transfer deadline for that
control period.

**I. "Allowance tracking
system"** means the system developed by
the department where allowances under the
WEB trading program are recorded, held,
transferred and deducted.

**J. "Allowance tracking
system account"** means an account in the
allowance tracking system established for
purposes of recording, holding, transferring,
and deducting allowances.

**K. "Allowance transfer
deadline"** means the deadline established
in Subsection B of 20.11.46.17 NMAC
when allowances must be submitted for
recording in a WEB source's compliance
account in order to demonstrate compliance
for that control period.

**L. "Compliance
account"** means an account established in
the allowance tracking system under
Subsection A of 20.11.46.15 NMAC for the
purpose of recording allowances that a
WEB source might hold to demonstrate
compliance with its allowance limitation.

**M. "Compliance certifi-
cation"** means a submission to the depart-
ment by the account representative as
required under Subsection B of 20.11.46.19
NMAC to report a WEB source's compli-
ance or noncompliance with 20.11.46
NMAC.

N. "Control period"
means the period beginning January 1 of
each year and ending on December 31 of
the same year, inclusive.

**O. "Emission report" or
"inventory"** means a listing, by source, of
the amount of air pollutants discharged into
the atmosphere.

**P. "Emissions tracking
database"** means the central database
where SO₂ emissions for WEB sources as
recorded and reported in accordance with
20.11.46 NMAC are tracked to determine
compliance with allowance limitations.

**Q. "Emission unit" or
"unit"** means any part of a stationary

source that emits or would have the potential to emit any pollutant regulated pursuant to the Clean Air Act.

R. "Existing source" means, a stationary source that commenced operation before the program trigger date.

S. "Fugitive emissions" are those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

T. "General account" means an account established in the *allowance tracking system* under 20.11.46.15 NMAC for the purpose of recording allowances held by a person that are not to be used to show compliance with an allowance limitation.

U. "Milestone" means the maximum level of stationary source regional sulfur dioxide emissions for each year from 2003 to 2018, established according to the procedures in Section A of the SO₂ milestones and backstop trading program implementation plan.

V. "New source set-aside" means a pool of allowances that are available for allocation to new sources in accordance with the provisions of Section F(3) of Chapter VI of the SO₂ milestones and backstop trading program implementation plan element.

W. "New WEB source" means a WEB source that commenced operation on or after the program trigger date.

X. "Owner or operator" means any person who is an owner or who operates, controls or supervises a WEB source, and includes but is not limited to any holding company, utility system or plant manager.

Y. "Part" means an air quality control regulation under Title 20, Chapter 11 of the New Mexico administrative code, unless otherwise noted, as adopted or amended by the AQCB.

Z. "Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation is enforceable by the EPA administrator.

AA. "Program trigger date" means the date that the department determines that the WEB trading program has been triggered in accordance with the provisions of Section D of Chapter VI of the SO₂ milestones and backstop trading program implementation plan element.

BB. "Program trigger

years" means the years shown in Table 3, column 3, of the SO₂ milestones and backstop trading program implementation plan element for the applicable milestone if the WEB trading program is triggered as described in Chapter V(D) of the SO₂ milestones and backstop trading program implementation plan element.

CC. "Renewable energy resource" means a resource that generates electricity by non-nuclear and non-fossil technologies that results in low or no air emissions. The term includes electricity generated by wind energy technologies; solar photovoltaic and solar thermal technologies; geothermal technologies; technologies based on landfill gas and biomass sources, and new low-impact hydropower that meets the low-impact hydropower institute criteria. Biomass includes agricultural, food and wood wastes. The term does not include pumped storage or biomass from municipal solid waste, black liquor, or treated wood.

DD. "Retired source" means a WEB source that has received a retired source exemption as provided in Subsection E of 20.11.46.11 NMAC. Any retired source resuming operations under Subsection E of 20.11.46.11 NMAC, must submit its exemption as part of its registration materials.

EE. "Serial number" means, when referring to allowances, the unique identification number assigned to each allowance by the tracking systems administrator, in accordance with Subsection B of 20.11.46.14 NMAC.

FF. "SO₂ emitting unit" means any equipment that is located at a WEB source and that emits SO₂.

GG. "SO₂ milestones and backstop trading program implementation plan element" means Section F of Chapter VI of the *Section 309 Regional Haze State Implementation Plan Element: Albuquerque/Bernalillo County, New Mexico* adopted by the AQCB on November 12, 2003.

HH. "Stationary source" means any building, structure, facility or installation that emits or may emit any air pollutant subject to regulation under the Clean Air Act.

II. "Submit" means sent to the appropriate authority under the signature of the account representative. For purposes of determining when something is submitted, an official U.S. postal service postmark, or equivalent electronic time stamp, shall establish the date of submittal.

JJ. "Ton" means 2000 pounds and, for any control period, any fraction of a ton equaling 1000 pounds or more shall be treated as one ton and any

fraction of a ton equaling less than 1000 pounds shall be treated as zero tons.

KK. "Tracking system administrator" means the person designated by the department as the administrator of the *allowance tracking system* and the emission-tracking database.

LL. "WEB source" means a stationary source that meets the applicability requirements of 20.11.46.11 NMAC.

MM. "Western backstop sulfur dioxide (SO₂) trading program" or "WEB trading program" means all sections of 20.11.46 NMAC, but not Section 20.11.46.9 NMAC, triggered as a backstop in accordance with the provisions in the SO₂ milestones and backstop trading program implementation plan element to ensure that regional SO₂ emissions are reduced.

[20.11.46.7 NMAC - N, 12/31/03]

20.11.46.8 VARIANCES: No variances will be granted from requirements of this part.

[20.11.46.8 NMAC - N, 12/31/03]

20.11.46.9 EMISSION TRACKING REQUIREMENTS FOR SULFUR DIOXIDE EMISSION INVENTORIES:

Beginning with the 2003 emission inventory, all stationary sources with actual emissions of one hundred (100) tons per year or more of sulfur dioxide in the year 2000, or in any subsequent year, shall submit an annual inventory of sulfur dioxide emissions. A source that meets these criteria, and then emits less than 100 tons per year in a later year shall submit a sulfur dioxide inventory for tracking compliance with the regional sulfur dioxide milestones until the western backstop sulfur dioxide trading program has been fully implemented and emission tracking has occurred under 20.11.46.16 NMAC.

A. All sources meeting the criteria immediately above in 20.11.46.9 NMAC will be subject to the following federally enforceable provisions:

(1) submit an annual inventory of sulfur dioxide emissions;

(2) document the emissions monitoring/estimation methodology used, and demonstrate that the selected methodology is acceptable under the inventory program;

(3) include emissions from start up, shut down, and upset conditions in the annual total inventory;

(4) use 40 CFR Part 75 methodology for reporting emissions for all sources subject to the federal acid rain program;

(5) maintain all records used in the calculation of the emissions, including but not limited to the following:

(a) amount of fuel consumed;

(b) percent sulfur content of fuel

and how the content was determined;

- (c) quantity of product produced;
- (d) emissions monitoring data;
- (e) operating data; and
- (f) how the emissions are calculated.

(6) maintain records of any physical changes to facility operations or equipment, or any other changes that may affect the emissions projections; and

(7) retain records for a minimum of 10 years from the date of establishment, or if the record was the basis for an adjustment to the milestone, five years after the date of an implementation plan revision, whichever is longer.

B. Reporting Requirements.

(1) Except as provided in Paragraph (2) of Subsection B of 20.11.46.9 NMAC, the owner or operator shall submit the emission report by April 1 each year immediately following the year for which the source is required to report emissions data.

(2) Sources for which a date for submitting an annual emission report is specified in a current operating permit issued under 20.11.42 NMAC, Operating Permits, shall submit such report on the date specified in the permit. The Department shall provide a copy of the previous emissions report upon request by the owner or operator of such source.

C. Emissions report contents shall include.

(1) The name, address, and physical location of the stationary source;

(2) The name and telephone number of the person to contact regarding the emissions report;

(3) A certification signed by the owner, or operator, or a responsible official as defined in 20.11.42 NMAC attesting that the statements and information contained in the emissions report are true and accurate to the best knowledge and belief of the certifying official, and including the full name, title, signature, date of signature, and telephone number of the certifying official. For sources subject to 20.11.42 NMAC, the certification shall be made as required under 20.11.42 NMAC;

(4) smelters shall submit an annual report of sulfur input, in tons/year;

(5) for each emission point additional information may be required by the department:

- (a) stack and exhaust gas parameters;
- (b) type of control equipment and estimated control efficiency;
- (c) schedule of operation;
- (d) estimated actual emissions, including fugitive emissions and emissions occurring during maintenance, start-ups,

shutdowns, upsets, and downtime, of sulfur oxides, in tons per year, and a description of the methods utilized to make such estimates, including calculations;

(e) the annual process or fuel combustion rates; and

(f) the fuel heat, sulfur, and ash content.

D. The department shall retain emission inventory records for non-utilities for 1996 and 1998 until the year 2018 to ensure that changes in emissions monitoring techniques can be tracked.

[20.11.46.9 NMAC - N, 12/31/03]

20.11.46.10 WEB TRADING PROGRAM TRIGGER:

A. Except as provided in Subsection B of 20.11.46.10 NMAC, Sections 20.11.46.11 NMAC through 20.11.46.22 NMAC shall become effective on the program trigger date that is established in accordance with the procedures outlined in the SO₂ milestones and backstop trading program implementation plan element.

B. 20.11.46.20 NMAC, Special Penalty Provisions for the Year 2018 Milestone, shall become effective on January 1, 2018 and shall remain effective until the provisions of 20.11.46.20 NMAC have been fully implemented.

[20.11.46.10 NMAC - N, 12/31/03]

20.11.46.11 WEB TRADING PROGRAM APPLICABILITY:

A. General applicability: 20.11.46 NMAC applies to any stationary source or group of stationary sources that are located on one or more contiguous or adjacent properties and which are under the control of the same person or persons under common control, belonging to the same industrial grouping, and that are described in Paragraphs (1) through (4) of Subsection B of 20.11.46.10 NMAC. A stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group (i.e., all have the same two-digit code) as described in the *standard industrial classification manual*, 1987.

B. The following are WEB sources.

(1) All BART-eligible sources as defined in 40 CFR 51.301 that are BART-eligible due to SO₂ emissions.

(2) All stationary sources not meeting the criteria of Paragraph (1) of Subsection B of 20.11.46.11 NMAC, that have actual SO₂ emissions of 100 tons or more per year in the program trigger years or any subsequent year. The fugitive emis-

sions of a stationary source shall not be considered in determining whether it is a WEB source unless the source belongs to one of the following categories of stationary source:

- (a) coal cleaning plants (with thermal dryers);
 - (b) kraft pulp mills;
 - (c) portland cement plants;
 - (d) primary zinc smelters;
 - (e) iron and steel mills;
 - (f) primary aluminum ore reduction plants;
 - (g) primary copper smelters;
 - (h) municipal incinerators capable of charging more than 250 tons of refuse per day;
 - (i) hydrofluoric, sulfuric, or nitric acid plants;
 - (j) petroleum refineries;
 - (k) lime plants;
 - (l) phosphate rock processing plants;
 - (m) coke oven batteries;
 - (n) sulfur recovery plants;
 - (o) carbon black plants (furnace process);
 - (p) primary lead smelters;
 - (q) fuel conversion plants;
 - (r) sintering plants;
 - (s) secondary metal production plants;
 - (t) chemical process plants;
 - (u) fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
 - (v) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
 - (w) taconite ore processing plants;
 - (x) glass fiber processing plants;
 - (y) charcoal production plants;
 - (z) fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or
 - (aa) any other stationary source category, which as of August 7, 1980 is being regulated under Section 111 or 112 of the Clean Air Act.
- (3) A new source that begins operation after the program trigger date and has the potential to emit 100 tons or more of SO₂ per year.
- (4) The department may determine on a case-by-case basis, with concurrence from the EPA administrator, that a source defined in Paragraph (2) of Subsection B of 20.11.46.11 NMAC is not a WEB source if the source:
- (a) in each of the previous five years had actual SO₂ emissions of less than 100 tons per year, and
 - (b) had actual SO₂ emissions of 100 tons or more in a single year due to a

temporary emission increase that was caused by a sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, failure of process equipment, or a failure to operate in a normal or usual manner;

(c) took timely and reasonable action to minimize the temporary emission increase; and

(d) has corrected the failure of air pollution control equipment, process equipment, or process by the time of the department's determination under 20.11.46.11 NMAC; or

(e) had to switch fuels or feedstocks on a temporary basis and as a result of an emergency situation or unique and unusual circumstances besides cost of such fuels or feedstocks.

(5) A temporary emission increase due to poor maintenance or careless operation does not meet the criteria of this section.

C. Duration of program participation: Except as provided for in Subsection D of 20.11.46.11 NMAC, once a source is subject to the WEB trading program, it will remain in the program every year thereafter.

D. Application for retired source exemption:

(1) Any WEB source that is retired shall apply for a retired source exemption. The WEB source may only be considered retired if all SO₂ emitting units at the source are retired. The application shall contain the following information:

(a) identification of the WEB source, including plant name and an appropriate identification code in a format specified by the department;

(b) name of account representative;

(c) description of the status of the WEB source, including the date that the WEB source was retired;

(d) signed certification that the WEB source is retired and will comply with the requirements of Subsection D of 20.11.46.11 NMAC; and

(e) verification that the WEB source has a general account where any unused allowances or future allocations will be recorded.

(2) **Responsibilities of retired sources:** The retired source exemption becomes effective when the department notifies the source that the retired source exemption has been granted.

(3) A retired source shall be exempt from 20.11.46.16 NMAC and 20.11.46.19 NMAC, except as provided below.

(a) A retired source shall not emit any SO₂ after the date the retired source exemption is effective.

(b) A WEB source shall submit SO₂ emissions reports, as required by Subsection O of 20.11.46.16 NMAC for any time period the source was operating prior to the effective date of the retired source exemption. The retired source shall be subject to the compliance provisions of 20.11.46.19 NMAC, including the requirement to hold allowances in the source's compliance account to cover all SO₂ emissions prior to the date the source was permanently retired.

(c) A retired source that is still in existence but no longer emitting SO₂ shall, for a period of five years from the date the records are created, retain records demonstrating the effective date of the retired source exemption for purposes of this part.

(4) Resumption of operations.

(a) Should a retired source desire to resume operation, the retired source shall submit registration materials as follows:

(i) if the source is required to obtain a new source review permit or operating permit under 20.11.41 NMAC, 20.11.42 NMAC, 20.11.60 NMAC or 20.11.61 NMAC prior to resuming operation, then the source shall submit registration information as described in 20.11.46.13 NMAC and a copy of the retired source exemption with the application required under 20.11.41 NMAC, 20.11.42 NMAC, 20.11.60 NMAC or 20.11.61 NMAC;

(ii) if the source is not required to obtain a new source review permit or operating permit under 20.11.41 NMAC, 20.11.42 NMAC, 20.11.60 NMAC or 20.11.61 NMAC prior to resuming operation, then the source shall submit registration information as described in Subsection A of 20.11.46.13 NMAC and a copy of the retired source exemption to the department at least ninety days prior to resumption of operation.

(b) The retired source exemption shall automatically expire on the day the source resumes operation.

(5) **Loss of Future Allowances:** A WEB source that is retired and that does not apply to the department for a retired source exemption within 90 days of the date that the source is retired shall forfeit any unused and future allowances. The abandoned allowances shall be retired by the *tracking system administrator*.
[20.11.46.11 NMAC - N, 12/31/03]

20.11.46.12 A C C O U N T REPRESENTATIVE FOR WEB SOURCES: Each WEB source must identify one account representative and may also identify an alternate account representative who may act on behalf of the account representative. Any representation, action, inaction or submission by the alternate account representative will be deemed to be

a representation, action, inaction or submission by the account representative.

A. Identification and certification of an account representative.

(1) The account representative and any alternate account representative shall be appointed by a written agreement that makes the representations, actions, inactions or submissions of the account representative and any alternate account representative binding on the owners and operators of the WEB source. A copy of the agreement shall be provided to the department.

(2) The account representative shall submit to the department and the tracking system administrator a signed and dated account certificate of representation (certificate) that contains the following elements:

(a) identification of the WEB source by plant name, state, and an appropriate identification code in a format specified by the department;

(b) the name, address, e-mail (if available), telephone and facsimile number of the account representative and any alternate;

(c) a list of owners and operators of the WEB source;

(d) information to be part of the emission tracking system database in accordance with the SO₂ milestones and backstop trading program implementation plan element; and the specific data elements shall be as specified by the department to be consistent with the data system structure, and may include basic facility information that may appear in other reports and notices submitted by the WEB source, such as county location, industrial classification codes, and similar general facility information; and

(e) the following certification statement: "I certify that I was selected as the account representative or alternate account representative, as applicable, by an agreement binding on the owners and operators of the WEB source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the WEB trading program on behalf of the owners and operators of the WEB source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the department regarding the WEB trading program."

(3) Upon receipt by the department of the complete certificate, the account representative and any alternate account representative represents and, by his or her representations, actions, inactions, or submissions, legally binds each owner and operator of the WEB source in all matters pertaining to the WEB trading

program. The owners and operators shall be bound by any decision or order issued by the department regarding the WEB trading program.

(4) No WEB allowance tracking system account shall be established for the WEB source until the tracking system administrator has received a complete certificate. Once the account is established, the account representative shall make all submissions concerning the account, including the deduction or transfer of allowances.

B. Requirements and responsibilities.

(1) The responsibilities of the account representative include, but are not limited to, the transferring of allowances, and the submission of monitoring plans, registrations, certification applications, SO₂ emissions data and compliance reports as required by 20.11.46 NMAC, and representing the source in all matters pertaining to the WEB trading program.

(2) Each submission under this program shall be signed and certified by the account representative for the WEB source. Each submission shall include the following truth and accuracy certification statement by the account representative: "I am authorized to make this submission on behalf of the owners and operators of the WEB source for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

C. Changing the account representative or owners and operators.

(1) **Changes to the account representative or the alternate account representative.** The account representative or alternate account representative may be changed at any time by sending a complete superseding certificate to the department and the tracking system administrator under Paragraph (3) of Subsection A of 20.11.46.12 NMAC, with the change taking effect upon receipt of such certificate by the department. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous account representative or alternate prior to the time and date when the tracking system administrator receives the superseding certificate shall be binding on the new account representative and the owners and operators

of the WEB source.

(2) Changes in owners and operators.

(a) Within 30 days of any change in the owners and operators of the WEB source, including the addition of a new owner or operator, the account representative shall submit a revised certificate amending the list of owners and operators to include such change.

(b) In the event a new owner or operator of a WEB source is not included in the list of owners and operators submitted in the certificate, such new owner or operator shall be deemed to be subject to and bound by the certificate, the representations, actions, inactions, and submissions of the account representative of the WEB source, and the decisions, orders, actions, and inactions of the department as if the new owner or operator were included in such list.

[20.11.46.12 NMAC - N, 12/31/03]

20.11.46.13 REGISTRATION:

A. Deadlines.

(1) Each source that is a WEB source on or before the program trigger date shall register by submitting the initial certificate required in Subsection A of 20.11.46.12 NMAC to the department no later than 180 days after the program trigger date.

(2) Any existing source that becomes a WEB source after the program trigger date shall register by submitting the initial certificate required in Subsection A of 20.11.46.12 NMAC to the department no later than September 30 of the year following the inventory year in which the source exceeded the emission threshold.

(3) Any new WEB source shall register by submitting the initial certificate required in Subsection A of 20.11.46.12 NMAC to the department prior to the commencement of operation.

B. Integration into Permits.

(1) Any allocation, transfer or deduction of allowance to or from the compliance account of a WEB source shall not require revision of the WEB source's operating permit under 20.11.42 NMAC.

(2) After 20.11.46 NMAC is effective, a WEB source that is not required to have a permit under 20.11.41 NMAC, 20.11.60 NMAC or 20.11.61 NMAC, must at all times possess a valid 20.11.42 NMAC permit that includes the requirements of 20.11.46 NMAC. If the WEB source does not possess a Title V permit under 20.11.42 NMAC, it may satisfy the requirements of paragraph (2) of Subsection B of 20.11.46.13 NMAC by obtaining or modifying a permit under 20.11.41 NMAC, 20.11.60 NMAC or 20.11.61 NMAC that incorporates the requirements of 20.11.46

NMAC. The source must at all times possess a valid permit that includes these requirements.

[20.11.46.13 NMAC - N, 12/31/03]

20.11.46.14 A L L O W A N C E ALLOCATIONS:

A. The tracking system administrator shall record the allowances for each WEB source in the compliance account for a WEB source once the allowances are allocated by the department under Section F1 of Chapter VI of the SO₂ milestones and backstop trading program implementation plan element. If applicable, the tracking system administrator shall also record a portion of the SO₂ allowances in a WEB source's special reserve compliance account for any allowances held in accordance with Subsection B of 20.11.46.16 NMAC.

B. The tracking system administrator shall assign a serial number to each allowance in accordance with Section F2 of the SO₂ milestones and backstop trading program implementation plan element.

C. All allowances shall be allocated, recorded, transferred, or used as whole allowances. To determine the number of whole allowances, the number of allowances shall be rounded down for decimals less than 0.50 and rounded up for decimals of 0.50 or greater.

D. An allowance is not a property right, and is a limited authorization to emit one ton of SO₂ valid only for the purpose of meeting the requirements of 20.11.46 NMAC. No provision of this WEB trading program or other law should be construed to limit the authority of the United States or the department to terminate or limit such authorization.

E. Early reduction bonus allocation: Any WEB source that, between 2003 and the program trigger year, reduces permitted annual SO₂ emissions to a level that is below the floor level allocation established for that source in Section F1 of Chapter VI of the SO₂ milestones and backstop trading program implementation plan element may apply to the department for an early reduction bonus allocation. The application shall be submitted no later than 90 days after the program trigger date. Any WEB source that applies and receives early reduction bonus allocations shall retain the records referenced below for a minimum of five years after the early reduction bonus allowance is certified in accordance with Section F1(d) of Chapter VI of the SO₂ milestones and backstop trading program implementation plan element. The application for an early reduction bonus allocation shall contain the following information:

(1) copies of all permits or other

enforceable documents that include annual SO₂ emissions limits for the WEB source during the period the WEB source was generating the early reductions; and such permits or enforceable documents shall require monitoring for SO₂ emissions that meets the requirements in Subsection A and Subsection C of 20.11.46.16 NMAC and monitoring provisions that were in effect one year prior to the beginning of the credit generating period;

(2) copies of emissions monitoring reports, for one year prior to the beginning of the credit generating period and for the period the WEB source was generating the early reductions, that document the actual annual SO₂ emissions; and the emissions monitoring reports during the credit generating period must demonstrate that the actual annual SO₂ emissions were below the floor level allocation established for that source in Section F1 of Chapter VI of the SO₂ milestones and backstop trading program implementation plan element;

(3) demonstration that the floor level established for the source in accordance with Section F1 of Chapter VI of the SO₂ milestones and backstop trading program implementation plan element was calculated using data that are consistent with the new monitoring methodology under Subsection A of 20.11.46.16 NMAC; and if new monitoring techniques change the floor level for the source, then a demonstration of the new floor level based on new monitoring techniques shall be included in the application.

F. Request for allowances for new WEB sources or modified WEB Sources.

(1) A new WEB source or an existing WEB source that has increased production capacity through a permitted change in operations under 20.11.41 NMAC, 20.11.60 NMAC or 20.11.61 NMAC may apply to the department for an allocation from the new source set-aside, as outlined in Section F3 of Chapter VI of the SO₂ milestones and backstop trading program implementation plan element.

(a) A new WEB source is eligible to apply for an annual allocation equal to the permitted annual SO₂ emission limit for that source after the source has commenced operation.

(b) An existing WEB source is eligible to apply for an annual allocation equal to the permitted annual SO₂ emission limit for that source that is attributable to any amount of production capacity that is greater than the permitted production capacity for that source as of January 1, 2003.

(c) A source that has received a retired source exemption under Subsection

D of 20.11.46.11 NMAC is not eligible to apply for an allocation from the new source set-aside.

(2) The application for an allocation from the new source set-aside shall contain the following information:

(a) for existing WEB sources, documentation that shows the permitted production capacity of the source before and after the new permit;

(b) for new WEB sources, documentation of the actual date of the commencement of operation and a copy of the permit.

[20.11.46.14 NMAC - N, 12/31/03]

20.11.46.15 ESTABLISHMENT OF ACCOUNTS:

A. Allowance tracking system accounts: All WEB sources shall open a compliance account. Any person may open a general account for holding and transferring allowances. In addition, if a WEB source conducts monitoring under Subsection B of 20.11.46.16 NMAC, the WEB source shall open a special reserve compliance account for allowances associated with units monitored under those provisions. The WEB source and account representative shall have no rights to transfer allowances in or out of such special reserve compliance account. The department shall allocate allowances to the account in accordance with Paragraph (5) of Subsection B of 20.11.46.16 NMAC and all such allowances for each control period shall be retired each year to comply with 20.11.46.19 NMAC. To open either type of account, an application that contains the following information shall be submitted:

(1) the name, mailing address, e-mail address, telephone number, and facsimile number of the account representative; for a compliance account, include a copy of the account certificate of representation of the account representative and any alternate as required in Paragraph (2) of Subsection A of 20.11.46.12 NMAC; and for a general account, include the account certificate of representation of the account representative and any alternate as required in Paragraph (2) of Subsection C of 20.11.46.15 NMAC;

(2) the WEB source or organization name;

(3) the type of account to be opened; and

(4) a signed certification of truth and accuracy by the account representative according to Paragraph (2) of Subsection A of 20.11.46.12 NMAC and for compliance accounts and for general accounts, a certification of truth and accuracy by the account representative according to Subsection D of 20.11.46.15 NMAC.

B. Account representa-

tion for general accounts: For a general account, one account representative shall be identified and an alternate account representative may be identified and may act on behalf of the account representative. Any representation, action, inaction or submission by the alternate account representative shall be deemed to be a representation, action, inaction or submission by the account representative.

C. Identification and certification of an account representative for general accounts.

(1) The account representative and any alternate account representative shall be appointed by a written agreement that makes the representations, actions, inactions or submissions of the account representative and any alternate account representative binding on all persons who have an ownership interest with respect to allowances held in the general account. A copy of the signed agreement shall be provided to the department.

(2) The account representative shall submit to the department and the tracking system administrator a signed and dated account certificate of representation (certificate) that contains the following elements:

(a) the name, address, e-mail (if available), telephone and facsimile number of the account representative and any alternate;

(b) the organization name;

(c) the following certification statement: "I certify that I was selected as the account representative or alternate account representative, as applicable, by an agreement binding on all persons who have an ownership interest in allowances in the general account with regard to matters concerning the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the WEB trading program on behalf of said persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the department regarding the general account."

(3) Upon receipt by the department of the complete certificate, the account representative represents and, by his or her representations, actions, inactions, or submissions, legally binds each person who has an ownership interest in allowances held in the general account with regard to all matters concerning the general account. Such persons shall be bound by any decision or order issued by the department.

(4) No WEB allowance tracking system general account shall be established until the tracking system administrator has received a complete certificate. Once the

account is established, the account representative shall make all submissions concerning the account, including the deduction or transfer of allowances.

D. Requirements and responsibilities: Each submission for the general account shall be signed and certified by the account representative for the general account. Each submission shall include the following truth and accuracy certification statement by the account representative: "I am authorized to make this submission on behalf of all person who have an ownership interest in allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

E. Changing the account representative: The account representative or alternate account representative may be changed at any time by sending a complete superseding certificate to the department and the tracking system administrator under Paragraph (2) of Subsection C of 20.11.46.15 NMAC, with the change taking effect upon receipt of such certificate by the department. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous account representative or alternate prior to the time and date when the department receives the superseding certificate shall be binding on the new account representative and all persons having ownership interest with respect to allowances held in the general account.

F. Changes to the account: Any change to the information required in the application for an existing account under Subsection A of 20.11.46.15 NMAC shall require a revision of the application.

[20.11.46.15 NMAC - N, 12/31/03]

20.11.46.16 MONITORING, RECORD KEEPING AND REPORTING - GENERAL REQUIREMENTS FOR MONITORING METHODS:

A. Each SO₂ emitting unit at a WEB source shall comply with the following, as applicable, to monitor and record SO₂ mass emissions:

(1) if a unit is subject to 40 CFR

Part 75 under a requirement separate from the WEB trading program, the unit shall meet the requirements contained in 40 CFR Part 75 with respect to monitoring, recording and reporting SO₂ mass emissions;

(2) if a unit is not subject to 40 CFR Part 75 under a requirement separate from the WEB trading program, a unit shall use one of the following monitoring methods, as applicable:

(a) a continuous emission monitoring system (CEMS) for SO₂ and flow that complies with all applicable monitoring provisions in 40 CFR Part 75;

(b) if the unit is a gas- or oil-fired combustion device, the excepted monitoring methodology in appendix D to 40 CFR Part 75, or, if applicable, the low mass emissions (LME) provisions (with respect to SO₂ mass emissions only) of Section 75.19 of 40 CFR Part 75;

(c) one of the optional WEB protocols, if applicable, in 20.11.46.21 NMAC or 20.11.46.22 NMAC ; or

(d) a petition for site-specific monitoring that the source submits for approval by the department and approval by the EPA in accordance with Paragraph (5) of Subsection O of 20.11.46.16 NMAC;

(3) a permanently retired unit shall not be required to monitor under Section 20.11.46.15 NMAC if such unit was permanently retired and had no emissions for the entire period for which the WEB source implements Paragraph (3) of Subsection A of 20.11.46.16, and the account representative certifies in accordance with Subsection B of 20.11.46.19 NMAC that these conditions were met; and in the event that a permanently retired unit recommences operation, the WEB source shall meet the requirements of 20.11.46.16 NMAC in the same manner as if the unit was a new unit.

B. Notwithstanding Subsection A of 20.11.46.16 NMAC , the WEB source with a unit that meets one of the conditions of Paragraph (1) of Subsection B of 20.11.46.16 NMAC may elect to have the provisions of Paragraph (1) of Subsection B of 20.11.46.16 NMAC apply to that unit.

(1) Any of the following units may implement Subsection B of 20.11.46.16 NMAC:

(a) any smelting operation where all of the emissions from the operation are not ducted to a stack; or

(b) any flare, except to the extent such flares are used as a fuel gas combustion device at a petroleum refinery;

(c) any other type of unit without add-on SO₂ control equipment, if no control level was assumed for the WEB source in establishing the floor level (and reducible

allocation) provided in Section F1 of Chapter VI of the SO₂ milestones and backstop trading program implementation plan element.

(2) For each unit covered by Subsection B of 20.11.46.16 NMAC, the account representative shall submit a notice to request that Subsection B of 20.11.46.16 NMAC applies to one or more SO₂ emitting units at a WEB source. The notice shall be submitted in accordance with the compliance dates specified in Paragraph (1) of Subsection M of 20.11.46.16 NMAC, and shall include the following information (in a format specified by the department with such additional, related information as may be requested):

(a) a notice of all units at the applicable source, specifying which of the units are to be covered by Subsection B of 20.11.46.16 NMAC; and

(b) consistent with the emission estimation methodology used to determine the floor level (and reducible allocation) for the source in accordance with Section F1 of Chapter VI of the SO₂ milestones and backstop trading program implementation plan element, the portion of the WEB source's overall allowance allocation that is attributable to any unit(s) covered by Paragraph (2) of Subsection B of 20.11.46.16; and

(c) an identification of any such units that are permanently retired.

(3) For each new unit at an existing WEB source for which the WEB source seeks to comply with this Subsection B of 20.11.46.16 NMAC, and for which the account representative applies for an allocation under the new source set-aside provisions of Subsection F of 20.11.46.14 NMAC, the account representative shall submit a modified notice under Paragraph (2) of Subsection B of 20.11.46.16 NMAC, that includes such new SO₂ emitting unit(s).

The modified notice shall be submitted in accordance with the compliance dates in Paragraph (1) of Subsection M of 20.11.46.16 NMAC, but no later than the date on which a request must be submitted under Paragraph (1) of Subsection F of 20.11.46.14 NMAC for allocations from the set-aside.

(4) The department shall evaluate the information submitted by the WEB source in Paragraphs (2) and (3) of Subsection B of 20.11.46.16 NMAC, and may issue a notice to the source to exclude any units that do not qualify under this Subsection B of 20.11.46.16 NMAC or to adjust the portion of allowances attributable to units that do qualify to be consistent with the emission estimation methodology used to establish the floor level (and reducible allocation) for the source.

(5) The department shall allocate

allowances equal to the adjusted portion of the WEB source's allowances under Paragraphs (2), (3), and (4) of Subsection B of 20.11.46.16 NMAC in a special reserve compliance account provided that no such treatment of the WEB source's allocation will be required for any unit that is permanently retired and had no emissions for the entire period for which the WEB source implements Subsection B of 20.11.46.16 NMAC and the account representative certifies in accordance with 20.11.46.19 NMAC that these conditions are met. In the event that a permanently retired unit recommences operation, the WEB source shall meet the requirements of Section 20.11.46.16 NMAC in the same manner as if the unit was a new unit.

(6) For each unit under this Subsection B of 20.11.46.16 NMAC, the account representative for a WEB source shall submit an annual emissions statement in accordance with Subsection O of 20.11.46.16 NMAC. The WEB source shall maintain operating records sufficient to estimate annual emissions in a manner consistent with the emission estimation methodology used to establish the floor level (and reducible allocation) for the source. In addition, if the estimated emissions from all such units at the WEB source are greater than the allowances for the current control year held in the special reserve compliance account under Paragraph (5) of Subsection B of 20.11.46.16 NMAC for the WEB source, the account representative shall report the excess amount as part of the annual report for the WEB source under 20.11.46.19 NMAC and the WEB source shall use other allowances in the standard compliance account for the WEB source to account for such emissions, in accordance with 20.11.46.19 NMAC.

(7) The remaining provisions of 20.11.46.16 NMAC shall not apply to units covered by Subsection B of 20.11.46.16 NMAC except where otherwise noted.

(8) A WEB source may opt to modify the monitoring for an SO₂ emitting unit to use monitoring under Subsection A of 20.11.46.16 NMAC, but any such monitoring change shall take effect on January 1 of the next compliance year. In addition, the account representative shall submit an initial monitoring plan at least 180 days prior to the date on which the new monitoring will take effect and a detailed monitoring plan in accordance with Subsection D of 20.11.46.16 NMAC. The account representative shall also submit a revised notice under Subsection B of 20.11.46.16 NMAC at the same time that the initial monitoring plan is submitted.

C. For any monitoring that the WEB source uses under 20.11.46.16 NMAC (including Paragraph B of Section

20.11.46.16 NMAC), the WEB source (and, as applicable, the account representative) shall implement, certify, and use such monitoring in accordance with 20.11.46.16 NMAC, and shall record and report the data from such monitoring as required in 20.11.46.16 NMAC. In addition, the WEB source (and, as applicable, the account representative) shall not:

(1) except for an alternative approved by the EPA administrator for a WEB source that implements monitoring under Paragraph (1) of Subsection A of 20.11.46.16 NMAC, use an alternative monitoring system, alternative reference method or another alternative for the required monitoring method without having obtained prior written approval in accordance with Paragraph (5) of Subsection O of 20.11.46.16 NMAC;

(2) operate an SO₂ emitting unit so as to discharge, or allow to be discharged, SO₂ emissions to the atmosphere without accounting for these emissions in accordance with the applicable provisions of 20.11.46.16 NMAC;

(3) disrupt the approved monitoring method or any portion thereof, and thereby avoid monitoring and recording SO₂ mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing or maintenance is performed in accordance with the applicable provisions of 20.11.46.16 NMAC; or

(4) retire or permanently discontinue use of an approved monitoring method, except under one of the following circumstances:

(a) during a period when the unit is exempt from the requirements of 20.11.46.16 NMAC, including retirement of a unit as addressed in Paragraph (3) of Subsection A of 20.11.46.16 NMAC;

(b) the WEB source is monitoring emissions from the unit with another certified monitoring method approved under 20.11.46.16 NMAC for use at the unit that provides data for the same parameter as the retired or discontinued monitoring method; or

(c) the account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with 20.11.46.16 NMAC, and the WEB source recertifies thereafter a replacement monitoring system in accordance with the applicable provisions of 20.11.46.16 NMAC.

D. Monitoring plan general provisions: The WEB source of an SO₂ emitting unit that uses a monitoring method under Paragraph (2) of Subsection A of 20.11.46.16 NMAC shall meet the following requirements:

(1) prepare and submit to the department an initial monitoring plan for each monitoring method that the WEB source uses to comply with 20.11.46.16 NMAC; and in accordance with Subsection F of 20.11.46.16 NMAC, the plan shall contain sufficient information on the units involved, the applicable method, and the use of data derived from that method to demonstrate that all unit SO₂ emissions are monitored and reported; and the plan shall be submitted in accordance with the compliance deadlines specified in Subsection M of 20.11.46.16 NMAC;

(2) prepare, maintain and submit to the department a detailed monitoring plan prior to the first day of certification testing in accordance with the compliance deadline specified in Subsection M of 20.11.46.16 NMAC; the plan shall contain the applicable information required by Subsection D of 20.11.46.16 NMAC; the department may require that the monitoring plan (or portions thereof) be submitted electronically; and the department also may require that the plan be submitted on an ongoing basis in electronic format as part of the quarterly report submitted under Paragraph (1) of Subsection O of 20.11.46.16 NMAC or resubmitted separately after any change is made to the plan in accordance with the following Paragraph (3) of Subsection D of 20.11.46.16 NMAC;

(3) whenever the WEB source makes a replacement, modification, or change in one of the systems or methodologies provided for in Paragraph (2) of Subsection A of 20.11.46.16 NMAC, including a change in the automated data acquisition and handling system or in the flue gas handling system, that affects information reported in the monitoring plan (e.g., a change to serial number for a component of a monitoring system), then the WEB source shall update the monitoring plan in accordance with the compliance deadline specified in Subsection M of 20.11.46.16 NMAC.

E. A WEB source with an SO₂ emitting unit that uses a method under Paragraph (1) of Subsection A of 20.11.46.16 NMAC (a unit subject to 40 CFR Part 75 under a program other than this WEB trading program) shall meet the requirements of Subsection D through Subsection I of 20.11.46.16 NMAC by preparing, maintaining and submitting a monitoring plan in accordance with the requirements of 40 CFR Part 75, provided that the WEB source also shall submit the entire monitoring plan to the department upon request.

F. Initial monitoring plan: The account representative shall submit an initial monitoring plan for each SO₂ emitting unit (or group of units sharing a

common methodology) that, except as otherwise specified in an applicable provision in 20.11.46.21 NMAC, contains the following information:

(1) for all SO₂ emitting units involved in the monitoring plan:

- (a) plant name and location;
- (b) plant and unit identification numbers assigned by the department;
- (c) type of unit (or units for a group of units using a common monitoring methodology);
- (d) identification of all stacks or pipes associated with the monitoring plan;
- (e) types of fuel(s) fired (or sulfur containing process materials used in the SO₂ emitting unit), and the fuel classification of the unit if combusting more than one type of fuel and using a 40 CFR Part 75 methodology;
- (f) type(s) of emissions controls for SO₂ installed or to be installed, including specifications of whether such controls are pre-combustion, post-combustion, or integral to the combustion process;
- (g) maximum hourly heat input capacity, or process throughput capacity, if applicable;
- (h) identification of all units using a common stack; and
- (i) indicator of whether any stack identified in the plan is a bypass stack;

(2) for each unit and parameter required to be monitored, identification of monitoring methodology information, consisting of monitoring methodology, monitor locations, substitute data approach for the methodology, and general identification of quality assurance procedures; and if the proposed methodology is a site-specific methodology submitted pursuant to Subparagraph (d) of Paragraph (2) of Subsection A of 20.11.46.16 NMAC, the description under Paragraph (2) of Subsection D of 20.11.46.16 NMAC shall describe fully all aspects of the monitoring equipment, installation locations, operating characteristics, certification testing, ongoing quality assurance and maintenance procedures, and substitute data procedures;

(3) if the WEB source intends to petition for a change to any specific monitoring requirement otherwise required under 20.11.46.16 NMAC, such petition may be submitted as part of the initial monitoring plan;

(4) the department may issue a notice of approval or disapproval of the initial monitoring plan based on the compliance of the proposed methodology with the requirements for monitoring in 20.11.46.16 NMAC.

G. Detailed monitoring plan: The account representative shall submit a detailed monitoring plan that, except as otherwise specified in an applicable pro-

visions in 20.11.46.21 NMAC or 20.11.46.22 NMAC, shall contain the following information:

(1) identification and description of each monitoring component (including each monitor and its identifiable components, such as analyzer or probe) in a CEMS (e.g., SO₂ pollutant concentration monitor, flow monitor, moisture monitor), a 40 CFR Part 75, appendix D monitoring system (e.g., fuel flowmeter, data acquisition and handling system), or a protocol in 20.11.46.21 NMAC or 20.11.46.22 NMAC, including:

- (a) manufacturer, model number and serial number;
- (b) component or system identification code assigned by the facility to each identifiable monitoring component, such as the analyzer or probe;
- (c) designation of the component type and method of sample acquisition or operation (e.g., in situ pollutant concentration monitor or thermal flow monitor);
- (d) designation of the system as a primary or backup system;
- (e) first and last dates the system reported data;
- (f) status of the monitoring component; and
- (g) parameter monitored;

(2) identification and description of all major hardware and software components of the automated data acquisition and handling system, including:

- (a) hardware components that perform emission calculations or store data for quarterly reporting purposes (provide the manufacturer and model number); and
- (b) software components (provide the identification of the provider and model or version number);

(3) explicit formulas for each measured emissions parameter, using component or system identification codes for the monitoring system used to measure the parameter that links the system observations with the reported concentrations and mass emissions; the formulas shall contain all constants and factors required to derive mass emissions from component or system code observations and an indication of whether the formula is being added, corrected, deleted, or is unchanged; and the WEB source with a low mass emissions unit for which the WEB source is using the optional low mass emissions excepted methodology in Section 75.19(c) of 40 CFR Part 75 is not required to report such formulas;

(4) inside cross-sectional area (square feet) at flow monitoring location (for units with flow monitors, only);

(5) if using CEMS for SO₂ and flow, for each parameter monitored: scale, maximum potential concentration (and

method of calculation), maximum expected concentration (if applicable, and method of calculation), maximum potential flow rate (and method of calculations), span value, full-scale range, daily calibration units of measure, span effective date and hour, span inactivation date and hour, indication of whether dual spans are required, default high range value, flow rate span, and flow rate span value and full scale value in standard cubic feet per hour (scfh) for each unit or stack using SO₂ or flow component monitors;

(6) if the monitoring system or excepted methodology provides for use of a constant, assumed, or default value for a parameter under specific circumstances, then the following information for each value of such parameter shall be included:

- (a) identification of the parameter;
- (b) default, maximum, minimum, or constant value, and units of measure for the value;
- (c) purpose of the value;
- (d) indicator of use during controlled and uncontrolled hours;
- (e) types of fuel;
- (f) source of the value;
- (g) value effective date and hour;
- (h) date and hour value is no longer effective (if applicable); and

(i) for units using the excepted methodology under Section 75.19 of 40 CFR Part 75, the applicable SO₂ emission factor;

(7) unless otherwise specified in Section 6.5.2.1 of appendix A to 40 CFR Part 75, for each unit or common stack on which hardware CEMS are installed:

(a) the upper and lower boundaries of the range of operation (as defined in Section 6.5.2.1 of appendix A to 40 CFR Part 75), or thousands of lb/hr of steam, or ft/sec (as applicable);

(b) the load or operating level(s) designated as normal in section 6.5.2.1 of appendix A to 40 CFR Part 75, or thousands of pounds per hour lb/hr of steam, or feet per second ft/sec (as applicable);

(c) the two load or operating levels (i.e., low, mid, or high) identified in section 6.5.2.1 of appendix A to 40 CFR Part 75 as the most frequently used;

(d) the date of the data analysis used to determine the normal load (or operating) level(s) and the two most frequently used load (or operating) levels; and

(e) activation and deactivation dates when the normal load or operating level(s) change and are updated.

(8) for each unit that is complying with 40 CFR Part 75 for which the optional fuel flow-to-load test in Section 2.1.7 of appendix D to 40 CFR Part 75 is used:

(a) the upper and lower bound-

aries of the range of operation (as defined in Section 6.5.2.1 of appendix A to 40 CFR Part 75), expressed in thousands of lb/hr of steam;

(b) the load level designated as normal, pursuant to Section 6.5.2.1 of appendix A to 40 CFR Part 75, expressed in thousands of lb/hr of steam; and

(c) the date of the load analysis used to determine the normal load level.

(9) information related to quality assurance testing, including (as applicable): identification of the test strategy; protocol for the relative accuracy test audit; other relevant test information; calibration gas levels (percent of span) for the calibration error test and linearity check; calculations for determining maximum potential concentration, maximum expected concentration (if applicable), maximum potential flow rate, and span;

(10) if applicable, apportionment strategies under Sections 75.10 through 75.18 of 40 CFR Part 75;

(11) description of site locations for each monitoring component in a monitoring system, including schematic diagrams and engineering drawings and any other documentation that demonstrates each monitor location meets the appropriate siting criteria; and for units monitored by a continuous emission monitoring system, diagrams shall include:

(a) a schematic diagram identifying entire gas handling system from unit to stack for all units, using identification numbers for units, monitor components, and stacks corresponding to the identification numbers provided in the initial monitoring plan and Paragraphs (1) and (3) of Subsection G of 20.11.46.16 NMAC; the schematic diagram must depict the height of any monitor locations; and comprehensive or separate schematic diagrams shall be used to describe groups of units using a common stack;

(b) stack and duct engineering diagrams showing the dimensions and locations of fans, turning vanes, air preheaters, monitor components, probes, reference method sampling ports, and other equipment that affects the monitoring system location, performance, or quality control checks;

(12) a data flow diagram denoting the complete information-handling path from output signals of CEMS components to final reports.

H. In addition to supplying the information in Subsections F and G of 20.11.46.16 NMAC above, the WEB source with an SO₂ emitting unit using either of the methodologies in Subparagraph (b) of Paragraph (2) of Subsection A of 20.11.46.16 NMAC shall include the following information in its monitoring plan

for the specific situations described:

(1) for each gas-fired or oil-fired SO₂ emitting unit for which the WEB source uses the optional protocol in appendix D to 40 CFR Part 75 for SO₂ mass emissions, the WEB source shall include the following information in the monitoring plan:

(a) parameter monitored;

(b) type of fuel measured, maximum fuel flow rate, units of measure, and basis of maximum fuel flow rate (i.e., upper range value or unit maximum) for each fuel flowmeter;

(c) test method used to check the accuracy of each fuel flowmeter;

(d) submission status of the data;

(e) monitoring system identification code;

(f) the method used to demonstrate that the unit qualifies for monthly gross calorific value (GCV) sampling or for daily or annual fuel sampling for sulfur content, as applicable;

(g) a schematic diagram identifying the relationship between the unit, all fuel supply lines, the fuel flowmeter(s), and the stack(s); the schematic diagram must depict the installation location of each fuel flowmeter and the fuel sampling location(s); and comprehensive and separate schematic diagrams shall be used to describe groups of units using a common pipe;

(h) for units using the optional default SO₂ emission rate for "pipeline natural gas" or "natural gas" in appendix D to 40 CFR Part 75, the information on the sulfur content of the gaseous fuel used to demonstrate compliance with either Section 2.3.1.4 or 2.3.2.4 of appendix D to 40 CFR Part 75;

(i) for units using the 720 hour test under Section 2.3.6 of appendix D to 40 CFR Part 75 to determine the required sulfur sampling requirements, report the procedures and results of the test; and

(j) for units using the 720 hour test under Section 2.3.5 of appendix D to 40 CFR Part 75 to determine the appropriate fuel GCV sampling frequency, report the procedures used and the results of the test;

(2) for each SO₂ emitting unit for which the WEB source uses the low mass emission excepted methodology of section 75.19 of 40 CFR Part 75, the WEB source shall include the following information in the monitoring plan that accompanies the initial certification application:

(a) the results of the analysis performed to qualify as a low mass emissions unit under Section 75.19(c) of 40 CFR Part 75; this report shall include either the previous three years actual or projected emissions; and the following items shall be included: a) current calendar year of appli-

cation; b) type of qualification; c) years one, two, and three; d) annual measured, estimated or projected SO₂ mass emissions for years one, two, and three; and e) annual operating hours for years one, two, and three;

(b) a schematic diagram identifying the relationship between the unit, all fuel supply lines and tanks, any fuel flowmeter(s), and the stack(s); and comprehensive or separate schematic diagrams shall be used to describe groups of units using a common pipe;

(c) for units which use the long term fuel flow methodology under section 75.19(c)(3) to 40 CFR Part 75, a diagram of the fuel flow to each unit or group of units and a detailed description of the procedures used to determine the long term fuel flow for a unit or group of units for each fuel combusted by the unit or group of units;

(d) a statement that the unit burns only gaseous fuel(s) and/or fuel oil and a list of the fuels that are burned or a statement that the unit is projected to burn only gaseous fuel(s) and/or fuel oil and a list of the fuels that are projected to be burned;

(e) a statement that the unit meets the applicability requirements in Sections 75.19(a) and (b) of 40 CFR Part 75 with respect to SO₂ emissions; and

(f) any unit historical actual, estimated and projected SO₂ emissions data and calculated SO₂ emissions data demonstrating that the unit qualifies as a low mass emissions unit under Sections 75.19(a) and (b) of 40 CFR Part 75.

(3) for each gas-fired unit the WEB source shall include the following in the monitoring plan: current calendar year, fuel usage data as specified in the definition of gas-fired in Section 72.2 of 40 CFR Part 72, and an indication of whether the data are actual or projected data.

I. The specific elements of a monitoring plan under Subsection D of 20.11.46.16 NMAC shall not be part of an operating permit for a WEB source issued in accordance with the Title V of the Clean Air Act, and modifications to the elements of the plan shall not require a permit modification.

J. Certification and recertification:

(1) All monitoring systems are subject to initial certification and recertification testing as specified in 40 CFR Part 75, 20.11.46.21 NMAC or; 20.11.46.22 NMAC. Certification or recertification of a monitoring system by the EPA for a WEB source that is subject to 40 CFR Part 75 under a requirement separate from 20.11.46 NMAC shall constitute certification under the WEB Trading Program.

(2) The WEB source with an SO₂

emitting unit not otherwise subject to 40 CFR Part 75 that monitors SO₂ mass emissions in accordance with 40 CFR Part 75 to satisfy the requirements of 20.11.46.16 NMAC shall perform all of the tests required by that regulation and shall submit the following:

(a) a test notice, not later than 21 days before the certification testing of the monitoring system, provided that the department may establish additional requirements for adjusting test dates after this notice as part of the approval of the initial monitoring plan under Subsection F of 20.11.46.16 NMAC;

(b) an initial certification application within 45 days after testing is complete;

(c) a monitoring system shall be considered provisionally certified while the application is pending, and the system shall be deemed certified if the department does not approve or disapprove the system within six months after the date on which the application is submitted;

(d) both at the time of the initial certification or recertification application submission and at the time of the audit, if an audit of any monitoring certified under 20.11.46 NMAC, and a review of the initial certification or recertification application, reveal that any system or component should not have been certified or recertified because it did not meet a particular performance specification or other requirement of 20.11.46 NMAC, the department will issue a notice of disapproval of the certification status of such system or component; for the purposes of Paragraph (2) of Subsection J of 20.11.46.16 NMAC, an audit shall be either a field audit of the facility or an audit of any information submitted to the department regarding the facility; by issuing the notice of disapproval, the certification status is revoked prospectively, and the data measured and recorded shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the WEB source completes subsequently approved initial certification or recertification tests in accordance with the procedures in Subsection J of 20.11.46.16 NMAC; and the WEB source shall apply the substitute data procedures in Subsection L of 20.11.46.16 NMAC to replace, prospectively, all of the invalid, non-quality-assured data for each disapproved system or component.

K. Ongoing quality assurance and quality control: The WEB source shall satisfy the applicable quality assurance and quality control requirements of 40 CFR Part 75 or, if the WEB source is subject to a WEB protocol in 20.11.46.21 NMAC, the applicable quality assurance and quality control requirements in

20.11.46.21 NMAC on and after the date that certification testing commences.

L. Substitute data procedures:

(1) For any period after certification testing is complete in which quality assured, valid data are not being recorded by a monitoring system certified and operating in accordance with 20.11.46 NMAC, missing or invalid data shall be replaced with substitute data in accordance with 40 CFR Part 75 or, if the WEB source is subject to a WEB protocol in 20.11.46.21 NMAC or 20.11.46.22 NMAC, with substitute data in accordance with 20.11.46.21 NMAC.

(2) For an SO₂ emitting unit that does not have a certified or provisionally certified monitoring system in place as of the beginning of the first control period for which the unit is subject to the WEB trading program, the WEB source shall:

(a) if the WEB Source will use a CEMS to comply with 20.11.46.16 NMAC, substitute the maximum potential concentration of SO₂ for the unit and the maximum potential flow rate, as determined in accordance with 40 CFR Part 75; and the procedures for conditional data validation under Section 75.20(b)(3) may be used for any monitoring system under 20.11.46 NMAC that uses these 40 CFR Part 75 procedures, as applicable;

(b) if the WEB source will use the 40 CFR Part 75 appendix D methodology, substitute the maximum potential sulfur content, density or gross calorific value for the fuel and the maximum potential fuel flow rate, in accordance with Section 2.4 of appendix D to 40 CFR Part 75;

(c) if the WEB source will use the 40 CFR Part 75 methodology for low mass emissions units, substitute the SO₂ emission factor required for the unit as specified in 40 CFR 75.19 and the maximum rated hourly heat input, as defined in 40 CFR 72.2; or

(d) if using a protocol in 20.11.46.21 NMAC or 20.11.46.22 NMAC, follow the procedures in the applicable protocol.

M. Compliance deadline:

(1) The initial monitoring plan shall be submitted by the following dates:

(a) for each source that is a WEB source on or before the program trigger date, the monitoring plan shall be submitted 180 days after such program trigger date;

(b) for any existing source that becomes a WEB source after the program trigger date, the monitoring plan shall be submitted by September 30 of the year following the inventory year in which the source exceeded the emissions threshold;

(c) for any new WEB source, the monitoring plan shall be included with the permit application under 20.11.41 NMAC,

20.11.42 NMAC, 20.11.60 NMAC or 20.11.61 NMAC.

(2) A detailed monitoring plan under Subsection E of 20.11.46.16 NMAC shall be submitted no later than 45 days prior to commencing certification as required by Paragraph (3) of Subsection M of 20.11.46.16 NMAC.

(3) Emission monitoring systems shall be installed, operational and shall have met all of the certification testing requirements of this 20.11.46.16 NMAC (including any referenced in 20.11.46.21 NMAC or 20.11.46.22 NMAC) by the following dates:

(a) for each source that is a WEB source on or before the program trigger date, two years prior to the start of the first control period as described in 20.11.46.19 NMAC;

(b) for any existing source that becomes a WEB source after the program trigger date, one year after the due date for the monitoring plan under Subparagraph (b) of Paragraph (2) of Subsection M of 20.11.46.16 NMAC.

(c) for any new WEB source, or any new unit at a WEB source under Subparagraph (a) or (b) of Paragraph (3) of Subsection M of 20.11.46.16 NMAC, the earlier of 90 unit operating days or 180 calendar days after the date the new source commences operation.

(4) The WEB source shall submit test notices and certification applications in accordance with the deadlines set forth in Paragraph (2) of Subsection J of 20.11.46.16 NMAC.

(5) For each applicable control period, the WEB source shall submit each quarterly report under Subsection O of 20.11.46.16 NMAC by no later than 30 days after the end of each calendar quarter and shall submit the annual report under Subsection O of 20.11.46.16 NMAC no later than 60 days after the end of each calendar year.

N. Record keeping:

(1) Except as provided in Paragraph (2) of Subsection N of 20.11.46.106 NMAC, the WEB source shall keep copies of all reports, registration materials, compliance certifications, sulfur dioxide emissions data, quality assurance data, and other submissions under 20.11.46 NMAC for a period of five years. In addition, the WEB source shall keep a copy of all account certificates of representation for the duration of this program. Unless otherwise requested by the WEB source and approved by the department, the copies shall be kept on site at the source.

(2) The WEB source shall keep records of all operating hours, quality assurance activities, fuel sampling measurements, hourly averages for SO₂, stack flow,

fuel flow, or other continuous measurements, as applicable, and any other applicable data elements specified in 20.11.46.16 NMAC, 20.11.46.21 NMAC or in 20.11.46.22 NMAC. The WEB source shall maintain the applicable records specified in 40 CFR Part 75 for any SO₂ emitting unit that uses a 40 CFR Part 75 monitoring method to meet the requirements of 20.11.46.16 NMAC.

O. Reporting.

(1) **Quarterly reports.** For each SO₂ emitting unit, the account representative shall submit a quarterly report within 30 days after the end of each calendar quarter. The report shall be in a format specified by the department to include hourly and quality assurance activity information and shall be submitted in a manner compatible with the emissions tracking database designed for the WEB trading program. If the WEB source submits a quarterly report under 40 CFR Part 75 to the EPA administrator, no additional report under Paragraph (1) of Subsection O of 20.11.46.16 NMAC shall be required, provided, however, that the department may require that a copy of that report (or a separate statement of quarterly and cumulative annual SO₂ mass emissions) be submitted separately to the department.

(2) **Annual report.** Based on the quarterly reports, each WEB source shall submit an annual statement of total annual SO₂ emissions for all SO₂ emitting units at the source. The annual report shall identify the total emissions for all units monitored in accordance with Subsection A of 20.11.46.16 NMAC and the total emissions for all units with emissions estimated in accordance with Subsection B of 20.11.46.16 NMAC. The annual report shall be submitted within 60 days after the end of a control period.

(3) If the department so directs, any monitoring plan, report, certification, recertification, or emissions data required to be submitted under 20.11.46.16 NMAC shall be submitted to the tracking system administrator.

(4) The department may review and reject any report submitted under Subsection O of 20.11.46.16 NMAC that contains errors or fails to satisfy the requirements of 20.11.46.16 NMAC, and the account representative shall resubmit the report to correct any deficiencies.

(5) A WEB source may petition for an alternative to any requirement specified in Paragraph (2) of Subsection A of 20.11.46.16 NMAC. The petition shall require approval of the department and the EPA administrator. Any petition submitted under Paragraph (5) of Subsection O of 20.11.46.16 NMAC shall include sufficient information for the evaluation of the peti-

tion, including, at a minimum, the following information:

(a) identification of the WEB source and applicable SO₂ emitting unit(s);

(b) a detailed explanation of why the proposed alternative is being suggested in lieu of the requirement;

(c) a description and diagram of any equipment and procedures used in the proposed alternative, if applicable;

(d) a demonstration that the proposed alternative is consistent with the purposes of the requirement for which the alternative is proposed and is consistent with the purposes of 20.11.46 NMAC and that any adverse effect of approving such alternative will be de minimis; and

(e) any other relevant information that the department may require.

(6) For any monitoring plans, reports, or other information submitted under 20.11.46.16 NMAC, the WEB source shall ensure that, where applicable, identifying information is consistent with the identifying information provided in the most recent certificate of representation for the WEB source submitted under 20.11.46.12 NMAC.

[20.11.46.16 NMAC - N, 12/31/03]

20.11.46.17 ALLOWANCE TRANSFERS:

A. **Procedure:** To transfer allowances, the account representative shall submit the following information to the tracking system administrator:

(1) the transfer account number(s) identifying the transferor account;

(2) the transfer account number(s) identifying the transferee account;

(3) the serial number of each allowance to be transferred; and

(4) the transferor's account representative's name and signature and date of submission.

B. **Deadline:** The allowance transfer deadline is midnight pacific standard time March 1 of each year (or if this date is not a business day, midnight of the first business day thereafter) following the end of the control period. By this time, the transfer of the allowances into the WEB source's compliance account must be correctly submitted to the tracking system administrator in order to demonstrate compliance under Subsection A of 20.11.46.19 NMAC for that control period.

C. **Retirement of allowances:** To transfer allowances for the purpose of retirement, the account representative shall submit the following information to the tracking system administrator:

(1) the transfer account number(s) identifying the transferor account;

(2) the serial number of each allowance to be retired; and

(3) the transferor's account representative's name and signature and date of submission accompanied by a signed statement acknowledging that each retired allowance as no longer available for future transfers from or to any account.

[20.11.46.17 NMAC - N, 12/31/03]

20.11.46.18 USE OF ALLOWANCES FROM A PREVIOUS YEAR:

A. Any allowance that is held in a compliance account or general account shall remain in such an account unless and until the allowance is deducted in conjunction with the compliance process, or transferred to another account.

B. In order to demonstrate compliance under Subsection A of 20.11.46.19 NMAC for a control period, WEB sources shall only use allowances allocated for that current control period or any previous year. Because all allowances held in a special reserve compliance account for a WEB source that monitors certain units in accordance with Subsection B of 20.11.46.16 NMAC will be deducted for compliance for each control period, no banking of such allowances for use in a subsequent year is permitted by 20.11.46 NMAC.

C. If flow control procedures for the current control period have been triggered as outlined in Section F(9)(b) of Chapter VI of the SO₂ milestones and backstop trading program implementation plan element, then the use of allowances that were allocated for any previous year shall be limited as follows:

(1) the number of allowances that are held in each compliance account and general account as of the allowance transfer deadline for the immediately previous year and that were allocated for any previous year shall be determined;

(2) the number determined in Paragraph (1) of Subsection C of 20.11.46.18 NMAC shall be multiplied by the flow control ratio established in accordance with Section F(9)(b) of the SO₂ milestones and backstop trading program implementation plan element to determine the number of allowances that were allocated for a previous year that can be used without restriction for the current control period;

(3) allowances that were allocated for a previous year in excess of the number determined in Paragraph (2) of Subsection C of 20.11.46.18 NMAC may also be used for the current control period; and if such allowances are used to make a deduction, two allowances shall be deducted for each deduction of one allowance required under 20.11.46.19 NMAC.

D. Special provisions for the year 2018. After compliance with the

2017 allowance limitation has been determined in accordance with Subsection A of 20.11.46.19 NMAC, allowances allocated for any year prior to 2018 shall not be used for determining compliance with the 2018 allowance limitation or any future allowance limitation.

[20.11.46.18 NMAC - N, 12/31/03]

20.11.46.19 COMPLIANCE:
A. Compliance with allowance limitations:

(1) In accordance with Paragraph (2) of Subsection A of 20.11.46.19 NMAC and 20.11.46.18 NMAC, the WEB source shall hold allowances, as of the allowance transfer deadline in the WEB source's compliance account (together with any current control year allowances held in the WEB source special reserve compliance account under Subsection B of 20.11.46.16 NMAC) in an amount not less than the total SO₂ emissions for the control period from the WEB source, as determined under the monitoring and reporting requirements of 20.11.46.16 NMAC.

(a) For each source that is a WEB source on or before the program trigger date, the first control period is the calendar year that is six years following the calendar year for which SO₂ emissions exceeded the milestone in accordance with procedures in Section A of the SO₂ milestones and backstop trading program implementation plan element.

(b) For any existing source that becomes a WEB source after the program trigger date, the first control period is the calendar year that is four years following the inventory year in which the source exceeded the SO₂ emissions threshold.

(c) For any new WEB source after the program trigger date, the first control period is the first full calendar year that the source is in operation.

(d) If the WEB trading program is triggered in accordance with the 2013 review procedures in Section D(7) of Chapter VI of the SO₂ milestones and backstop trading program implementation plan element, the first control period for each source that is a WEB source on or before the program trigger date is the year 2018.

(2) Allowance transfer deadline: An allowance may only be deducted from the WEB source's compliance account if:

(a) the allowance was allocated for the current control period or meets the requirements in 20.11.46.18 NMAC for use of allowances from a previous control period, and

(b) the allowance was held in the WEB source's compliance account as of the allowance transfer deadline for the current control period, or was transferred into the

compliance account by an allowance transferred correctly submitted for recording by the allowance transfer deadline for the current control period.

(3) Compliance with allowance limitations shall be determined as follows:

(a) the total annual SO₂ emissions for all SO₂ emitting units at the source that are monitored under Subsection B of 20.11.46.16 NMAC, as reported by the source in Paragraph (2) and Paragraph (4) of Subsection O of 20.11.46.16 NMAC, and recorded in the emissions tracking database, shall be compared to the allowances held in the source's special reserve compliance account as of the allowance transfer deadline for the current control period, adjusted in accordance with 20.11.46.18 NMAC; if the emissions are equal to or less than the allowances in such account, all such allowances shall be retired to satisfy the obligation to hold allowances for such emissions; and if the total emissions from such units exceeds the allowances in such special reserve account, the WEB source shall account for such excess emissions in Subparagraph (b) of Paragraph (3) of Subsection A of 20.11.46.19 NMAC;

(b) the total annual SO₂ emissions for all SO₂ emitting units at the source that are monitored under Subsection A of 20.11.46.16 NMAC, as reported by the source as required by Paragraph (2) and Paragraph (4) of Subsection O of 20.11.46.16 NMAC, and recorded in the emissions tracking database, together with any excess emissions as calculated in the Subparagraph (a) of Paragraph (3) of Subsection A of 20.11.46.19, shall be compared to the allowances held in the source's compliance account as of the allowance transfer deadline for the current control period, adjusted in accordance with 20.11.46.18 NMAC.

(4) Other than allowances in a special reserve compliance account for units monitored under Subsection B of 20.11.46.16 NMAC, to the extent consistent with 20.11.46.18 NMAC, allowances shall be deducted for a WEB source for compliance with the allowance limitation as directed by the WEB source's account representative. Deduction of any other allowances as necessary for compliance with the allowance limitation shall be on a first-in, first-out accounting basis in the order of the date and time of their recording in the WEB source's compliance account, beginning with the allowances allocated to the WEB source and continuing with the allowances transferred to the WEB source's compliance account from another compliance account or general account. The allowances held in a special reserve compliance account pursuant to Subsection B of 20.11.46.16

NMAC shall be deducted as specified in Subparagraph (a) of Paragraph (3) of Subsection A of 20.11.46.19 NMAC.

B. Certification of compliance:

(1) For each control period in which a WEB source is subject to the allowance limitation, the account representative of the source shall submit to the department a compliance certification report for the source.

(2) The compliance certification report shall be submitted no later than the allowance transfer deadline of each control period, and shall contain the following:

(a) identification of each WEB source;

(b) at the account representative's option, the serial numbers of the allowances that are to be deducted from a source's compliance account for compliance with the allowance limitation; and

(c) the compliance certification report according to Paragraph (3) of Subsection B of 20.11.46.19 NMAC.

(3) In the compliance certification report, the account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the WEB source in compliance with the WEB trading program, whether the WEB source for which the compliance certification is submitted was operated during the control period covered by the report in compliance with the requirements of the WEB trading program applicable to the source including:

(a) whether the WEB source operated in compliance with the SO₂ allowance limitation;

(b) whether SO₂ emissions data has been submitted to the department in accordance with Subsection A of 20.11.46.16 NMAC and other applicable guidance, for review, revision as necessary, and finalization for forwarding to the SO₂ allowance tracking system for recording;

(c) whether the monitoring plan that governs the WEB source has been maintained to reflect the actual operation and monitoring of the source, and contains all information necessary to attribute SO₂ emissions to the source, in accordance with Subsection A of 20.11.46.16 NMAC;

(d) whether all the SO₂ emissions from the WEB source, if applicable, were monitored or accounted for either through the applicable monitoring or through application of the appropriate missing data procedures;

(e) if applicable, whether any SO₂ emitting unit for which the WEB source is not required to monitor in accordance with Paragraph (3) of Subsection A of 20.11.46.16 NMAC remained permanently

retired and had no emissions for the entire applicable period; and

(f) whether there were any changes in the method of operating or monitoring the WEB source that required monitor recertification; and if there were any such changes, the report shall specify the nature, reason, and date of the change, the method to determine compliance status subsequent to the change, and specifically, the method to determine SO₂ emissions.

C. Penalties for any WEB source exceeding its allowance limitations:

(1) Allowance deduction penalties:

(a) If emissions from a WEB source exceed the allowance limitation for a control period, as determined in accordance with Subsection A of 20.11.46.19 NMAC, the source's allowance held in its compliance account will be reduced by an amount equal to two times the source's tons of excess emissions. If the compliance account does not have sufficient allowances allocated for that control period, the required number of allowances shall be deducted from the WEB source's compliance account regardless of the control period for which they were allocated, once allowances are recorded in the account.

(b) Any allowance deduction required under 20.11.46.19 NMAC shall not reduce or otherwise affect the liability of the owners and operators of the WEB source for any fine, penalty or assessment or their obligation to comply with any other remedy, for the same violation, as ordered under the Clean Air Act, implementing regulations or applicable state or tribal law. Accordingly, a violation can be assessed each day of the control period for each ton of SO₂ emissions in excess of its allowance limitation if the department so chooses.

(2) **Financial penalties:** A financial penalty of \$5,000 per ton of SO₂ emissions in excess of the WEB source's allowance limitation shall be levied. Each ton represents a separate violation.

D. Liability:

(1) **WEB Source liability for non-compliance:** Separate from and regardless of any automatic penalties assessed for allowance deduction penalty and financial penalty, a WEB source that violates any requirement of 20.11.46 NMAC is subject to administrative, civil and criminal penalties under the Air Quality Control Act and the Clean Air Act. Each day of the control period is a separate violation, and each ton of SO₂ emissions in excess of a source's allowance limitation is a separate violation.

(2) **General liability:**

(a) Any provision of the WEB

trading program that applies to a source or an account representative shall apply also to the owners and operators of such source.

(b) Any person who violates any requirement or prohibition of the WEB trading program shall be subject to enforcement pursuant to applicable state, tribal or federal law.

(c) Any person who knowingly makes a false material statement in any record, submission, or report under this WEB trading program shall be subject to criminal enforcement pursuant to the applicable state, tribal or federal law.

[20.11.46.19 NMAC - N, 12/31/03]

20.11.46.20 SPECIAL PENALTY PROVISIONS FOR YEAR 2018 MILESTONE:

A. If the WEB trading program is triggered as outlined in Section D of Chapter VI of the SO₂ milestones and backstop trading program implementation plan element, and the first control period will not occur until after the year 2018, the following provisions shall apply for the 2018 emissions year.

(1) All WEB sources shall register, and open a compliance account within 180 days after the program trigger date, in accordance with Subsection A of 20.11.46.13 NMAC and 20.11.46.15 NMAC.

(2) The tracking system administrator shall record the allowances for the 2018 control period for each WEB source in the source's compliance account once the department allocates the 2018 allowances under Section F(1) and G(1) of Chapter VI of the SO₂ milestones and backstop trading program implementation plan element.

(3) The allowance transfer deadline is midnight pacific standard time on May 30, 2021. WEB sources may transfer allowances as provided in Subsection A of 20.11.46.17 NMAC until the allowance transfer deadline.

(4) A WEB source shall hold allowances allocated for 2018 including those transferred into the compliance account by an allowance transfer correctly submitted by the allowance transfer deadline, in an amount not less than the WEB source's total SO₂ emissions for 2018. Emissions shall be determined using the pre-trigger monitoring provisions in Section B of the SO₂ milestones and backstop trading program implementation plan element, and 20.11.46.9 NMAC.

(5) An allowance deduction penalty and financial penalty shall be assessed and levied in accordance with Subsection D of 20.11.46.18 NMAC, Paragraph (4) of Subsection A of 20.11.46.19 NMAC and Subsection C of

20.11.46.19 NMAC except that SO₂ emissions shall be determined under Paragraph (4) of Subsection A of 20.11.46.20 NMAC.

B. The provisions in 20.11.46.20 NMAC shall continue to apply for each year after the 2018 emission year until:

(1) the first control period under the WEB trading program; or

(2) the department determines, in accordance with Section D(6)(j) of Chapter VI of the SO₂ milestones and backstop trading program implementation plan element, that the 2018 SO₂ milestone has been met.

C. If provisions of Subsection A or 20.11.46.20 NMAC was implemented, the following shall apply to each emissions year after the 2018 emissions year:

(1) the tracking system administrator will record the allowances for the control period for the specific year for each WEB source in the source's compliance account once the department allocates the allowances under Section F(1) of Chapter VI of the SO₂ milestones and backstop trading program implementation plan element;

(2) the allowance transfer deadline is midnight pacific standard time on March 1 of each year (or if this date is not a business day, midnight of the first business day thereafter) following the end of the specific emissions year. WEB sources may transfer allowances as provided in Subsection A of 20.11.46.17 NMAC until the allowance transfer deadline.

(3) a WEB source must hold allowances allocated for that specific emissions year, or any year after 2018, including those transferred into the compliance account by an allowance transfer correctly submitted by the allowance transfer deadline, in an amount not less than the WEB source's total SO₂ emissions for the specific emissions year; and emissions are determined using the pre-trigger monitoring provisions in Section D of the SO₂ milestones and backstop trading program implementation plan element, and 20.11.46.9 NMAC;

(4) an allowance deduction penalty and financial penalty shall be assessed and levied in accordance with Subsection D of 20.11.46.18 NMAC, Paragraph (4) of Subsection A of 20.11.46.19 NMAC, and Subsection C of 20.11.46.19 NMAC, except that SO₂ emissions shall be determined under Paragraph (3) of Subsection C of 20.11.46.20 NMAC.

[20.11.46.20 NMAC - N, 12/31/03]

20.11.46.21 SO₂ MONITORING OF FUEL GAS COMBUSTION DEVICES:

A. **Applicability.**

(1) The provisions of this protocol are applicable to fuel gas combustion devices at petroleum refineries.

(2) Fuel gas combustion devices include boilers, process heaters, and flares used to burn fuel gas generated at a petroleum refinery.

(3) Fuel gas means any gas, which is generated, and combusted at a petroleum refinery. Fuel gas does not include:

(a) natural gas, unless combined with other gases generated at a petroleum refinery;

(b) gases generated by a catalytic cracking unit catalyst regenerator;

(c) gases generated by fluid coking burners;

(d) gases combusted to produce sulfur or sulfuric acid; or

(e) process upset gases generated due to startup, shutdown, or malfunctions.

B. Monitoring Requirements.

(1) Except as provided in Paragraph (2) and Paragraph (3) of Subsection B of 20.11.46.21 NMAC, fuel gas combustion devices shall use a continuous fuel gas monitoring system (CFGMS) to determine the total sulfur content (reported as H₂S) of the fuel gas mixture prior to combustion, and continuous fuel flow meters to determine the amount of fuel gas burned.

(a) Fuel gas combustion devices having a common source of fuel gas may be monitored for sulfur content at one location, if monitoring at that location is representative of the sulfur content of the fuel gas being burned in any fuel gas combustion device.

(b) The CFGMS shall meet the performance requirements in performance specification 2 in appendix B to 40 CFR Part 60, and the following:

(i) continuously monitor and record the concentration by volume of total sulfur compounds in the gaseous fuel reported as ppmv H₂S;

(ii) have the span value set so that the majority of readings fall between 10 and 95% of the range;

(iii) record negative values of zero drift, for initial certification and daily calibration error tests;

(iv) calibration drift shall be 5.0% of the span; and

(v) methods 15A, 16, or approved alternatives for total sulfur, are the reference methods for the relative accuracy test; and the relative accuracy test shall include a bias test in accordance with Paragraph (3) of Subsection D of 20.11.46.21 NMAC.

(c) All continuous fuel flow meters shall comply with the provisions of

Section 2.1.5 of Appendix D to 40 CFR Part 75.

(d) The hourly mass SO₂ emissions rate for all the fuel combustion devices monitored by this approach shall be calculated using the following equation:

$E_t = (C_s)(Q_f)(K)$; where:

E_t = Total SO₂ emissions in lb/hr from applicable fuel gas combustion devices;

C_s = Sulfur content of the fuel gas as H₂S (ppmv);

Q_f = Fuel gas flow rate to the applicable fuel gas combustion devices (scf/hr); and

$K = 1.660 \times 10^{-7}$ (lb/scf)/ppmv

(2) In place of a CFGMS in Paragraph (1) of Subsection B of 20.11.46.21 NMAC, fuel gas combustion devices having a common source of fuel gas may be monitored with an SO₂ CEMS and flow CEMS and (if necessary) a moisture monitoring system at only one location, if the CEMS monitoring at that location is representative of the SO₂ emission rate (lb SO₂/scf fuel gas burned) of all applicable fuel gas combustion devices. Continuous fuel flow meters shall be used in accordance with Paragraph (2) of Subsection B of 20.11.46.21 NMAC, and the fuel gas combustion device monitored by a CEMS shall have separate fuel metering.

(a) Each CEMS for SO₂ and flow, and (if applicable) moisture, shall comply with the operating requirements, performance specifications, and quality assurance requirements of 40 CFR Part 75.

(b) All continuous fuel flow meters shall comply with the provisions of Section 2.1.5 of appendix D to 40 CFR Part 75.

(c) The SO₂ hourly mass emissions rate for all the fuel gas combustion devices monitored by this approach shall be determined by the ratio of the amount of fuel gas burned by the CEMS-monitored fuel gas combustion device to the total fuel gas burned by all applicable fuel gas combustion devices using the following equation:

$E_t = (E_m)(Q_t)/(Q_m)$; where:

E_t = Total SO₂ emissions in lb/hr from applicable fuel gas combustion devices;

E_m = SO₂ emissions in lb/hr from the CEMS-monitored fuel gas combustion device, calculated using Equation F-1 or (if applicable) F-2 in appendix F to 40 CFR Part 75;

Q_t = Fuel gas flow rate (scf/hr) from applicable fuel gas combustion devices; and

Q_m = Fuel gas flow rate (scf/hr) to the CEMS-monitored fuel gas combustion device.

(3) In place of a CFGMS in Paragraph (1) of Subsection B of 20.11.46.21 NMAC, fuel gas combustion

devices having a common source of fuel gas may be monitored with an SO₂ - diluent CEMS at only one location, if the CEMS monitoring at that location is representative of the SO₂ emission rate (lb SO₂/mmBtu) of all applicable fuel gas combustion devices. If this option is selected, the owner or operator shall conduct fuel gas sampling and analysis for gross calorific value (GCV), and shall use continuous fuel flow metering in accordance with Paragraph (1) of Subsection B of 20.11.46.21 NMAC, with separate fuel metering for the CEMS-monitored fuel gas combustion device.

(a) Each SO₂ - diluent CEMS shall comply with the applicable provisions for SO₂ monitors and diluent monitors in 40 CFR Part 75, and shall use the procedures in Section 3 of appendix F to 40 CFR Part 75 for determining SO₂ emission rate (lb/mmBtu) by substituting the term SO₂ for NO_x in that section, and using a K factor of 1.660×10^{-7} (lb/scf) ppmv instead of the NO_x K factor.

(b) All continuous fuel flow meters and fuel gas sampling and analysis for GCV to determine the heat input ratio shall comply with the applicable provisions of Section 2.1.5 and 2.3.4 of appendix D to 40 CFR Part 75.

(c) The SO₂ hourly mass emissions rate for all the fuel gas combustion devices monitored by this approach shall be determined by the ratio of the fuel gas heat input to the CEMS-monitored fuel gas combustion device to the total fuel gas heat input to all applicable fuel gas combustion devices using the following equation:

$E_t = (E_m)(Q_t)/(GCV) / 10^6$; where:

E_t = Total SO₂ emissions in lbs/hr from applicable fuel gas combustion devices;

E_m = SO₂ emissions in lb/mmBtu from the CEMS - monitored fuel gas combustion device;

Q_t = Fuel gas flow rate (scf/hr) to the applicable fuel gas combustion devices;

GCV = Fuel Gross Calorific Value (Btu/scf); and

10^6 = Conversion from Btu to million Btu.

(d) The owner or operator shall calculate total SO₂ mass emissions for each calendar quarter and each calendar year based on the emissions in lb/hr and Equations F-3 and F-4 in appendix F to 40 CFR Part 75.

C. Certification and recertification requirements. All monitoring systems are subject to initial certification and recertification testing as follows:

(1) the owner or operator shall comply with the initial testing and calibration requirements in performance specification 2 in appendix B of 40 CFR Part 60 and Subparagraph (b) of Paragraph (1) of

Subsection B of 20.11.46.21 NMAC for each CFGMS;

(2) each CEMS for SO₂ and flow or each SO₂-diluent CEMS shall comply with the testing and calibration requirements specified in 40 CFR Part 75, section 75.20 and Appendices A and B, except that each SO₂-diluent CEMS shall meet the relative accuracy requirements for a NO_x-diluent CEMS (lb/mmBtu);

(3) a continuous fuel flow meter shall comply with certification requirements in section 2.1.5 of appendix D of 40 CFR Part 75.

D. Quality assurance/quality control requirements.

(1) A quality assurance and quality control (QA/QC) plan shall be developed and implemented for each CEMS for SO₂ and flow or the SO₂-diluent CEMS in compliance with Sections 1, 1.1, and 1.2 of appendix B of 40 CFR Part 75.

(2) A quality assurance and quality control plan shall be developed and implemented for each continuous fuel flow meter and fuel sampling and analysis in compliance with Sections 1, 1.1, and 1.3 appendix B of 40 CFR Part 75. The owner or operator shall meet the requirements in section 2.1.6 of appendix D to 40 CFR Part 75, and may use the procedures set forth in section 2.1.7 of that appendix.

(3) A quality assurance and quality control plan shall be developed and implemented for each CFGMS in compliance with Sections 1 and 1.1 of appendix B to 40 CFR Part 75, and the following:

(a) perform a daily calibration error test of each CFGMS at two gas concentrations, one low level and one high level; and calculate the calibration error as described in appendix A to 40 CFR Part 75; an out of control period occurs whenever the error is greater than 5.0 percent of the span value;

(b) in addition to the daily calibration error test, an additional calibration error test shall be performed whenever a daily calibration error test is failed, whenever a monitoring system is returned to service following repairs or corrective actions that may affect the monitor measurements, and after making manual calibration adjustments;

(c) perform a linearity test once every operating quarter; calculate the linearity as described in appendix A to 40 CFR Part 75; and an out of control period occurs whenever the linearity error is greater than 5.0 percent of a reference value, and the absolute value of the difference between average monitor response values and a reference value is greater than 5.0 ppm;

(d) perform a relative accuracy test audit once every four operating quar-

ters. Calculate the relative accuracy as described in appendix A to 40 CFR Part 75; and an out of control period occurs whenever the relative accuracy is greater than 20.0 percent of the mean value of the reference method measurements;

(e) using the results of the relative accuracy test audit, conduct a bias test in accordance with appendix A to 40 CFR Part 75, and calculate and apply a bias adjustment factor if required.

E. Missing data procedures.

(1) For any period in which valid data are not being recorded by an SO₂ CEMS or flow CEMS specified in 20.11.46.21 NMAC, missing or invalid data shall be replaced with substitute data in accordance with the requirements in Subpart D of 40 CFR Part 75.

(2) For any period in which valid data are not being recorded by an SO₂-diluent CEMS specified in 20.11.46.21 NMAC, missing or invalid data shall be replaced with substitute data on a rate basis (lb/mmBtu) in accordance with the requirements for SO₂ monitors in Subpart D of 40 CFR Part 75.

(3) For any period in which valid data are not being recorded by a continuous fuel flow meter or for fuel gas GCV sampling and analysis specified in 20.11.46.21 NMAC, missing or invalid data shall be replaced with substitute data in accordance with missing data requirements in Section 2.4 of appendix D to 40 CFR Part 75.

(4) For any period in which valid data are not being recorded by the CFGMS specified in 20.11.46.21 NMAC, hourly missing or invalid data shall be replaced with substitute data in accordance with the missing data requirements for units performing hourly gaseous fuel sulfur sampling in Section 2.4 of appendix D to 40 CFR Part 75.

F. Monitoring plan and reporting requirements. In addition to the general monitoring plan and reporting requirements of 20.11.46.16 NMAC, the owner or operator shall meet the following additional requirements:

(1) the monitoring plan shall identify each group of units that is monitored by a single monitoring system under 20.11.46.21 NMAC, and the plan shall designate an identifier for the group of units for emissions reporting purposes; and for purpose of submitting emissions reports, no apportionment of emissions to the individual units within the group is required;

(2) if the provisions of Paragraph (2) or Paragraph (3) of Subsection B of 20.11.46.21 NMAC are used, provide documentation and an explanation to demonstrate that the SO₂ emission rate from the

monitored unit is representative of the rate from non-monitored units.

[20.11.46.21 NMAC - N, 12/31/03]

20.11.46.22 PREDICTIVE FLOW MONITORING SYSTEMS FOR KILNS WITH POSITIVE PRESSURE FABRIC FILTER:

A. Applicability. The provisions of this protocol are applicable to cement kilns or lime kilns that:

(1) are controlled by a positive pressure fabric filter;

(2) combust only a single fuel, no fuel blends; and

(3) have operating conditions upstream of the fabric filter that the WEB source documents would reasonably prevent reliable flow monitor measurements; and this protocol does not modify the SO₂ monitoring requirements in 20.11.46.16 NMAC.

B. Monitoring Requirements.

(1) A cement or lime kiln with a positive pressure fabric filter shall use a predictive flow monitoring system (PFMS) to determine the hourly kiln exhaust gas flow.

(2) A PFMS is the total equipment necessary for the determination of exhaust gas flow using process or control device operating parameter measurements and a conversion equation, a graph, or computer program to produce results in cubic feet per hour.

(3) The PFMS shall meet the following performance specifications:

(a) sensor readings and conversion of sensor data to flow in cubic feet per hour must be automated;

(b) the PFMS must allow for the automatic or manual determination of failed monitors; and at a minimum a daily determination must be performed;

(c) the PFMS shall have provisions to check the calibration error of each parameter that is individually measured; the owner or operator shall propose appropriate performance specifications in the initial monitoring plan for all parameters used in the PFMS comparable to the degree of accuracy required for other monitoring systems used to comply with 20.11.46 NMAC; the parameters shall be tested at two levels, low: 0 to 20 percent of full scale, and high: 50 to 100 percent of full scale; and the reference value need not be certified;

(d) the relative accuracy of the PFMS must be less than or equal to 10.0 percent of the reference method average value, and include a bias test in accordance with Paragraph (3) of Subsection D of 20.11.46.22 NMAC.

C. Certification requirements. The PFMS is subject to initial certification testing. The source owner or oper-

ator shall:

(1) demonstrate the ability of the PFMS to identify automatically or manually a failed monitor;

(2) provide evidence of calibration testing of all monitoring equipment; and any tests conducted within the previous 12 months of operation that are consistent with the QA/QC plan for the PFMS are acceptable for initial certification purposes; and

(3) perform a relative accuracy test audit and accompanying bias test once every four operating quarters; and calculate the relative accuracy (and bias adjustment factor) as described in appendix A to 40 CFR Part 75; an out of control period occurs whenever the flow relative accuracy is greater than 10.0 percent of the mean value of the reference method.

D. Quality assurance and quality control requirements. A quality assurance and quality control plan shall be developed and implemented for each PFMS in compliance with Sections 1 and 1.1 of appendix B of 40 CFR Part 75, and the following:

(1) perform a daily monitor failure check;

(2) perform calibration tests of all monitors for each parameter included in the PFMS. At a minimum, calibrations shall be conducted prior to each relative accuracy test audit; and

(3) perform a relative accuracy test audit and accompanying bias test once every four operating quarters; and calculate the relative accuracy (and bias adjustment factor) as described in 20.11.46.21 NMAC and 40 CFR Part 75; an out of control period occurs whenever the flow relative accuracy is greater than 10.0 percent of the mean value of the reference method.

E. Missing data. For any period in which valid data are not being recorded by the PFMS specified in 20.11.46.22 NMAC, hourly missing or invalid data shall be replaced with substitute data in accordance with the flow monitor missing data requirements for non-load based units in Subpart D of 40 CFR Part 75.

F. Monitoring plan requirements. In addition to the general monitoring plan requirements of 20.11.46.16 NMAC, the owner or operator shall meet the following additional requirements:

(1) the monitoring plan shall document the reasons why stack flow measurements upstream of the fabric filter are unlikely to provide reliable flow measurements over time;

(2) the initial monitoring plan shall explain the relationship of the proposed parameters and stack flow, and discuss other parameters considered and the

reasons for not using those parameters in the PFMS; and the department may require that the subsequent monitoring plan include additional explanation and documentation for the reasonableness of the proposed PFMS.

[20.11.46.22 NMAC - N, 12/31/03]

20.11.46.23 SAVINGS CLAUSE:

Any amendment to Sulfur Dioxide Emissions Inventory Requirements; Western Backstop Sulfur Dioxide Trading Program, 20.11.46 NMAC, which is filed with the state records center and archives shall not affect actions pending for violation of a statute, ordinance, part, or permit. Prosecution for a violation of a prior statute, ordinance, Part or permit shall be governed and prosecuted under the statute, ordinance, part or permit wording in effect at the time the violation was committed.

[20.11.46.23 NMAC - N, 12/31/03]

20.11.46.24 SEVERABILITY:

If any section, subsection, sentence, phrase, clause or wording of this part or the federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court or the EPA, the decision shall not affect the validity of remaining portions of this part.

[20.11.46.24 NMAC - N, 12/31/03]

HISTORY OF 20.11.46 NMAC:

Pre-NMAC History: None.

History of Repealed Material: [RESERVED]

**ALBUQUERQUE /
BERNALILLO COUNTY
AIR QUALITY CONTROL
BOARD**

These amendments to 20.11.21 NMAC, Open Burning, have been made by the Albuquerque/Bernalillo County Air Quality Control Board (Board) in response to federal regional haze requirements contained in 40 CFR 51.309(d)(6). These regulatory amendments are needed in order for the *Section 309 regional haze state implementation plan element: for Albuquerque / Bernalillo County, NM*, to comply with the federal regional haze requirements for programs related to fire, such as prescribed burning activities. The amendments to 20.11.21 NMAC, which are effective December 31, 2003, were approved by the Board after a public hearing held on October 8 and November 12, 2003. Changes were also made to improve the readability and effectiveness of the regulation. In addition, the capitalization and for-

matting has been modified to comply with the current NMAC requirements.

20.11.21.2 SCOPE:

A. This part is applicable to sources within Bernalillo county.

B. Exempt: This part does not apply to sources within Bernalillo county ~~[which]~~ that are located on Indian lands over which the Albuquerque/Bernalillo county air quality control board lacks jurisdiction.

[12/1/95; 20.11.21.2 NMAC - Rn, 20 NMAC 11.21.I.2, 10/01/02; A, 12/31/03]

20.11.21.3 STATUTORY AUTHORITY:

This part is adopted pursuant to the authority provided in the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5.C; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5 [Section] Sections 3 and 4; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 [Section] Sections 9-5-1-3 and 9-5-1-4.

[6/14/71. . .12/1/95; 20.11.21.3 NMAC - Rn, 20 NMAC 11.21.I.3, 10/1/02; A, 12/31/03]

20.11.21.6 OBJECTIVE:

~~[The objective of this Part is to minimize] To ensure that all persons conduct open burning in a manner that prevents or abates emissions from fires in the open, which, as a general class, produce visible emissions and noxious byproducts of combustion.~~

[3/24/82. . .12/1/95; 20.11.21.6 NMAC - Rn, 20 NMAC 11.21.I.6, 10/1/02; A, 12/31/03]

20.11.21.7 DEFINITIONS:

In addition to the definitions in ~~[this]~~ Section 20.11.21.7 NMAC, the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in this Part shall govern.

A. “[Commercial] Agricultural burning” means the burning of crop residues for field preparation or that is otherwise ~~[necessary]~~ used for the production of a crop [that is sold by or used as feed in a registered agricultural business].

B. “Alternative to burning” means a treatment employing manual, mechanical, chemical, or biological methods to manage vegetation and/or fuel loads, or land management practices that treat vegetation (fuel) without using fire. A treatment or practice may only be considered an alternative if it has successfully been used to take the place of fire for at least three consecutive years. Suggested alternatives to burning are listed in Section 20.11.21.18 NMAC.

C. “Biomass utilization”

means any method of removing and taking biomass material to a landfill, burn facility, a power generation facility, an ethanol production facility, a redistribution facility, a fiberboard and/or particleboard facility, using the material as compost or mulch, using it as animal bedding, for erosion control, etc.

D. "Burn down" means that period of time, not to exceed three (3) hours, after a no-burn period is announced by the director, within which period a person operating a solid fuel heating device must cease combustion within any solid fuel heating device by withholding fuel or modifying the air-to-fuel ratio.

E. "Burner" means the person who is responsible for or in control of a prescribed fire project that is regulated under this part.

F. "Burn project" means, in prescribed fires or in wildland fire use, a burn regulated by 20.11.21.15 NMAC regulated under this Part.

G. "Class I area" means all international parks, national wilderness areas which exceed 5,000 acres, national memorial parks which exceed 5,000 acres, and national park areas which exceed 6,000 acres in size and which were in existence on the date of enactment of the Clean Air Act Amendments of 1977. The extent of the areas designated as class I shall conform to any changes in the boundaries of such areas, which occurred after to the date of the enactment of the Clean Air Act Amendments of 1977 or 1990.

H. "Division" means the city of Albuquerque air quality division or its successor agency.

I. "Emission reduction technique or ERT" means a control strategy used to reduce smoke from a prescribed fire that results in less smoke than would have been produced if the emission reduction technique were absent. A control strategy used for a period of fewer than three years is an emission reduction technique; if the control strategy replaces fire for three consecutive years or more, the control strategy is an alternative to burning.

[B]J. "Environmentally non-essential burning" means the open burning of any unwanted combustible material [~~assembly or collection of combustible materials~~] which could otherwise reasonably be altered, destroyed, reduced or removed to a suitable disposal site without the potential to cause environmental harm or damage [~~in situ or en route~~].

[C]K. "Environmentally poor burning substances" include but are not limited to: [~~leaves, grass, clippings, green plants,~~] refuse, paper, rubbish, books, magazines, fiberboard, packaging, rags, fabrics, animal waste, waste oil, liquid or

gelatinous hydrocarbons, tar, paints and solvents, chemically [~~soaked~~] treated wood, plastic or rubber, office records, sensitive or classified wastes, hazardous or toxic substances, interiors of wrecked vehicle bodies or other materials which are difficult to burn without producing [~~vast~~] significant amounts of noxious and/or toxic fumes or dense smoke.

L. "Health alert" means an air pollution alert, warning, or emergency issued by the department.

[D]M. "Hot torch" means a wand or burner fueled by propane, butane, or compressed natural gas.

[E]N. "Hot torch burning" means burning of individual weeds at the point of the hot torch.

O. "No-Burn period" means a period of time, declared by the director, during which no person with authority or power to control the operation of a solid fuel heating device shall allow the operation of a solid fuel heating device to continue, following a burn down period, within the wood smoke impacted area, unless the device is a wood heater that has been emission certified by the EPA. Exemptions may be granted by the director per 20.11.22.2 NMAC. No-Burn periods may be declared any time from October 1 through February 28. The director shall declare a No-burn period after reviewing available meteorological data, air pollution monitoring data, and other relevant information and determining that expected atmospheric conditions will not adequately disperse wood smoke.

[F]P. "Open burning" means the [~~causing of rapid oxidation~~] combustion of any substance which is not confined in a device having controllable fuel/air mixture capable of achieving nearly complete combustion, and from which combustion products are discharged into the open air without passing through a stack, duct, chimney, or vent.

Q. "PB-I" or "level I prescribed burn" means a smoke management burn project that emits less than one ton of PM₁₀ emissions per day or burns less than 5,000 cubic feet pile volume of vegetative material per day.

R. "PB-II" or "level II prescribed burn" means a smoke management burn project that emits one ton or more of PM₁₀ emissions per day or burns 5,000 cubic feet or more pile volume of vegetative material per day.

S. "Pile" means vegetative materials that have been relocated and heaped together either by hand or machinery.

T. "Pile volume" means the gross volume of a pile, including the air space between solid constituents, as calcu-

lated from the overall dimensions and shape of the pile.

U. "PM₁₀ emissions" or "PM₁₀" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air, as measured by the reference method in 40 CFR Part 50, Appendix J, or equivalent method approved by the EPA.

V. "Population" means the total number of individuals occupying an area. Locations for individuals within an area include, but are not limited to, open campgrounds, single-family dwellings, hospitals, schools in use, villages, and open places of employment.

W. "Prescribed fire" or "prescribed burn" or "PB" means any fire ignited by any person to meet specific land management objectives. For the purposes of this regulation, wildland fire use is considered a prescribed fire.

X. "Public notification" means any method that communicates burn information to the burners, air regulators, Bernalillo county fire department, the local fire authority, and to the general public.

[G]Y. "Research and development activities" means scientific experimentation using open burning to prove a concept or produce information useful in planning.

Z. "Vegetative material" means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, shavings, grass, grass clippings, weeds, leaves, conifer needles, bushes, shrubs, clippings from bushes and shrubs, and agricultural plant residue.

AA. "Ventilation index" means a technical rating used to establish the potential for smoke or other pollutants to ventilate away from its source.

BB. "Ventilation index category" means a category in the ventilation index that is determined as provided in Section 20.11.21.17 NMAC and is rated as excellent, very good, good, fair, or poor.

CC. "Wildfire" means an unplanned and/or unwanted fire that burns vegetative material in a natural or modified state.

DD. "Wildland" means an area in which there is minimal development, except for roads, railroads, power lines, and similar utilities and transportation facilities. Structures, if any, are widely scattered.

EE. "Wildland fire use" means the management of wildfire within a wildland that is ignited by natural forces, such as by lightning or volcanic eruption, following a decision to allow the wildfire to

burn to accomplish specific pre-stated resource objectives in predefined geographic areas, also known as fire use, wildfire use, prescribed natural fire, and fire for resource benefit.

FF. “Winter pollution advisory season” or “no-burn season” means the period from October 1st through February 28th each year when no-burn calls are made. The no-burn call is a control strategy designed to protect the air quality in Bernalillo county. This strategy helps mitigate particulate matter and carbon monoxide build up during the colder months of the year when temperature inversions trap pollutants closer to ground level.

GG. “Wood smoke impacted area” means that portion of Bernalillo county that is the most adversely affected by the burning of wood during atmospheric conditions that the director concludes may not adequately disperse wood smoke. The wood smoke impacted area is bounded on the north and south by the Bernalillo county line, on the west by the universal transverse meridian (UTM) line 337000mE and on the east by the UTM line 367000mE, Zone 13.

[1/3/85; 6/16/92, 12/1/95; 20.11.21.7 NMAC - Rn, 20 NMAC 11.21.I.7, 10/1/02; A, 12/31/03]

20.11.21.9 SAVINGS CLAUSE: Any amendment to 20.11.21 NMAC, which is filed with the state records center shall not affect actions pending for violation of a city or county ordinance [~~Air Quality Control Board Regulation 3, or Part 21~~] or 20.11.21 NMAC. Prosecution for a violation under a prior statute, ordinance, or regulation [~~wording~~] shall be governed and prosecuted under the statute, ordinance, [~~Part,~~] or regulation [~~section~~] in effect at the time the violation was committed. [12/1/95; 20.11.21.9 NMAC - Rn, 20 NMAC 11.21.I.9 & A, 10/1/02; A, 12/31/03]

20.11.21.12 OPEN BURNING PROHIBITED:

A. Open burning [~~by any person~~] on private or public property, including burning of environmentally poor burning substances and vegetative materials, is prohibited in Bernalillo county [~~— Except where otherwise allowed~~] unless authorized under [~~Sections~~] Section 13 [~~and~~] 14, or 15 of 20.11.21 NMAC, [~~no person shall permit, cause, suffer or allow open burning to occur on private or public property~~]. In addition to complying with 20.11.21 NMAC, all open burning shall comply with applicable local fire department requirements.

~~**B.** Materials ignited accidentally, which cause open burning, shall be extinguished as soon as possible after discovery.~~
~~**C.** [No person shall construe compliance with this Part as permission to violate other applicable regulations, ordinances or~~

~~Codes.]~~

B. Compliance with 20.11.21 NMAC shall not relieve any person from complying with all other applicable statutes, ordinances, and regulations.

~~**C.** Open burning allowed under Sections 13, [~~and~~] 14, or 15 of 20.11.21 NMAC shall be suspended during declared "no-burn periods" [~~of~~] during the winter pollution advisory season and/or when an air pollution health alert is issued unless a waiver has been granted, following the general process provided in 20.11.21.15 NMAC.~~

[1/3/85, 12/1/95; 20.11.21.12 NMAC - Rn, 20 NMAC 11.21.I.12 & Repealed, 10/1/02; Rn, 20 NMAC 11.21.II.1, 10/1/02; 20.11.21.12 NMAC - A, 12/31/03]

20.11.21.13 CONDITIONALLY ALLOWED OPEN BURNING WITH A PERMIT:

A. Open burning may be allowed for the purposes [~~prescribed~~] described in Table I [~~providing~~] if an open burning permit has been obtained from the Albuquerque environmental health department as set forth in Subsections B and C of 20.11.21.13 NMAC before the fire is ignited.

Table 1

OPEN BURNING PERMITS FOR MULTIPLE AND SINGLE EVENTS

Multiple Event	Single Event	Purpose and Conditions
X	X	1. Timber and forest management (single event permit required for burns [of 1/4] one-quarter acre [or more] through 10 acres in size, or up to 1000 cubic feet of pile volume per day).
	X	2. Disease control of dead animals and plants
X	X	3. Research and development activities (single event permit required for burns of 2,000 gallons or more liquid fuel or 5,000 pounds or more solid fuel)
X		4. Disposal by burning of explosives to avoid hazards of transport or handling
X	X	5. Above ground detonation of more than 20 pounds of explosives (single event permit required for detonation of more than 200 pounds).
X	X	6. Ignition of rocket motors containing more than 4,000 pounds fuel (single event permit required for motors containing more than 8,000 pounds fuel).

X		7. Fire fighter and rescue training (fuel and conditions appropriate for the activity). No environmentally poor burning substances may be burned unless essential to simulate the needed training conditions. <u>Training burns shall comply with 20.11.64.11 NMAC and 40 CFR Part 61, Subpart M regarding asbestos.</u>
X	X	8. Hot torch burning of weeds along ditches, channels, public rights of way, or other public property.
X	X	9. [Commercial] Agricultural burning (single event permit required for burns [of 1/4] <u>one-quarter acre [or more] through 10 acres in size, or up to 1,000 cubic feet of pile volume per day.</u>
	X	10. Any special condition which would otherwise be prohibited for which there is an unusual need where burning would best serve the public interest overall.

~~[B. Persons seeking Multiple or Single Event permits as indicated in Table I for some act which may be conditionally allowed by this subsection shall supply the following information in writing in letter form at least 24 hours in advance of the Single Event classification and at least by the date required by the department on those classified as Multiple.]~~

B. A person seeking a multiple or single event permit for the purposes described in Table I shall deliver the following information to the department in letter form or by a department approved electronic notification method at least five business days in advance of the single or multiple event burn:

- (1) the requestor's name, address, and telephone number; and
- (2) location where burning is to be conducted; and
- (3) type and quantity of ignitable material and fuel; and
- (4) additional required information:
 - (a) date(s) when the burning is to be conducted; ~~[or]~~ and
 - (b) for multiple burn events, the estimated number, character, and schedule of fires to be conducted; and
 - ~~(b)~~(c) general description of method to ignite, maintain, control, and terminate the burning; and
 - ~~(c)~~(d) reasons why the requestor believes the burning is necessary; and
 - ~~(d)~~(e) what alternatives to burning have been considered and why they were not chosen instead of burning; and
 - ~~(e)~~(f) for multiple event permits, the number and character of similar fires conducted during the previous permit cycle for which renewed approval is sought.

~~(4)~~(5) In the event of an emergency necessitating a single event permit, the above process may be handled by telephone ~~[providing]~~ if the department is in agreement and the information is ~~[subse-~~

~~quently supplied]~~ promptly delivered to the department in writing. In case of such emergency, the ~~[24 hours]~~five-business-day notice requirement may be waived at the discretion of the department. Information supplied to the department relative to planned burning shall be construed to be part of the conditions of the permit issued pursuant thereto. Any ~~[subsequent]~~ later need to deviate from the original plan must be reported to and approved by the department ~~[and approved]~~ in order to maintain the validity of the permit.

C. Upon receipt of a request for a single event or multiple event open burning permit, the department shall evaluate the application and ~~[make its best judgment as to]~~ decide whether to grant the permit, deny the permit, or grant the permit with additional conditions that the department believes to be in the best interest of the local community and consistent with the board's goal of eliminating ~~[burning that is]~~ "environmentally non-essential burning". ~~[Renewal of]~~ Multiple event permits ~~[shall not be prejudiced by prior approved permits but rather]~~ shall only be ~~[issued]~~ renewed by the department ~~[upon]~~ following a re-evaluation of all the information provided in ~~[said renewal request]~~ the renewal request. The department shall consider the need to burn, anticipated atmospheric conditions, and other factors ~~[as]~~ the department ~~[may deem appropriate to the requestor's application]~~ determines are relevant.

D. Within 24 hours of receipt of the applicant's request, the department shall notify the applicant by phone, electronically or in writing, that the department has received the request. After evaluation of the applicant's request, the department shall respond to the applicant at least 24 hours in advance of the scheduled open burn event in writing or by a department-approved electronic notification method advising the applicant of its findings, including any additional conditions

deemed necessary. In ~~[emergency situations]~~ an emergency, preliminary information ~~[relative to]~~ regarding the department's decision should first be telephoned to the applicant if possible, ~~[so as]~~ to expedite issues of immediate need. ~~[Copies of all applications for multiple open burning permits and the Department's response shall be submitted to the Board.]~~

E. ~~[In the event]~~ If an applicant for a permit under this subsection is not satisfied with either the conditions or ~~[possible]~~ denial of ~~[his]~~the applicant's request, the ~~[decision may be appealed to]~~ applicant may request an administrative hearing on the merits before the board consistent with 20.11.21.21 NMAC

F. Any multiple or single event permit issued under this section ~~[shall]~~ may be revoked or suspended if the applicant fails to comply with the permit provisions therein, and the permittee may be subject to enforcement actions.

G. All permits issued under this section shall expire when specified or not later than one year from the date of issuance.

[12/1/95; 20.11.21.13 NMAC - Rn, 20 NMAC 11.21.II.2, 10/1/02; A, 12/31/03]

20.11.21.14 [EXCEPTIONS TO]CONDITIONALLY ALLOWED OPEN BURNING [PROHIBITIONS]:

~~[A: Environmentally poor burning substances shall not be burned in Bernalillo County by any open burning process unless authorized under the provisions of subsection A of 20.11.21.13 NMAC.~~

~~B: Open burning is allowed for the purposes set forth in Table II providing that the indicated Time, Notice, and Condition requirements therein are met.~~

~~C: Required notice as indicated in Table II shall be given to a staff engineer or environmental health specialist of the Department at least 24 hours prior to~~

the planned burning. Information supplied to the Department shall be sufficient to document the allowed event:

- (1) name of individual giving notice;
- (2) whom he represents;
- (3) kind or purpose of burning planned;
- (4) approximate beginning and ending time;
- (5) date and location of the burn, and
- (6) telephone number.

D. ALLOWED OPEN BURNING

Table II

Time & Notice Requirements			ALLOWED TYPE OF BURNING CONDITION
Column 1	Column 2	Column 3	
No Time Limits	11 AM to 3 PM October thru March 6 AM to 5 PM April thru September	Advance Notice to Env. Health Department	
	X		1. Dead and dry tumbleweed removal.
X			2. Cooking noncommercial food.
		X	3. Religious, ceremonial, or recreational bonfires.
	X		4. Hot torch weed control on less than 1/4 acre private, residential property.

Open burning is allowed for the purposes set forth in Table II providing that the burn complies with local fire and safety codes as well as the time requirements specified in Table II.

Table II
CONDITIONALLY ALLOWED OPEN BURNING

Type of Burning	Time Restrictions
1. <u>Cooking food not intended for resale</u>	No limit on time of day
2. <u>Recreational or ceremonial bonfires.</u>	
3. <u>Dead and dry weed removal on private residential, commercial or industrial property, hot torch weed control on private residential property, provided that the amount of non-piled vegetative material shall not exceed 10 acres per day. Piled vegetative material, including material gathered in a pit or open container, shall be no more than 1,000 cubic feet of pile volume per day. Burning in excess of these daily limits is subject to SMOKE MANAGEMENT; PRESCRIBED BURNS; WILDFIRES, 20.11.21.15 NMAC.</u>	11 AM to 3 PM October through March 6 AM to 5 PM April through September

[1/3/85. . .12/1/95; 20.11.21.14 NMAC - Rn, 20 NMAC 11.21.II.3, 10/1/02; A, 12/31/03]

20.11.21.15 SMOKE MANAGEMENT; PRESCRIBED BURNS; WILDFIRES: This section applies to all users of prescribed fire that intend to burn or do burn more than 10 acres, or more than 1,000 cubic feet of pile volume of vegetative material per day. Specified portions of this section also apply to the land manager or owner of property on which a wildfire occurs.

- A. Materials allowed to be burned:** Only vegetative material shall be burned, with the following exceptions:
- (1) auxiliary fuel or incendiary devices may be used to start the burning authorized by this section, provided that:
 - (a) no oil heavier than No. 2 diesel shall be used; and
 - (b) no more than the minimum amount of auxiliary fuel necessary to start the fire shall be used.
 - (2) polyethylene sheeting may be burned with the vegetative materials, provided that;

(a) the sheeting has been covering piled vegetative material for at least one month prior to burning; and

(b) the amount of sheeting burned is no more than the minimum necessary to cover the pile; and

(c) removal of the sheeting before burning is impractical; and

(d) the burner is able to provide evidence, such as purchase records or package labeling, that establish the sheeting is polyethylene and not some other form of plastic.

B. Requirements for PB-I: For any burn project expected to produce less than one ton of PM₁₀ emissions per day or burn less than 5,000 cubic feet pile volume per day, all of the following requirements shall be met.

(1) The burner shall burn only under appropriate dispersion conditions. In order to accomplish this objective, the burner shall follow Subparagraph (a) or (b) of Paragraph (1) of Subsection B of 20.11.21.15 NMAC.

(a) The burner shall:

(i) ignite burns only during the hours from one hour after sunrise until one hour before sunset; the burner may apply for a waiver of this requirement by submitting a written application for waiver to the department no fewer than two weeks prior to the planned burn project; the burner shall document the reasons for requesting the waiver in the application for a waiver. The department shall notify the burner no later than one week prior to the planned burn project whether the waiver is granted or denied, and, if denied, the reasons for the denial; the department shall consider each waiver request on a case-by-case basis; and

(ii) conduct burn projects at least 300 feet from any occupied dwelling, workplace, or place where people congregate, which is on property other than the burn project location; the burner may apply for a waiver of this requirement by submitting a written application for waiver to the department no fewer than two weeks prior to the planned burn project; the burner shall document the reasons for requesting the waiver in the application for a waiver; the department shall notify the burner no later than one week prior to the planned burn project whether the waiver is granted or denied, and, if denied, the reasons for the denial; and the department shall consider each waiver request on a case-by-case basis; or

(b) The burner shall:

(i) only burn during times when the ventilation index category is rated "good" or better; the burner may apply for a waiver of this requirement by submitting a written application for waiver to the department no later than 10:00 a.m. one

business day prior to the planned burn project; the burner shall document the reasons for requesting the waiver in the application for a waiver; the department shall notify the burner no later than 3:00 p.m. one business day prior to the planned burn project whether the waiver is granted or denied, and, if denied, the reasons for the denial; the department shall consider each waiver request on a case-by-case basis; and

(ii) conduct visual monitoring and document the results in writing; the results shall evaluate the smoke dispersion by recording characteristics of the smoke (e.g., color, density), including the general compass direction of dispersion, the patterns of vertical dispersion, and the duration of the smoke plume(s), and corresponding time-of-day information; use of onsite instruments to record the wind speed and direction is encouraged; no later than six months after the burn project, the burner shall submit records of these results to the department; for burn projects planned to be conducted within a one mile radius of a population, the department may require the burner to notify the department no later than two business days prior to the planned burn project so that the department may determine whether to conduct instrument monitoring, in addition to the visual monitoring conducted by the burner; and the need for instrument monitoring by the department shall be determined by the department on a case-by-case basis.

(2) The burner shall notify the local fire authorities prior to igniting a burn.

(3) No later than 10:00 a.m. one business day prior to the planned ignition of the burn project, the burner shall register the burn project with the department on a registration form obtained from the department. The department shall provide the burner with a registration number for the burn project. Prior to igniting the burn project, if the burner has not received the registration number, the burner shall make a good faith effort to contact the department to obtain the registration number. If the burner is not able to obtain a registration number before igniting the burn, the burner shall obtain a registration number from the department as soon as possible. For burn projects longer than seven consecutive days, the burner shall notify the department every seven days when burning is to be conducted under that burn project registration. The burner shall not burn more area or volume than the burner has included in the registration form submitted to the department.

(4) No more than two weeks following completion of the burn project, the burner shall submit a completed burn project tracking form to the department on a tracking form obtained from department.

(5) For burn projects conducted

within a one-mile radius of a population, the burner shall comply with the following requirements in addition to complying with all other applicable requirements of Subsection B of 20.11.21.15 NMAC:

(a) the burner shall conduct visual monitoring and document the results. The results shall evaluate the smoke dispersion by recording characteristics of the smoke (e.g., color, density), including the general compass direction of dispersion, the patterns of vertical dispersion, the duration of the smoke plume(s), and corresponding time-of-day information; use of onsite instruments to record the wind speed and direction is encouraged; documentation through use of photographs, with the date, time, and other relevant information noted on the photographs, is also encouraged; and no later than six months after the burn project, the burner shall submit records of these results to the department; and

(b) no fewer than two days prior to, and no earlier than 30 days in advance of igniting a burn project, the burner shall conduct public notification of any population(s) within a one-mile radius of the burn project in advance of igniting the burn project; and the method of notification shall be an advertisement in a newspaper of general circulation in the area where the burn will take place, and/or other means, as approved by the department to assure adequate notice to the affected public.

(6) An applicant for a waiver may challenge the department's denial of a waiver by following the procedures established in 20.11.21.21 NMAC. A person adversely affected by the department's grant of a waiver may challenge the department's decision by following the procedures established in Subsection B of 20.11.21.21 NMAC.

C. Requirements for PB-II: For any burn project expected to produce emissions greater than or equal to one ton of PM₁₀ emissions per day or expected to burn 5,000 cubic feet pile volume per day or more, all of the following requirements shall be met.

(1) The burner shall review smoke management educational material supplied by the department or complete a department-approved smoke management training program prior to initiating burning.

(2) The burner shall consider alternatives to burning and shall document the alternatives considered and the rationale for not utilizing alternatives provided in 20.11.21.18 NMAC on a form obtained from department.

(3) The burner shall implement at least one emission reduction technique included in 20.11.21.19 NMAC and shall document the techniques implemented on a form obtained from the department. No

fewer than two weeks prior to the planned burn project, the burner may apply for a waiver of this requirement by submitting a written application to the department. The burner shall document the reasons for requesting the waiver in the application for a waiver. The department shall notify the burner no later than 10:00 a.m. one week prior to the planned burn project whether the waiver is granted or denied, and, if denied, the reasons for the denial. The department shall consider each waiver request on a case-by-case basis.

(4) The burner shall only burn during times when the ventilation index category is "good" or better. No later than 10:00 a.m. one business day prior to the planned burn, the burner may apply for a waiver of this requirement by submitting a written application to the department. The burner shall document the reasons for requesting the waiver in the application for a waiver. The department shall notify the burner no later than 3:00 p.m. one business day prior to the planned burn whether the waiver is granted or denied, and, if denied, the reasons for the denial. The department shall consider each waiver request on a case-by-case basis.

(5) The burner shall conduct visual monitoring and shall document the results. The results shall evaluate the smoke dispersion by recording characteristics of the smoke (e.g., color, density), including the general compass direction of dispersion, the patterns of vertical dispersion, and the duration of the smoke plume(s). Use of onsite instruments to record the wind speed and direction is encouraged. Documentation through use of photographs, with the date, time, and other relevant information noted on the photographs, is also encouraged. No later than six months after the burn project, the burner shall submit records of these results to the department.

(6) The burner shall notify the local fire authorities prior to igniting a burn.

(7) No fewer than two weeks prior to planned ignition of the burn, the burner shall register a burn project with the department on a registration form obtained from the department. The department shall provide the burner with a registration number for the burn project. Prior to igniting the burn project, if the burner has not received the registration number, the burner shall make a good faith effort to contact the department to obtain the registration number. If the burner is not able to obtain a registration number before igniting the burn, the burner shall obtain a registration number from the department as soon as possible. For burn projects longer than seven consecutive days, the burner shall notify the department every seven days when burning is to be conducted under that burn project

registration. The burner shall not burn more area or volume than the burner has included in the registration form submitted to the department.

(8) The burner shall notify the department of the intent to burn on a specific date no later than 10:00 a.m. one business day prior to the planned burn project. The notification may be made up to a seven days prior to igniting the burn. The department shall notify the burner of the receipt of the notification by 11:00 a.m. on the day the department receives the notification. If the department has not notified the burner by 11:00 a.m., and prior to igniting the burn, the burner shall make a good faith effort to contact the department to verify that the department received the notification. The burner shall not burn more area or volume than the burner included in the registration. The department shall notify the burner no later than 3:00 p.m. one business day prior to the start of the burn project if a modification of the burn is being required by the department.

(9) No later than two weeks following the end of the burn project, the burner shall complete and submit to the department a fire activity tracking form, using a form obtained from department.

(10) The department may require the burner to notify the department no later than two business days prior to the planned burn so the department may determine whether to conduct instrument monitoring in addition to visual monitoring conducted by the burner. The need for instrument monitoring by the department shall be determined by the department on a case-by-case basis.

(11) The burner shall conduct public notification no fewer than two business days prior to, and no earlier than 30 days prior to igniting a burn. The method of notification shall be an advertisement in a newspaper of general circulation in the area where the burn will take place, and/or other means, as approved by the department to assure adequate notice to the affected public.

(12) An applicant for a waiver may challenge the department's denial of a waiver by following the procedures established in 20.11.21.21 NMAC. A person adversely affected by the department's grant of a waiver may challenge the department's decision by following the procedures established in Subsection B of 20.11.21.21 NMAC.

D. Wildland Fire Use:

For wildland fire use exceeding 10 acres in size, the following requirements shall apply.

(1) No later than one business day following the decision to manage a wildland fire use burn, the burner shall register the burn project with the department on forms

obtained from department. The department shall provide the burner with a registration number for the burn project. Each day the wildland fire use burn project is burning, the burner shall notify the department daily by 10:00 a.m. on the status of the burn project.

(2) The burner shall notify the appropriate local fire authorities of the decision to manage a wildland fire use burn. For wildland fire use burns within Bernalillo county, the burner shall conduct public notification no later than one calendar day after the decision to manage the burn as a wildland fire use burn. The notification shall be appropriate to the population being notified.

(3) The burner shall conduct visual monitoring and shall document the results. The results shall evaluate the smoke dispersion by recording characteristics of the smoke (e.g., color, density), including the general compass direction of dispersion, the patterns of vertical dispersion, and the duration of the smoke plume(s). Use of onsite instruments to record the wind speed and direction is encouraged. Documentation through use of photographs, with the date, time, and other relevant information noted on the photographs, is also encouraged. No later than six months after the burn project, the burner shall submit records of these results to the department.

(4) No later than two weeks following the end of the burn project, the burner shall complete and submit to the department a fire activity tracking form obtained from department.

E. Wildfire under suppression: For all wildfires exceeding 100 acres in size, the land manager or owner of property on which the wildfire occurs shall complete a fire activity tracking form obtained from the department and submit it to the department no later than six weeks following the cessation of fire fighting activities on the wildfire.

[1/3/85, 20.11.21.15 NMAC - Rn, 20 NMAC 11.21.II.4, 10/1/02; 20.11.21.15 NMAC - N, 12/31/03]

20.11.21.16 CALCULATION OF PM₁₀ EMISSIONS FOR PRESCRIBED BURNS:

To determine whether a prescribed burn has the potential to produce more than one ton of PM₁₀ emissions per day, use the emission factors listed below (adapted from AP-42) or any alternative method approved in writing by the department.

A. To calculate the quantity of PM₁₀ emissions in tons generated by a prescribed burn project or a wildfire; multiply the number of acres estimated to be burned:

(1) by 0.04348 tons per acre for

forest; and

(2) by 0.02941 tons per acre for shrub land; and

(3) by 0.01 tons per acre for grass land; and

(4) by 0.01538 tons per acre for field crops.

B. For shrub and forest piles, multiply the number of cubic feet of piled material estimated to be burned by 0.0002 tons per cubic foot.

C. For all other prescribed burn projects or a wildfire uses that do not fall into the categories listed in this section, contact the department for assistance in determining a methodology to estimate emissions that is consistent with EPA methodologies.

[20.11.21.16 NMAC - N, 12/31/03]

20.11.21.17 DETERMINATION OF VENTILATION INDEX CATEGORY

A. PB-I and PB-II prescribed burns are allowed to be ignited only with a ventilation index category rated "good" or better. The ventilation index category may be obtained by contacting the department, or the burner may make the determination by calculating and documenting the ventilation index category using the following methodology:

(1) using a computer with internet access, enter the *national weather fire forecast* website at <http://www.srh.noaa.gov/abq/fw-3.htm> or successor universal resource locator (URL) internet address; and

(2) select the appropriate zone for the location of the burn project within the New Mexico map showing the various zones; and

(3) examine the forecast and find the reference elevation to be used to determine the general ventilation index category for the Bernalillo county zone (e.g., Albuquerque - 5,300 feet above mean sea level or Mountainair - 6,500 feet above mean sea level); and

(4) record the mixing height for "today" or "tomorrow" as appropriate; and

(5) calculate the mixing height at the burn location by adding the forecasted mixing height and the reference elevation obtained above; from the sum of these two items, subtract the elevation of the burn location; and

(6) calculate the ventilation index for the prescribed burn by multiplying the mixing height at the burn location by the average forecasted transport wind speed.

B. Once the ventilation index for the prescribed burn has been calculated, refer to the following table to see if the ventilation index for the burn project is acceptable to ignite the burn:

Category	Knot-Feet
Excellent - Acceptable	Greater than or equal to 150,000
Very Good- Acceptable	100,000 - 149,999
Good- Acceptable	60,000 - 99,999
Fair- Not Acceptable	40,000 - 59,999
Poor- Not Acceptable	Less than or equal to 40,000

[20.11.21.17 NMAC - N, 12/31/03]

20.11.21.18 ALTERNATIVES TO BURNING: As required by Subsection C of 20.11.21.15 NMAC, burners engaged in PB-II prescribed burns are required to consider the use of alternatives to burning, which include department-approved alternatives, as well as those listed in this section. An effort will be made by the department to remove administrative barriers to the utilization of alternatives to burning.

A. Manual/Handwork - Handwork involves picking up and moving limbs and brush, as well as cutting downed and standing materials using hand tools or chain-saws. Manual work involves lifting, cutting, and carrying forest materials, and is generally limited to materials of roughly nine inches or less in diameter. Larger materials can be handled, but efficiency, production rate, and safety decrease rapidly as size increases. If the fuels requiring treatment exceed the nine-inch-diameter threshold, handwork is not a good option.

(1) Cut and scatter - Hand crews cut and scatter material to change the vertical and horizontal continuity of the fuel load. This technique increases the surface fuel load by redistributing ladder fuels onto the ground surface. It is appropriate where stand density is generally low and existing surface fuels are shallow.

(2) Pile - Cut material is piled, redistributing the fuel load rather than reducing it. Piling can be used in denser stand conditions than can scattering because the piles can be situated to avoid fuel-loading problems. Drawbacks to piling include: slower decomposition than when scattered, labor intensive, and dense stand conditions can result in a high number of piles.

B. Mechanical treatments - Employ equipment as the primary means of modifying or removing fuels. Generally, treatment areas must be within one-quarter mile of a road, and have slopes less than forty percent.

(1) Pile - Cut material is piled, redistributing the fuel load rather than reducing it

(2) Fuel modification - Machinery is used to process the material into smaller pieces that can then be redistributed on the ground surface or removed from the site. Because materials processed in this fashion can be much more densely packed than materials that are scattered by hand or piled by hand, the available oxygen supply is reduced, thereby inhibiting spread of fire and flame height.

(i) Masticate/Mow - Mastication involves the processing of standing or downed material where it occurs. Mastication is more suitable for denser stand conditions than is scattering or piling, and the redistributed fuel load decomposes more rapidly. It is most appropriate for treating both green and dead ladder fuels and the higher surface fuels. Mowing is primarily appropriate to treat grassland and light shrub land habitats. Like mastication, mowing processes the vegetation material on site and in place.

(ii) Chip/Grind/Cut - Material is placed into a piece of equipment and discharged, often through a chute. Because of this feature, material can be processed more selectively and transported off site for either disposal or utilization. It is the method of choice when biomass utilization is an option.

(iii) Crush - Another form of mastication; this technique is useful primarily for shrub land habitats dominated by brittle species.

(3) Tree removal - Numerous approaches to tree removal have been developed as the timber industry has evolved to operate in a variety of habitats and under myriad political and economic constraints.

(i) Bole removal - This is traditional harvesting. Trees are felled either by hand or mechanically and removed from the site for processing. Bole removal eliminates the vertical continuity of the fuel load, but increases surface fuels with the addition of leaf/needle and limb materials. Overall biomass is reduced.

(ii) Whole tree yarding - Trees are felled either by hand or mechanically. The entire tree is then brought intact to a staging area where they are processed. This method removes the vertical continuity of the fuel load, removes biomass, and adds very little to the surface fuel load. Moreover, the removal of leaf/needle and limb material is more important than bole removal in the context of fire behavior. Only suitable for trees 9-18 inches in diameter in order to avoid damage to soil and water quality caused by felling trees greater than 18 inches in diameter.

(iii) Cut-to-length logging - Utilizes specialized equipment to cut and

process entire trees on site in the forest. While much of the biomass either remains onsite or must be addressed through secondary treatments, an important advantage of this technique is its efficacy in treating material of very small diameter.

C. Chemical - Chemical treatments entail the application of herbicides. Chemical treatments do not remove fuel, but kill existing vegetation or inhibit growth (i.e. maintenance of defensible fuel profile zones).

D. Grazing - Involves the use of livestock, primarily cattle and goats, to manage the growth and composition of brush and grasses. While it is of limited utility in forested habitats, it can be an effective technique in rural residential areas, in the wild land-urban interface, and in selected grassland and shrub land habitats.

[20.11.21.18 NMAC - N, 12/31/03]

20.11.21.19 EMISSIONS REDUCTION TECHNIQUES:

Emissions reductions techniques (ERTs) are control strategies that help reduce smoke from prescribed fires. ERTs are used in conjunction with fire and do not replace fire. In addition to department-approved ERTs, other ERTs are included below.

A. Reducing the area burned.

(1) Burn concentrations - Sometimes concentrations of fuels can be burned rather than using fire on 100 percent of an area requiring treatment. The fuel loading of the areas burned using this technique tends to be high.

(2) Isolate fuels - Large logs, snags, deep pockets of duff, sawdust piles, squirrel middens, or other fuel concentrations that have the potential to smolder for long periods of time can be isolated from burning. Eliminating these fuels from burning is often faster, safer, and less costly than mop-up, and allows targeted fuels to remain following the prescribed burn. This can be accomplished by several techniques including:

(a) constructing a fireline around fuels of concern;

(b) not lighting individual or concentrated fuels;

(c) using natural barriers or snow;

(d) scattering the fuels, and

(e) spraying with foam or other fire retardant material.

(3) Mosaic burning - Landscapes often contain a variety of fuel types that are noncontinuous and vary in fuel moisture content. Prescribed fire prescriptions and lighting patterns can be assigned to use this fuel and fuel moisture non-homogeneity to mimic natural wildfire and create patches of burned and non-burned areas or burn only

selected fuels. Areas or fuels that do not burn do not contribute to emissions.

B. Mechanical treatments - Mechanically removing fuels from a site reduces emissions proportionally to the amount of fuel removed. Treatments may include but are not limited to the following methods.

(1) Firewood sales - Firewood sales may result in sufficient removal of woody debris making on site burning unnecessary. This technique is particularly effective for piled material where the public has easy access.

(2) Whole tree harvesting - Whole trees can be removed through harvesting or thinning techniques and virtually eliminate the need for burning.

(3) Mulch/Chips - Mechanical processing of dead and live vegetation into wood chips or shredded biomass is effective in reducing emissions if the material is removed from the site or biologically decomposed.

(4) Fuel for power generation - Vegetative biomass can be removed and used to provide electricity in regions with cogeneration facilities.

(5) Biomass utilization - Vegetative material can be used for many miscellaneous purposes including pulp for paper, methanol/ethanol production, wood pellets, garden bedding, furniture, specialty crafts, compost, mulch, fiberboard/particleboard, etc.

C. Chemical pre-treatments - Broad spectrum and selective herbicides can be used to reduce or remove live vegetation, or alter species diversity respectively. Herbicides can be applied before burning to kill vegetation, which can create a much drier fuel, which in turn burns more efficiently.

D. Site conversion - Natural site productivity can be decreased by changing the vegetation composition.

E. Land use change - Changing wildlands / shrublands / rangelands / croplands to another land use category may result in elimination of the need to burn and vice versa.

F. Reduce fuel loading - Some or all of the fuel can be permanently removed from the site, biologically decomposed, and/or prevented from being produced. Overall, emissions can be reduced when fuel is permanently excluded from burning.

(1) Mechanically removing fuel - Mechanically removing fuels from a site reduces emissions proportionally to the amount of fuel removed.

(2) Burn more frequently at low intensity - This method prevents the fuels from building up and causing greater emissions.

(3) Schedule burning before green up - Burning in cover types with a grass and/or herbaceous fuel bed component can produce fewer emissions if burning takes place before these fuels green-up for the year.

(4) Under burn before fall leaf drop - When deciduous trees and shrubs drop their leaves, this ground litter contributes extra volume to the fuel bed.

(5) Ungulates - Grazing and browsing live grassy or brushy fuels by sheep, cattle, or goats can reduce fuels prior to burning or reduce the burn frequency.

(6) Isolating pockets of fuel - See explanation under reducing the area burned.

G. Reduce fuel consumption - Emission reductions can be achieved when significant amounts of fuel are at or above the moisture of extinction, and therefore unavailable for combustion.

(1) Having high moisture content in non-target fuels - This can result in only the fuels targeted being dry enough to burn.

(2) High moisture in large woody fuels - Burning when large-diameter woody fuels (three- plus inch diameter or greater) are wet can result in lower fuel consumption and less smoldering.

(3) Moist litter or duff - The organic layer that forms from decayed and partially decayed material on the forest floor often burns during the inefficient smoldering phase. Consequently, reducing the consumption of this material can be effective at reducing emissions.

(4) Mass ignition/shortened fire duration/aerial ignition - "Mass" ignition can occur through a combination of dry fine-fuels and rapid ignition, which can be achieved using a helitorch. The conditions necessary to create a true mass ignition situation include rapid ignition of a large open area with continuous dry fuels.

(5) Burn before large fuels cure - Living trees contain very high internal fuel moistures, which take a number of months to dry after harvest. If an area can be burned within 3-4 drying months of timber harvest, many of the large fuels will still contain a significant amount of live fuel moisture.

(6) Rapid mop-up - Rapidly extinguishing a fire can reduce fuel consumption and smoldering emissions somewhat, although this technique is not particularly effective at reducing total emissions and can be expensive.

(7) Burn before precipitation - Scheduling a prescribed fire before a precipitation event will often limit the consumption of large woody material, snags, stumps, and organic ground matter, thus reducing the potential for a long smoldering

period and reducing the average emission actor.

H. Minimizing emissions by minimizing the emission factor - Using burning techniques that create a more efficient burn.

(1) Burning fuels in piles or windrows - Keeping piles dry and free of dirt and other debris generates greater heat and therefore, the piles burn more efficiently. The piles or windrows can be made mechanically or by hand.

(2) Utilizing a backing fire - Flaming combustion is cleaner than smoldering combustion. A backing fire takes advantage of this relationship by causing more fuel consumption to take place in the flaming phase than would occur if a heading fire were used.

(3) Rapid mop-up - See above.

(4) Mass ignition/shortened fire duration/aerial ignition - See above.

(5) Dry conditions - Burning under dry conditions increases combustion efficiency and fewer emissions may be produced.

I. Air curtain incinerator (ACI) - Use of an air curtain incinerator improves combustion and reduces emissions by introducing high velocity air into a combustion environment. As the air continuously rotates in and over the environment, a "curtain" is created over the fire thus trapping smoke and particulate matter. Constant airflow into and over the combustion environment allows temperatures to remain high, resulting in relatively complete combustion of all emission products. ACIs can burn a wider variety of materials from green fuel to red slash and produce lower smoke emissions as compared to pile or broadcast burning. They also reduce risk of an escaped fire since the fire is contained and can be quickly extinguished if necessary.

[20.11.21.19 NMAC - N, 12/31/03]

~~[20.11.21.15]~~**20.11.21.20 AMBIENT AIR STANDARD EXCEEDENCE:** The director shall have the authority to suspend any open burning allowed under this Part in the event of ~~current or prospective~~ ongoing or projected violations of the federal, state, or local ambient air standards.

[20.11.21.20 NMAC - Rn, 20.11.21.15 NMAC & A, 12/31/03]

20.11.21.21 REVIEW MEETING, HEARING ON THE MERITS REGARDING PERMIT APPLICATIONS AND PERMITS:

A. If a permit applicant is adversely affected by, or disagrees with the division's proposed decision regarding the applicant's permit application, the applicant may request an informal review meeting to

discuss the division's proposed decision. The request shall be in writing or on a form obtained from the division. Within 15 working days of the applicant receiving the proposed decision, the applicant shall deliver the request to the director and the division manager. Unless a timely request for an informal review meeting is received by the director, the division's proposed decision regarding the permit application shall be final. Within 10 working days after receiving the request, the director shall hold an informal review meeting with the applicant and a division representative (e.g., division manager or the person issuing the proposed decision regarding the permit application) in an attempt to resolve disagreements. Within two working days after the informal review meeting, the division representative shall issue a final decision regarding the permit application. If the permit applicant or permittee is adversely affected by the final decision made by the division representative, the permit applicant or permittee may follow the procedures described in the following subsection.

B. A person adversely affected by the decision of the division regarding a permit application or permit ("petitioner") may file a petition for a hearing on the merits before the board. Unless a timely petition for a hearing on the merits is received by the director, the decision of the division regarding the permit application or permit shall be final. The petition shall be in writing, addressed to the board and be delivered to the director no later than 30 consecutive days after the later of:

(1) the decision of the division regarding the proposed application, if no timely request has been made for an informal review meeting; or

(2) the final decision of the division representative following an informal review meeting.

C. If a timely petition for a hearing on the merits is received by the director, the board shall hold a hearing on the merits within 60 consecutive days after the director receives the petition. No fewer than 21 consecutive days before the start of the hearing, the board shall notify the petitioner and the applicant or permittee, if other than the petitioner, of the date, time, and place of the hearing by certified mail. If the subject of the petition is a permitting action deemed by the board to substantially affect the public interest, the board shall cause the notice of the date, time, and place of the hearing to be published. In such circumstances, the public shall also be given reasonable opportunity to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. Any person submitting data, views or arguments orally or in writing shall be sub-

ject to examination at the hearing.

D. The board may designate a hearing officer to take evidence in the hearing and recommend a decision to the board. All hearings shall be recorded.

E. The burden of proof shall be upon the Petitioner. Based upon the evidence presented at the hearing, within 30 consecutive days of the close of the hearing, the board shall sustain, modify, or reverse the decision of the division regarding the permit application or permit. The decision of the board shall be final and may be appealed consistent with 74-2-9 NMSA. [20.11.21.21 NMAC - N, 12/31/03]

**NEW MEXICO
ENVIRONMENTAL
IMPROVEMENT BOARD
ENVIRONMENTAL
PROTECTION DIVISION
Air Quality Bureau**

The Environmental Improvement Board has repealed and replaced the following rule effective December 31, 2003:

20.2.60 NMAC Repeal Rule
OPEN BURNING
20.2.60 NMAC Adopt New Rule
OPEN BURNING

**NEW MEXICO
ENVIRONMENTAL
IMPROVEMENT BOARD
ENVIRONMENTAL
PROTECTION DIVISION
Air Quality Bureau**

**TITLE 20 ENVIRONMENTAL
PROTECTION
CHAPTER 2 AIR QUALITY
(STATEWIDE)
PART 60 OPEN BURNING**

20.2.60.1 ISSUING AGENCY:
Environmental Improvement Board.
[20.2.60.1 NMAC - Rp 20.2.60.1 NMAC,
12/31/03]

20.2.60.2 SCOPE: All geographic areas within the jurisdiction of the environmental improvement board.
[20.2.60.2 NMAC - Rp 20.2.60.2 NMAC,
12/31/03]

20.2.60.3 STATUTORY AUTHORITY: Environmental Improvement Act, NMSA 1978, Sections 74-1-1 to -15, including specifically Subsections 74-1-8(A) (4) and (7), and Air Quality Control Act, NMSA 1978, Sections 74-2-1 to -22, including specifically

Subsections 74-2-5(A), (B) and (C).
[20.2.60.3 NMAC - Rp 20.2.60.3 NMAC,
12/31/03]

20.2.60.4 DURATION: Permanent.
[20.2.60.4 NMAC - Rp 20.2.60.4 NMAC,
12/31/03]

20.2.60.5 EFFECTIVE DATE: December 31, 2003, except where a later date is cited at the end of a section.
[20.2.60.5 NMAC - Rp 20.2.60.5 NMAC,
12/31/03]
[The latest effective date of any section in this part is December 31, 2003.]

20.2.60.6 OBJECTIVE: The objective of this part is to protect public health and welfare by establishing controls on pollution produced by open burning. This part does not preempt any more stringent controls on open burning provided in:

A. any other New Mexico statute or regulation, or any local law, ordinance or regulation; or

B. any lawfully issued restriction on open burning, including those that may be issued for prevention of wildfires.

[20.2.60.6 NMAC - Rp 20.2.60.6 NMAC,
12/31/03]

20.2.60.7 DEFINITIONS: In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this part:

A. "air pollution episode" means an air pollution alert, warning, or emergency issued by the department pursuant to the air pollution episode contingency plan for New Mexico, as included in New Mexico's state implementation plan as adopted by the environmental improvement board, and Section 74-2-10 NMSA 1978;

B. "household waste" means any waste including garbage and trash, derived from households including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas;

C. "nonattainment area" means an area which has been designated under Section 107 of the federal Clean Air Act as nonattainment for one or more of the national ambient air quality standards by the federal environmental protection agency;

D. "open burning" means any manner of burning, whether caused, suffered or allowed, not in a device or chamber designed to achieve combustion, where the products of combustion are emitted, directly or indirectly, into the open air; open burning does not include detonation of manufactured explosives;

E. "part" means an air

quality control regulation under Title 20, Chapter 2, of the New Mexico administrative code, unless otherwise noted, as adopted or amended by the board;

F. "pile volume" means the gross volume of a pile, including the air space between solid constituents, as calculated from the overall dimensions and shape of the pile;

G. "salvage operation" means any operation to salvage or reclaim any material for use or sale, such as reprocessing of used motor oils, metals, wire, chemicals, shipping containers, or drums, and specifically including automobile graveyards and junkyards; and

H. "vegetative material" means plant material, including:

(1) grass, grass clippings, leaves, conifer needles, bushes, shrubs, trees, and clippings from bushes, shrubs and trees, resulting from maintenance of yards or other private or public lands; and

(2) wood waste, clean lumber, wood and wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings, which have not been painted, pigment-stained, or treated with compounds containing chromium, copper, arsenic, pentachlorophenol, or creosote.

[20.2.60.7 NMAC - Rp 20.2.60.7 NMAC,
12/31/03]

20.2.60.8 to 20.2.60.107
[RESERVED]

20.2.60.108 RESTRICTIONS ON OPEN BURNING: Any open burning not expressly allowed, not expressly prohibited, or not otherwise specifically addressed under this part or 20.2.65 NMAC (Smoke Management) shall be conducted only pursuant to 20.2.72 NMAC, upon issuance of a construction permit under 20.2.72 NMAC, regardless of the applicability requirements contained in 20.2.72 NMAC. Open burning as allowed or prohibited in this part is not considered a stationary source as defined in other parts of Title 20, Chapter 2, NMAC.

[20.2.60.108 NMAC - Rp 20.2.60.108 NMAC, 12/31/03]

20.2.60.109 UNRESTRICTED OPEN BURNING:

A. Open burning is allowed for recreational and ceremonial purposes, for barbecuing, for heating purposes in fireplaces, for the noncommercial cooking of food for human consumption and for warming by small wood fires at construction sites. This subsection does not apply to open burning for the purpose of waste disposal.

B. Open burning of natural gas is allowed at gasoline plant and compressor stations and when used or produced in drilling, completion and workover operations on oil and gas wells, when necessary to avoid serious hazard to safety.

[20.2.60.109 NMAC - Rp 20.2.60.109 NMAC, 12/31/03]

20.2.60.110 OPEN BURNING OF HOUSEHOLD WASTE:

A. Applicability:

(1) This section (20.2.60.110 NMAC) applies to open burning of household waste, except for household waste that consists solely of vegetative material as defined in 20.2.60.7 NMAC.

(2) This section (20.2.60.110 NMAC) does not apply to any kind of salvage operation. Open burning as part of a salvage operation is prohibited.

B. Effective June 1, 2004, open burning of household waste, other than vegetative material as defined in 20.2.60.7 NMAC, is prohibited.

C. Prior to June 1, 2004, open burning of household waste is allowed where all of the following conditions are met:

(1) household waste shall not be burned on property other than that property where it was generated;

(2) household waste shall not be burned on property which is served by any on-premises or curbside refuse collection service operated or contracted by a regional waste authority, county, or incorporated city, town, or village;

(3) household waste shall not be burned on any property less than ten miles by road from a convenience center, transfer station, or other receptacle made available for public use by a regional waste authority, county, or incorporated city, town, or village for the deposition and collection of refuse;

(4) household waste shall not be burned at any location nearer than three hundred feet from any occupied dwelling, workplace, or place where people congregate, on property owned by, or under possessory control of, another person;

(5) burning of the following materials is prohibited:

(a) natural or synthetic rubber products, including tires;

(b) waste oil or used oil filters;

(c) insulated wire;

(d) plastic, including polyvinyl chloride ("PVC") pipe, tubing, and connectors;

(e) tar, asphalt, asphalt shingles, or tar paper;

(f) railroad ties;

(g) wood, wood waste, or lumber which has been painted or which has been

treated with preservatives containing arsenic, chromium, pentachlorophenol, or creosote;

(h) batteries;

(i) motor vehicle bodies or interiors;

(j) pathogenic wastes; and

(k) asbestos or asbestos containing materials;

D. Auxiliary fuel or incendiary devices may be used to start the burning allowed by this section, provided that:

(1) no oil heavier than number two diesel shall be used; and

(2) no more than the minimum amount of auxiliary fuel necessary to start the fire shall be used.

[20.2.60.110 NMAC - Rp 20.2.60.110 NMAC, 12/31/03]

20.2.60.111 OPEN BURNING OF VEGETATIVE MATERIAL:

A. Applicability:

(1) This section (20.2.60.111 NMAC) applies to open burning of vegetative material as defined in 20.2.60.7 NMAC, for purposes of disposal of such material, provided that burning of areas with non-piled vegetative material does not exceed ten acres per day, or burning of piled vegetative material, including material gathered in a pit or open container, does not exceed one thousand cubic feet of pile volume per day. In determining daily burn area and daily burn pile volume, areas or piles that are within three hundred feet of each other shall be considered to constitute a single burn if the burning occurs on the same day and on property under ownership or possessory control of the same person. Burning in excess of these daily limits is subject to 20.2.65 NMAC (Smoke Management).

(2) This section does not apply to any open burning of vegetative material which is subject to 20.2.65 NMAC.

(3) Open burning of vegetative material is prohibited in nonattainment areas.

B. Open burning of vegetative material under this section shall meet the following requirements:

(1) burning shall be conducted at least three hundred feet from any occupied dwelling, workplace, or place where people congregate, which is on property owned by, or under possessory control of, another person; burning that does not meet this requirement is subject to 20.2.65 NMAC (Smoke Management);

(2) burning shall begin no earlier than one hour after sunrise, and shall be extinguished no later than one hour before sunset; burning outside of this time limitation is subject to 20.2.65 NMAC (Smoke Management);

(3) burning shall be attended at all times;

(4) the appropriate local fire department or dispatch or firefighting authority shall be notified prior to burning;

(5) for burns exceeding one acre per day or one hundred cubic feet of pile volume per day, the burner shall provide prior notice of the date and location of the burn to all households within one quarter of a mile of the burn;

(6) burning shall be in compliance with 20.9.1 NMAC (Solid Waste Management);

(7) burning shall not be conducted when an air pollution episode is in effect;

(8) auxiliary fuel or incendiary devices may be used to ignite the burning allowed by this section, provided that:

(a) no oil heavier than number two diesel shall be used; and

(b) no more than the minimum amount of auxiliary fuel necessary to complete the burn shall be used;

(9) polyethylene sheeting may be burned with the vegetative materials, provided that:

(a) the sheeting has been covering piled vegetative material for at least one month prior to burning;

(b) the amount of sheeting burned is no more than the minimum necessary to cover the pile;

(c) removal of the sheeting before burning is impractical; and

(d) the burner is able to provide evidence, such as purchase records or package labeling, that the sheeting is polyethylene and not some other form of plastic;

(10) the burner shall consider alternatives to burning prior to igniting a burn; and

(11) material to be burned shall be as dry as practicable.

[20.2.60.111 NMAC - Rp 20.2.60.111 NMAC, 12/31/03]

20.2.60.112 BURNING OF MATERIALS AND STRUCTURES FOR FIREFIGHTER TRAINING:

Burning of structures, buildings, facilities or materials for purposes of instruction and training of bona fide firefighting and fire-rescue personnel is allowed, provided that:

A. all regulated asbestos-containing material is removed prior to burning, in accordance with 40 CFR 61, Subpart M (National Emission Standard for Asbestos); and

B. the department is notified, prior to burning, using the form provided by the department.

[20.2.60.112 NMAC - Rp 20.2.60.112 NMAC, 12/31/03]

20.2.60.113 OPEN BURNING OF

HAZARDOUS WASTE: Open burning of hazardous waste, as defined in the New Mexico Hazardous Waste Act, NMSA 1978, Sections 74-4-1 to -14, is allowed only when conducted in compliance with interim status regulations, or a permit issued, pursuant to the New Mexico Hazardous Waste Act and any other permits issued by the department.

[20.2.60.113 NMAC - Rp 20.2.60.113 NMAC 12/31/03]

20.2.60.114 EMERGENCY

BURNING: Open burning is allowed for purposes of eliminating an imminent danger to public health, safety, or the environment, provided that:

A. no other practical and lawful method of abatement or disposal is available;

B. an emergency response specialist has determined that the situation requires immediate and expeditious action;

C. the burning is in compliance with all other applicable state laws and regulations; and

D. notice is provided to the department as soon as practical, but at least within two weeks after the burn.

[20.2.60.114 NMAC - Rp 20.2.60.114 NMAC, 12/31/03]

HISTORY OF 20.2.60 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records-state records center and archives:

HSSD 70-1, Ambient Air Quality Standards And Air Quality Control Regulations, 01/27/70;

AQCR 301, Air Quality Control Regulation 301 - Regulation To Control Open Burning, 02/07/83;

EIB/AQCR 301, Air Quality Control Regulation 301 - Regulation To Control Open Burning, 07/24/84.

History of Repealed Material: 20.2.60 NMAC, Open Burning, filed 10/16/02, repealed 12/31/03.

Other History:

EIB/AQCR 301, Air Quality Control Regulation 301 - Regulation To Control Open Burning, filed 07/24/84 was **renumbered** into first version of the New Mexico Administrative Code as 20 NMAC 2.60, Open Burning, filed 10/30/95.

20 NMAC 2.60, Open Burning, filed 10/30/95 was **renumbered, reformatted and replaced** by 20.2.60 NMAC, Open Burning, effective 10/31/02.

20.2.60 NMAC, Open Burning, filed 10/16/02 was **replaced** by 20.2.60 NMAC, Open Burning, effective 12/31/03.

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**NEW MEXICO
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PROTECTION DIVISION
Air Quality Bureau**

**TITLE 20 ENVIRONMENTAL
PROTECTION
CHAPTER 2 AIR QUALITY
(STATEWIDE)
PART 65 SMOKE MANAGE-
MENT**

20.2.65.1 ISSUING AGENCY:
Environmental Improvement Board.
[20.2.65.1 NMAC - N, 12/31/03]

20.2.65.2 SCOPE: All geo-
graphic areas within the jurisdiction of the
environmental improvement board.
[20.2.65.2 NMAC - N, 12/31/03]

**20.2.65.3 STATUTORY
AUTHORITY:** Environmental
Improvement Act, NMSA 1978, Subsection
74-1-8(A) (4) and Air Quality Control Act,
NMSA 1978, Sections 74-2-1 to -22,
including specifically, Subsections 74-2-
5(A), (B) and (C).
[20.2.65.3 NMAC - N, 12/31/03]

20.2.65.4 DURATION :
Permanent.
[20.2.65.4 NMAC - N, 12/31/03]

20.2.65.5 EFFECTIVE DATE:
December 31, 2003, except where a later
date is cited at the end of a section.
[20.2.65.5 NMAC - N, 12/31/03]
[The latest effective date of any section in
this part is December 31, 2003.]

20.2.65.6 OBJECTIVE: The
objective of this part is to manage the air
quality impacts of smoke from all sources
of fire. This part does not preempt any more
stringent controls on burning provided in:
A. any other New Mexico
statute or regulation or any local law, ordi-
nance or regulation; or
B. any lawfully issued
restriction on burning such as may be issued
for wildfire prevention.
[20.2.65.6 NMAC - N, 12/31/03]

20.2.65.7 DEFINITIONS: In
addition to the terms defined in 20.2.2
NMAC (definitions), as used in this part:
A. "alternatives to burn-
ing" means treatments employing manual,
mechanical, chemical, or biological meth-
ods to manage vegetation or fuel loads or
land management practices that treat vege-
tation (fuel) without using fire; a treatment
or practice may only be considered an alter-
native if it has successfully been used to
take the place of fire for at least three years;
B. "burn project" means,
in prescribed burning or in wildland fire
use, a burn on an area that is contiguous and
is being treated or managed for the same
land management objectives;

C. "burner" means that
person who is responsible for a prescribed
fire project that is regulated under this part;

D. "class I area" means
all international parks, national wilderness
areas that exceed 5,000 acres in area,
national memorial parks that exceed 5,000
acres in area, and national park areas that
exceed 6,000 acres in area and that existed
on the date of enactment of the Clean Air
Act amendments of 1977; the extent of the
areas designated as class I shall conform to
any changes in the boundaries of such areas
that occurred subsequent to the date of the
enactment of the Clean Air Act amendments
of 1977 or 1990;

E. "emission reduction
technique" means a strategy for controlling
smoke from prescribed fires that minimizes
the amount of smoke output per unit of area
treated or other objective unit of accom-
plishment; such strategy shall be used in
conjunction with fire and shall not be a
replacement for fire; for the purposes of this
regulation, a technique used within three
years of a burning operation is an emission
reduction technique; if that same technique
replaces fire for three years or more, the
technique is considered an alternative to
burning;

F. "non-attainment
area" means an area which has been desig-
nated under section 107 of the federal Clean
Air Act as nonattainment for one or more of
the national ambient air quality standards by
the federal environmental protection
agency;

G. "part" means an air
quality control regulation under Title 20,
Chapter 2 of the New Mexico administra-
tive code, unless otherwise noted, as adopt-
ed or amended by the board;

H. "pile" means vegeta-
tive materials that have been relocated
either by hand or machinery and heaped
together;

I. "pile volume" means a
pile's gross volume, including the air space
between solid constituents, as calculated
from the pile's overall dimensions and
shape;

J. "population" means
the total of individuals occupying an area;
locations for individuals within an area
include, but are not limited to, open camp-
grounds, single family dwellings, hospitals,
schools in use, villages, and open places of
employment;

K. "prescribed fire"
means any fire ignited by any person to
meet specific land management objectives;
for the purposes of this part, wildland fire
use is considered prescribed fire; any fire
ignited in an air curtain incinerator is not
"prescribed fire" for purposes of this part;

L. "public notification"
means any method that communicates burn
information to the burners, air regulators,
the local fire authority, and to the general
public;

M. "SMP I" means burn
projects that emit less than one ton per day
of PM-10 emissions or burn less than 5,000
cubic feet pile volume of vegetative materi-
al per day;

N. "SMP II" means burn
projects that emit greater than or equal to
one ton of PM-10 emissions per day or
greater than or equal to 5,000 cubic feet pile
volume of vegetative material per day;

O. "vegetative material"
means untreated wood and untreated wood

products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, shavings, grass, grass clippings, leaves, conifer needles, bushes, shrubs, clippings from bushes and shrubs, and agricultural plant residue;

P. "ventilation category" means that adjective describing the ventilation index conditions in terms of excellent, very good, good, fair, and poor;

Q. "ventilation index" means an index that describes the potential for smoke or other pollutants to ventilate away from their source;

R. "wildfire" means any unplanned, non-structural fire that occurs on wildland;

S. "wildland" means an area in which development is essentially non-existent, except for roads, railroads, power lines, and similar transportation facilities; structures if any are widely scattered;

T. "wildland fire use" means the management of wildfire, which is naturally ignited (such as by lightning or volcanic eruption) fire, to accomplish specific pre-stated resource objectives in predefined geographic areas, also known as fire use, wildfire use, prescribed natural fire, and fire for resource benefit.

[20.2.65.7 NMAC - N, 12/31/03]

20.2.65.8 to 20.2.65.99

[RESERVED]

20.2.65.100 APPLICABILITY:

A. This part applies to all users of prescribed fire that:

(1) exceeds ten acres in area or 1,000 cubic feet of pile volume per day of vegetative material; or

(2) exceeds the daily burn area or pile volume thresholds specified in Subsection A of 20.2.60.111 NMAC (open burning).

B. This part also applies to burn projects otherwise subject to 20.2.60 NMAC (open burning) that users of prescribed fire voluntarily choose to register with the department under Subsection C of 20.2.65.102 NMAC or Subsection G of 20.2.65.103 NMAC.

C. In addition, portions of this part also apply to the land manager or owner of property on which a wildfire occurs.

[20.2.65.100 NMAC - N, 12/31/03]

20.2.65.101 MATERIALS ALLOWED TO BE BURNED: Only vegetative material shall be burned, with the following exceptions.

A. Auxiliary fuel or incendiary devices may be used to ignite the

burning authorized by this section, provided that:

(1) no oil heavier than no. 2 diesel shall be used; and

(2) no more than the minimum amount of auxiliary fuel necessary to complete the burn shall be used.

B. Polyethylene sheeting may be burned with the vegetative materials, provided that:

(1) the sheeting has been covering piled vegetative material for at least one month prior to burning;

(2) the amount of sheeting burned is no more than the minimum necessary to cover the pile;

(3) removal of the sheeting before burning is impractical; and

(4) the burner is able to provide evidence, such as purchase records or package labeling, that the sheeting is polyethylene and not some other form of plastic.

[20.2.65.101 NMAC - N, 12/31/03]

20.2.65.102 REQUIREMENTS

FOR SMP I: For any burn project of less than one ton of PM-10 emissions per day or less than 5,000 cubic feet pile volume per day, all of the following requirements shall apply.

A. The burner shall burn only under appropriate dispersion conditions. In order to accomplish this objective, the burner shall follow one of the two options below.

(1) The burner shall:

(a) ignite burns only during the hours from one hour after sunrise until one hour before sunset; the burner may apply for a waiver of this requirement in writing from the department no later than two weeks prior to the planned burn project; the burner shall document the reasons for waiver application on the appropriate form provided by the department; the department shall notify the burner no later than one week prior to the planned burn project of whether the waiver is granted or denied; the department shall consider such waiver requests on a case-by-case basis; and

(b) conduct burn projects at least 300 feet from any occupied dwelling, workplace, or place where people congregate, which is on property owned by, or under possessory control of, another person; the burner may apply for a waiver of this requirement in writing from the department no later than two weeks prior to the planned burn project; the burner shall document the reasons for waiver application on the appropriate form provided by the department; the department shall notify the burner no later than one week prior to the planned burn project of whether the waiver is granted or denied; the department shall consider such waiver requests on a case-by-case basis; or

(2) the burner shall:

(a) only burn during times when the ventilation category is good or better; the burner may apply for a waiver of this requirement in writing from the department no later than 10:00 a.m. one business day prior to the planned burn project; the burner shall document the reasons for waiver application on the appropriate form provided by the department; the department shall notify the burner no later than 3:00 p.m. one business day prior to the planned burn project of whether the waiver is granted or denied; the department shall consider such waiver requests on a case-by-case basis; and

(b) conduct visual monitoring and shall document the results; the burner shall maintain records of those results for a period of one year; for any burn project planned to be conducted within a one mile radius of a population, the department may require that the burner notify the department no later than two business days prior to the planned burn project so that the department may determine whether to conduct instrument monitoring in addition to visual monitoring conducted by the burner; the need for instrument monitoring shall be determined by the department on a case-by-case basis.

B. The burner shall notify the local fire authority prior to igniting a burn.

C. The burner shall register the burn project with the department on a registration form provided by the department no later than 10:00 a.m. one business day prior to the planned ignition of the burn project. The department shall provide the burner with a registration number for the burn project. Prior to igniting the burn project, if the burner has not received the registration number, the burner shall make a good faith effort to contact the department to obtain the registration number. For burn projects longer than seven days, the burner shall notify the department separately for each seven days of burning to be conducted under that burn project registration. The burner shall not burn more area or volume than the burner has included in the notification or registration.

D. The burner shall submit a completed burn project tracking form to the department on a tracking form provided by the department no later than two weeks following completion of the burn project.

E. For burn projects conducted within a one-mile radius of a population, the following requirements shall apply in addition to all other requirements in this section (20.2.65.102 NMAC):

(1) the burner shall conduct visual monitoring and document the results; and

(2) the burner shall conduct public notification of populations within a one-

mile radius of the burn project no later than two days prior to, and no earlier than thirty days in advance of, igniting a burn project.

F. The burner shall maintain all records of actions performed pursuant to the requirements of this section for a period of at least one year.
[20.2.65.102 NMAC - N, 12/31/03]

20.2.65.103 REQUIREMENTS FOR SMP II: For any burn project with emissions greater than or equal to one ton of PM-10 emissions per day or greater than or equal to 5,000 cubic feet pile volume per day, all of the following requirements shall apply.

A. The burner shall review smoke management educational material supplied by the department or complete an approved smoke management training program prior to initiating burning.

B. The burner shall consider alternatives to burning and shall document this consideration and rationale for not using alternatives on the form provided by the department.

C. The burner shall implement at least one emission reduction technique and shall document this implementation on the forms provided by the department. The burner may apply for a waiver of this requirement in writing from the department no later than two weeks prior to the planned burn project. The burner shall document the reasons for waiver application on the appropriate form provided by the department. The department shall notify the burner no later than 10:00 a.m. one week prior to the planned burn project of whether the waiver is granted or denied. The department shall consider such waiver requests on a case-by-case basis, taking into consideration the criteria of efficiency, economics, law, emission reduction opportunities, land management objectives, and reduction of visibility impact.

D. The burner shall only burn during times when the ventilation category is "good" or better. The burner may apply for a waiver of this requirement in writing from the department no later than 10:00 a.m. one business day prior to the planned burn. The burner shall document the reasons for waiver application on the appropriate form provided by the department. The department shall notify the burner no later than 3:00 p.m. one business day prior to the planned burn of whether the waiver is granted or denied. The department shall consider such waiver requests on a case-by-case basis.

E. The burner shall conduct visual monitoring and shall document the results.

F. The burner shall notify the local fire authority prior to igniting a

burn.

G. The burner shall register a burn project with the department on forms provided by the department no later than two weeks prior to planned ignition of the burn.

H. The burner shall notify the department of the intent to burn on a specific date no later than 10:00 a.m. one business day prior to the planned burn project. The notification may be made for up to a seven-day advance period. The department shall notify the burner of the receipt of the notification by 11:00 a.m. If the department has not notified the burner by 11:00 a.m., the burner shall make a good faith effort to contact the department to verify that the department received the notification prior to igniting the burn. The burner shall not burn more area or volume than the burner has included in the notification. The department shall notify the burner no later than 3:00 p.m. one business day prior to the burn project if a modification of the burn is required.

I. The burner shall complete and submit to the department on a form provided by the department a fire activity tracking form no later than two weeks following the end of the burn project.

J. For burns planned to be conducted with the wind blowing toward a population, or within a fifteen mile radius of a population if wind direction is not considered, the following requirements shall apply in addition to all other requirements in this section (20.2.65.103 NMAC).

(1) The department may require that the burner notify the department no later than two business days prior to the planned burn so that the department may determine whether to conduct instrument monitoring in addition to visual monitoring conducted by the burner. The need for instrument monitoring shall be determined by the department on a case-by-case basis; and

(2) The burner shall conduct public notification no later than two days prior to, and no sooner than thirty days in advance of, igniting a burn.

K. The burner shall maintain all records of actions performed pursuant to the requirements of this section for a period of at least one year.
[20.2.65.103 NMAC - N, 12/31/03]

20.2.65.104 WILDLAND FIRE USE: For wildland fire use exceeding ten acres in area, the following requirements shall apply.

A. The burner shall register a burn project with the department on forms provided by the department no later than one business day following the decision to manage a wildland fire use burn. The

burner shall notify the department daily by 10:00 a.m. of the status of the burn.

B. The burner shall notify the appropriate authorities of the decision to manage a wildland fire use burn. For burns within a fifteen mile radius of a population, the burner shall conduct public notification no later than one calendar day of the decision to manage the burn as a wildland fire use.

C. The burner shall conduct visual monitoring and shall document the results.

D. The burner shall complete and submit to the department a fire activity tracking form no later than two weeks following the end of the burn project.

E. The burner shall maintain all records of actions performed pursuant to the requirements of this section for a period of at least one year.
[20.2.65.104 NMAC - N, 12/31/03]

20.2.65.105 WILDFIRE UNDER SUPPRESSION: The land manager or owner of property on which a wildfire exceeding 100 acres in area occurs shall complete and submit to the department a fire activity tracking form no later than six weeks or by November 1 of that year, whichever is earlier, following the cessation of fire fighting activities on the wildfire.
[20.2.65.105 NMAC - N, 12/31/03]

HISTORY OF 20.2.65 NMAC:
Pre-NMAC History: None.

History of Repealed Material:
[RESERVED]

Other History: [RESERVED]

**NEW MEXICO
ENVIRONMENTAL
IMPROVEMENT BOARD
ENVIRONMENTAL
PROTECTION DIVISION
Air Quality Bureau**

**TITLE 20 ENVIRONMENTAL
PROTECTION
CHAPTER 2 AIR QUALITY
(STATEWIDE)
PART 81 WESTERN BACK-
STOP SULFUR DIOXIDE TRADING
PROGRAM**

20.2.81.1 ISSUING AGENCY:
Environmental Improvement Board.
[20.2.81.1 NMAC - N, 12/31/03]

20.2.81.2 SCOPE: All geographic areas within the jurisdiction of the environmental improvement board.

[20.2.81.2 NMAC - N, 12/31/03]

20.2.81.3 STATUTORY AUTHORITY: Environmental Improvement Act, NMSA 1978, Section 74-1-8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, Sections 74-2-1 et seq., including specifically, Section 74-2-5 (A), (B) and (C).

[20.2.81.3 NMAC - N, 12/31/03]

20.2.81.4 DURATION: Permanent.

[20.2.81.4 NMAC - N, 12/31/03]

20.2.81.5 EFFECTIVE DATE: December 31, 2003, except where a later date is cited at the end of a section.

[20.2.81.5 NMAC - N, 12/31/03]

[The latest effective date of any section in this part is December 31, 2003.]

20.2.81.6 OBJECTIVE:

A. 20.2.81 NMAC implements the western backstop sulfur dioxide trading program ("WEB trading program") provisions required under the federal regional haze rule, 40 CFR 51.309, and New Mexico's regional haze implementation plan.

B. Nothing in 20.2.81 NMAC waives any requirement otherwise in effect or subsequently required under another program, including rules governing new sources.

[20.2.81.6 NMAC - N, 12/31/03]

20.2.81.7 DEFINITIONS: In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this part:

A. "account certificate of representation" means the completed and signed submission required to designate an account representative for a web source or an account representative for a general account;

B. "account representative" means the individual who is authorized through an account certificate of representation to represent owners and operators of the WEB source with regard to matters under the web trading program or, for a general account, who is authorized through an account certificate of representation to represent the persons having an ownership interest in allowances in the general account with regard to matters concerning the general account;

C. "act" means the federal Clean Air Act, as amended, 42 U.S.C. 7401, et seq.;

D. "actual emissions" means total annual sulfur dioxide emissions determined in accordance with 20.2.81.106 NMAC, or determined in accordance with 20.2.73 NMAC for sources that are not sub-

ject to 20.2.81.106 NMAC;

E. "allocate" means to assign allowances to a WEB source through Section C1 of the implementation plan;

F. "allowance" means the limited authorization under the WEB trading program to emit one ton of sulfur dioxide during a specified control period or any control period thereafter subject to the terms and conditions for use of unused allowances as established by 20.2.81 NMAC;

G. "allowance limitation" means the tonnage of sulfur dioxide emissions authorized by the allowances available for compliance deduction for a WEB source for a control period under 20.2.81.109 NMAC on the allowance transfer deadline for that control period;

H. "allowance tracking system" means the system developed by the department where allowances under the WEB trading program are recorded, held, transferred and deducted;

I. "allowance tracking system account" means an account in the allowance tracking system established for purposes of recording, holding, transferring, and deducting allowances;

J. "allowance transfer deadline" means the deadline established in Subsection B of 20.2.81.107 NMAC when allowances must be submitted for recording in a WEB source's compliance account in order to demonstrate compliance for that control period;

K. "compliance account" means an account established in the allowance tracking system under Subsection A of 20.2.81.105 NMAC for the purpose of recording allowances that a WEB source might hold to demonstrate compliance with its allowance limitation;

L. "compliance certification" means a submission to the department by the account representative as required under Subsection B of 20.2.81.109 NMAC to report a WEB source's compliance or noncompliance with 20.2.81 NMAC;

M. "control period" means the period beginning January 1 of each year and ending on December 31 of the same year, inclusive;

N. "emissions tracking database" means the central database where sulfur dioxide emissions for WEB sources as recorded and reported in accordance with 20.2.81 NMAC are tracked to determine compliance with allowance limitations;

O. "emission unit" means any part of a stationary source that emits or would have the potential to emit any pollutant submitted to regulations under the Clean Air Act;

P. "existing source" means, a stationary source that commenced

operation before the program trigger date;

Q. "fugitive emissions" are those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening;

R. "general account" means an account established in the allowance tracking system under 20.2.81.105 NMAC for the purpose of recording allowances held by a person that are not to be used to show compliance with an allowance limitation;

S. "milestone" means the maximum level of stationary source regional sulfur dioxide emissions for each year from 2003 to 2018, established according to the procedures in section A of the sulfur dioxide milestones and backstop trading program implementation plan;

T. "new web source" means a WEB source that commenced operation on or after the program trigger date;

U. "new source set-aside" means a pool of allowances that are available for allocation to new sources in accordance with the provisions of section C (a)1.3 of the sulfur dioxide milestones and backstop trading program implementation plan;

V. "owner or operator" means any person who is an owner or who operates, controls or supervises a WEB source, and includes but is not be limited to any holding company, utility system or plant manager;

W. "part" means an air quality control regulation under Title 20, Chapter 2 of the New Mexico administrative code, unless otherwise noted, as adopted or amended by the board;

X. "potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design; any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation is enforceable by the EPA administrator;

Y. "program trigger date" means the date that the department determines that the WEB trading program has been triggered in accordance with the provisions of section A2 of the sulfur dioxide milestones and backstop trading program implementation plan;

Z. "program trigger years" means the years shown in table 1, column 3, of the sulfur dioxide milestones and backstop trading program implementation plan for the applicable milestone if the WEB trading program is triggered as described in section A of the sulfur dioxide

milestones and backstop trading program implementation plan;

AA. "renewable energy resource" means a resource that generates electricity by non-nuclear and non-fossil technologies that results in low or no air emissions; the term includes electricity generated by wind energy technologies; solar photovoltaic and solar thermal technologies; geothermal technologies; technologies based on landfill gas and biomass sources, and new low-impact hydropower that meets the low-impact hydropower institute criteria; biomass includes agricultural, food and wood wastes; the term does not include pumped storage or biomass from municipal solid waste, black liquor, or treated wood;

AB. "retired source" means a WEB source that has received a retired source exemption as provided in Subsection D of 20.2.81.101 NMAC; any retired source resuming operations under Subsection D of 20.2.81.101 NMAC, must submit its exemption as part of its registration materials;

AC. "serial number" means, when referring to allowances, the unique identification number assigned to each allowance by the tracking systems administrator, in accordance with Subsection B of 20.2.81.104 NMAC;

AD. "sulfur dioxide emitting unit" means any equipment that is located at a WEB source and that emits sulfur dioxide;

AE. "sulfur dioxide milestones and backstop trading program implementation plan" or "implementation plan" means section C of the New Mexico regional haze state implementation plan revision adopted by the environmental improvement board on November 18, 2003;

AF. "stationary source" means any building, structure, facility or installation that emits or may emit any air pollutant subject to regulation under the Clean Air Act;

AG. "submit" means sent to the appropriate authority under the signature of the account representative; for purposes of determining when something is submitted, an official U.S. postal service postmark, or equivalent electronic time stamp, shall establish the date of submittal;

AH. "ton" means 2000 pounds and, for any control period, any fraction of a ton equaling 1000 pounds or more shall be treated as one ton and any fraction of a ton equaling less than 1000 pounds shall be treated as zero tons;

AI. "tracking system administrator" means the person designated by the department as the administrator of the allowance tracking system and the emission tracking database;

AJ. "web source" means a

stationary source that meets the applicability requirements of 20.2.81.101 NMAC;

AK. "western backstop sulfur dioxide trading program ("WEB trading program")" means 20.2.81 NMAC, triggered as a backstop in accordance with the provisions in the sulfur dioxide milestones and backstop trading program implementation plan, if necessary, to ensure that regional sulfur dioxide emissions are reduced.

[20.2.81.7 NMAC - N, 12/31/03]

20.2.81.8 - 20.2.81.99 [RESERVED]

20.2.81.100 WEB TRADING PROGRAM TRIGGER:

A. Except as provided in Subsection B of this section, 20.2.81 NMAC shall become effective on the program trigger date that is established in accordance with the procedures outlined in the sulfur dioxide milestones and backstop trading program implementation plan.

B. 20.2.81.110 NMAC, special penalty provisions for year 2018, shall become effective on January 1, 2018 and shall remain effective until the provisions of 20.2.81.110 NMAC have been fully implemented.

C. The department shall report to the environmental improvement board every two years following the trigger of this program on the distributions of emissions allowances under the program.

[20.2.81.100 NMAC - N, 12/31/03]

20.2.81.101 WEB TRADING PROGRAM APPLICABILITY:

A. General applicability. 20.2.81 NMAC applies to any stationary source or group of stationary sources that are located on one or more contiguous or adjacent properties and which are under the control of the same person or persons under common control, belonging to the same industrial grouping, and that are described in Paragraphs 1 through 4 of Subsection B. A stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group (i.e., all have the same two-digit code) as described in the standard industrial classification manual, 1987.

B. The following are WEB sources.

(1) All BART-eligible sources as defined in 40 CFR 51.301 that are BART-eligible due to sulfur dioxide emissions.

(2) All stationary sources not meeting the criteria of Paragraph 1 of Subsection B of 20.2.81.101 NMAC, that have actual sulfur dioxide emissions of 100

tons or more per year in the program trigger years or any subsequent year. The fugitive emissions of a stationary source shall not be considered in determining whether it is a WEB source unless the source belongs to one of the following categories of stationary source:

(a) coal cleaning plants (with thermal dryers);

(b) Kraft pulp mills;

(c) Portland cement plants;

(d) primary zinc smelters;

(e) iron and steel mills;

(f) primary aluminum ore reduction plants;

(g) primary copper smelters;

(h) municipal incinerators capable of charging more than 250 tons of refuse per day;

(i) hydrofluoric, sulfuric, or nitric acid plants;

(j) petroleum refineries;

(k) lime plants;

(l) phosphate rock processing plants;

(m) coke oven batteries;

(n) sulfur recovery plants;

(o) carbon black plants (furnace process);

(p) primary lead smelters;

(q) fuel conversion plants;

(r) sintering plants;

(s) secondary metal production plants;

(t) chemical process plants;

(u) fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(v) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(w) taconite ore processing plants;

(x) glass fiber processing plants;

(y) charcoal production plants;

(z) fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

(aa) any other stationary source category, which as of August 7, 1980 is being regulated under Section 111 or 112 of the Clean Air Act.

(3) A new source that begins operation after the program trigger date and has the potential to emit 100 tons or more of sulfur dioxide per year.

(4) The department may determine on a case-by-case basis, with concurrence from the EPA administrator, that a source defined in Paragraph 2 of Subsection B of 20.2.81.101 NMAC is not a WEB source if the source:

(a) in each of the previous five years had actual sulfur dioxide emissions of less than 100 tons per year; and

(b) had actual sulfur dioxide emissions of 100 tons or more in a single year due to a temporary emission increase that was caused by a sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, failure of process equipment, or a failure to operate in a normal or usual manner; and

(c) took timely and reasonable action to minimize the temporary emission increase; and

(d) has corrected the failure of air pollution control equipment, process equipment, or process by the time of the department's determination under this section; or

(e) had to switch fuels or feedstocks on a temporary basis and as a result of an emergency situation or unique and unusual circumstances besides cost of such fuels or feedstocks; and

(f) a temporary emission increase due to poor maintenance or careless operation does not meet the criteria of this section.

C. Duration of program participation. Except as provided for in Subsection D of 20.2.81.101 NMAC, once a source is subject to the WEB trading program, it will remain in the program every year thereafter.

D. Retired source exemption: application.

(1) Any WEB that is retired shall apply for a retired source exemption. The WEB source may only be considered retired if all sulfur dioxide emitting units at the source are retired. The application shall contain all of the following information:

(a) identification of the WEB source, including plant name and an appropriate identification code in a format specified by the department;

(b) name of account representative;

(c) description of the status of the WEB source, including the date that the WEB source was retired;

(d) signed certification that the WEB source is retired and will comply with the requirements of Subsection D of 20.2.81.101 NMAC; and

(e) verification that the WEB source has a general account where any unused allowances or future allocations will be recorded.

(2) Responsibilities of retired sources. The retired source exemption becomes effective when the department notifies the source that the retired source exemption has been granted.

(3) A retired source shall be exempt from 20.2.81.106 NMAC and 20.2.81.109 NMAC, except as provided below.

(a) A retired source shall not emit any sulfur dioxide after the date the retired

source exemption is effective.

(b) A WEB source shall submit sulfur dioxide emissions reports, as required by Subsection O of 20.2.81.106 NMAC for any time period the source was operating prior to the effective date of the retired source exemption. The retired source shall be subject to the compliance provisions of 20.2.81.109 NMAC, including the requirement to hold allowances in the source's compliance account to cover all sulfur dioxide emissions prior to the date the source was permanently retired.

(c) A retired source that is still in existence but no longer emitting sulfur dioxide shall, for a period of five years from the date the records are created, retain records demonstrating the effective date of the retired source exemption for purposes of this part.

(4) Resumption of operations.

(a) Should a retired source desire to resume operation, the retired source shall submit registration materials as follows:

(i) if the source is required to obtain a new source review permit or operating permit under 20.2.70 NMAC, 20.2.72 NMAC, 20.2.74 NMAC or 20.2.79 NMAC prior to resuming operation, then the source shall submit registration information as described in 20.2.81.103 NMAC and a copy of the retired source exemption with the application required under 20.2.70 NMAC, 20.2.72 NMAC, 20.2.74 NMAC or 20.2.79 NMAC; or

(ii) if the source is not required to obtain a new source review permit or operating permit under 20.2.70 NMAC, 20.2.72 NMAC, 20.2.74 NMAC or 20.2.79 NMAC prior to resuming operation, then the source shall submit registration information as described in Subsection A of 20.2.81.103 NMAC and a copy of the retired source exemption to the department at least ninety days prior to resumption of operation.

(b) The retired source exemption shall automatically expire on the day the source resumes operation.

(5) Loss of future allowances. A WEB source that is retired and that does not apply to the department for a retired source exemption within ninety days of the date that the source is retired shall forfeit any unused and future allowances. The abandoned allowances shall be retired by the tracking system administrator.

[20.2.81.101 NMAC - N, 12/31/03]

20.2.81.102 ACCOUNT REPRESENTATIVE FOR WEB SOURCES: Each WEB source must identify one account representative and may also identify an alternate account representative who may act on behalf of the account representative. Any representation, action,

inaction or submission by the alternate account representative will be deemed to be a representation, action, inaction or submission by the account representative.

A. Identification and certification of an account representative.

(1) The account representative and any alternate account representative shall be appointed by an agreement that makes the representations, actions, inactions or submissions of the account representative and any alternate binding on the owners and operators of the WEB source.

(2) The account representative shall submit to the department and the tracking system administrator a signed and dated account certificate of representation (certificate) that contains the following elements:

(a) identification of the WEB source by plant name, state and an appropriate identification code in a format specified by the department;

(b) the name, address, e-mail (if available), telephone and facsimile number of the account representative and any alternate;

(c) a list of owners and operators of the WEB source; and

(d) information to be part of the emission tracking system database in accordance with the implementation plan. The specific data elements shall be as specified by the department to be consistent with the data system structure, and may include basic facility information that may appear in other reports and notices submitted by the WEB source, such as county location, industrial classification codes, and similar general facility information.

(e) the following certification statement: "I certify that I was selected as the account representative or alternate account representative, as applicable, by an agreement binding on the owners and operators of the WEB source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the WEB trading program on behalf of the owners and operators of the WEB source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the department regarding the WEB trading program."

(3) Upon receipt by the department of the complete certificate, the account representative and any alternate account representative represents and, by his or her representations, actions, inactions, or submissions, legally binds each owner and operator of the WEB source in all matters pertaining to the WEB trading program. The owners and operators shall be bound by any decision or order issued by

the department regarding the WEB trading program.

(4) No WEB allowance tracking system account shall be established for the WEB source until the tracking system administrator has received a complete certificate. Once the account is established, the account representative shall make all submissions concerning the account, including the deduction or transfer of allowances.

B. Requirements and responsibilities.

(1) The responsibilities of the account representative include, but are not limited to, the transferring of allowances, and the submission of monitoring plans, registrations, certification applications, sulfur dioxide emissions data and compliance reports as required by 20.2.81 NMAC, and representing the source in all matters pertaining to the WEB trading program.

(2) Each submission under this program shall be signed and certified by the account representative for the WEB source. Each submission shall include the following truth and accuracy certification statement by the account representative: "I am authorized to make this submission on behalf of the owners and operators of the WEB source for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

C. Changing the account representative or owners and operators.

(1) Changes to the account representative or the alternate account representative. The account representative or alternate account representative may be changed at any time by sending a complete superseding certificate to the department and the tracking system administrator under Paragraph 3 of Subsection A of 20.2.81.102 NMAC, with the change taking effect upon receipt of such certificate by the department. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous account representative or alternate prior to the time and date when the tracking system administrator receives the superseding certificate shall be binding on the new account representative and the owners and operators of the WEB

(2) Changes in owners and opera-

tors.

(a) Within thirty days of any change in the owners and operators of the WEB source, including the addition of a new owner or operator, the account representative shall submit a revised certificate amending the list of owners and operators to include such change.

(b) In the event a new owner or operator of a WEB source is not included in the list of owners and operators submitted in the certificate, such new owner or operator shall be deemed to be subject to and bound by the certificate, the representations, actions, inactions, and submissions of the account representative of the WEB source, and the decisions, orders, actions, and inactions of the department as if the new owner or operator were included in such list.

[20.2.81.102 NMAC - N, 12/31/03]

20.2.81.103 REGISTRATION:

A. Deadlines.

(1) Each source that is a WEB source on or before the program trigger date shall register by submitting the initial certificate required in Subsection A of 20.2.81.102 NMAC to the department no later than 180 days after the program trigger date.

(2) Any existing source that becomes a WEB source after the program trigger date shall register by submitting the initial certificate required in Subsection A of 20.2.81.102 NMAC to the department no later than September 30 of the year following the inventory year in which the source exceeded the emission threshold.

(3) Any new WEB source shall register by submitting the initial certificate required in Subsection A of 20.2.81.102 NMAC to the department prior to the commencement of operation.

B. Integration into permits.

(1) Any allocation, transfer or deduction of allowance to or from the compliance account of a WEB source shall not require revision of the WEB source's operating permit under 20.2.70 NMAC.

(2) Any WEB source is not required to have a permit under 20.2.72 NMAC, 20.2.74 NMAC or 20.2.79 NMAC at any time after this rule becomes effective, must at all times possess a permit that includes the requirements of 20.2.81 NMAC. If it does not possess a title V permit under 20.2.70 NMAC, it may satisfy this paragraph's requirements by obtaining or modifying a permit under 20.2.72, NMAC, 20.2.74 NMAC or 20.2.79 NMAC to incorporate the requirements of 20.2.81 NMAC. The source must at all times possess a permit that includes these requirements.

[20.2.81.103 NMAC - N, 12/31/03]

20.2.81.104 ALLOWANCE ALLOCATIONS:

A. The tracking system administrator shall record the allowances for each WEB source in the compliance account for a WEB source once the allowances are allocated by the department under section C1 of the sulfur dioxide milestones and backstop trading program implementation plan. If applicable, the tracking system administrator shall record a portion of the sulfur dioxide allowances for a WEB source in a special reserve account assigned to the department to account for any allowances to be held by the Department in accordance with Subsection B of 20.2.81.106 NMAC.

B. The tracking system administrator shall assign a serial number to each allowance in accordance with section C2 of the sulfur dioxide milestones and backstop trading program implementation plan.

C. All allowances shall be allocated, recorded, transferred, or used as whole allowances. To determine the number of whole allowances, the number of allowances shall be rounded down for decimals less than 0.50 and rounded up for decimals of 0.50 or greater.

D. An allowance is not a property right, and is a limited authorization to emit one ton of sulfur dioxide valid only for the purpose of meeting the requirements of 20.2.81 NMAC. No provision of this WEB trading program or other law should be construed to limit the authority of the United States or the department to terminate or limit such authorization.

E. Early reduction bonus allocation. Any WEB source that reduces permitted annual sulfur dioxide emissions to a level that is below the floor level allocation established for that source in section C1 of the sulfur dioxide milestones and backstop trading program implementation plan between 2003 and the program trigger year may apply to the department for an early reduction bonus allocation. The application shall be submitted no later than ninety days after the program trigger date. Any WEB source that applies and receives early reduction bonus allocations shall retain the records referenced below for a minimum of five years after the early reduction bonus allowance is certified in accordance with section C1.1(a) (3) of the implementation plan. The application for an early reduction bonus allocation shall contain the following information.

(1) Copies of all permits or other enforceable documents that include annual sulfur dioxide emissions limits for the WEB source during the period the WEB source was generating the early reductions. Such

permits or enforceable documents shall require monitoring for sulfur dioxide emissions that meets the requirements in Subsection A and Subsection C of 20.2.81.106 NMAC and that the monitoring provisions were in effect one year prior to the beginning of the credit generating period.

(2) Copies of emissions monitoring reports, for one year prior to the beginning of the credit generating period and for the period the WEB source was generating the early reductions, that documents the actual annual sulfur dioxide emissions. The emissions monitoring reports during the credit generating period must demonstrate that the actual annual sulfur dioxide emissions were below the floor level allocation established for that source in section C1 of the sulfur dioxide milestones and backstop trading program implementation plan.

(3) Demonstration that the floor level established for the source in accordance with section C1 of the sulfur dioxide milestones and backstop trading program implementation plan was calculated using data that are consistent with the new monitoring methodology under Subsection A of 20.2.81.106 NMAC. If new monitoring techniques change the floor level for the source, then a demonstration of the new floor level based on new monitoring techniques shall be included in the application.

F. Request for allowances for new WEB sources or modified WEB sources.

(1) A new WEB source or an existing WEB source that has increased production capacity through a permitted change in operations under 20.2.72 NMAC, 20.2.74 NMAC or 20.2.79 NMAC may apply to the department for an allocation from the new source set-aside, as outlined in section C1.3 of the implementation plan.

(a) A new WEB source is eligible to apply for an annual allocation equal to the permitted annual sulfur dioxide emission limit for that source after the source has commenced operation.

(b) An existing WEB source is eligible to apply for an annual allocation equal to the permitted annual sulfur dioxide emission limit for that source that is attributable to any amount of production capacity that is greater than the permitted production capacity for that source as of January 1, 2003.

(c) A source that has received a retired source exemption under Subsection D of 20.2.81.101 NMAC is not eligible to apply for an allocation from the new source set-aside.

(2) The application for an allocation from the new source set-aside shall contain the following information:

(a) for existing WEB sources,

documentation that shows the permitted production capacity of the source before and after the new permit; or

(b) for new WEB sources, documentation of the actual date of the commencement of operation and a copy of the permit.

[20.2.81.104 NMAC - N, 12/31/03]

20.2.81.105 ESTABLISHMENT OF ACCOUNTS:

A. Allowance tracking system accounts. All WEB sources shall open a compliance account. Any person may open a general account for holding and transferring allowances. In addition, if a Web source conducts monitoring under Subsection B of 20.2.81.106 NMAC, the WEB source shall open a special reserve compliance account for allowances associated with units monitored under those provisions. The WEB source and account representative shall have no rights to transfer allowances in or out of such special reserve compliance account. The department shall allocate allowances to the account in accordance with Paragraph 5 of Subsection B of 20.2.81.106 NMAC and all such allowances for each control period shall be retired each year for compliance in accordance with 20.2.81.109 NMAC. To open either type of account; an application that contains the following information shall be submitted:

(1) the name, mailing address, e-mail address, telephone number, and facsimile number of the account representative; for a compliance account, include a copy of the account certificate of representation of the account representative and any alternate as required in Paragraph 2 of Subsection A of 20.2.81.102 NMAC; for a general account, include the account certificate of representation of the account representative and any alternate as required in Paragraph 2 of Subsection C or 20.2.81.105 NMAC;

(2) the WEB source or organization name;

(3) the type of account to be opened; and

(4) a signed certification of truth and accuracy by the account representative according to Paragraph 2 of Subsection A of 20.2.81.102 for compliance accounts and for general accounts, certification of truth and accuracy by the account representative according to Subsection D of 20.2.81.105 NMAC.

B. Account representative for general accounts. For a general account, one account representative shall be identified and an alternate account representative may be identified and may act on behalf of the account representative. Any representation, action, inaction or submission by the alternate account representative

shall be deemed to be a representation, action, inaction or submission by the account representative.

C. Identification and certification of an account representative for general accounts.

(1) The account representative shall be appointed by an agreement that makes the representations, actions, inactions or submissions of the account representative binding on all persons who have an ownership interest with respect to allowances held in the general account.

(2) The account representative shall submit to the department and the tracking system administrator a signed and dated account certificate of representation (certificate) that contains the following elements:

(a) the name, address, e-mail (if available), telephone and facsimile number of the account representative and any alternate;

(b) the organization name; and

(c) the following certification statement: "I certify that I was selected as the account representative or alternate account representative, as applicable, by an agreement binding on all persons who have an ownership interest in allowances in the general account with regard to matters concerning the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the WEB trading program on behalf of said persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the department regarding the general account."

(3) Upon receipt by the department of the complete certificate, the account representative represents and, by his or her representations, actions, inactions, or submissions, legally binds each person who has an ownership interest in allowances held in the general account with regard to all matters concerning the general account. Such persons shall be bound by any decision or order issued by the department.

(4) No WEB allowance tracking system general account shall be established until the tracking system administrator has received a complete certificate. Once the account is established, the account representative shall make all submissions concerning the account, including the deduction or transfer of allowances.

D. Requirements and responsibilities. Each submission for the general account shall be signed and certified by the account representative for the general account. Each submission shall include the following truth and accuracy certification statement by the account representa-

tive: "I am authorized to make this submission on behalf of all person who have an ownership interest in allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

E. Changing the account representative. The account representative or alternate account representative may be changed at any time by sending a complete superseding certificate to the department and the tracking system administrator under Paragraph 2 of Subsection C of 20.2.81.105 NMAC, with the change taking effect upon receipt of such certificate by the department. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous account representative or alternate prior to the time and date when the department receives the superseding certificate shall be binding on the new account representative and all persons having ownership interest with respect to allowances held in the general account.

F. Changes to the account. Any change to the information required in the application for an existing account under Subsection A of 20.2.81.105 NMAC shall require a revision of the application.

[20.2.81.105 NMAC - N, 12/31/03]

20.2.81.106 MONITORING, RECORDKEEPING AND REPORTING - GENERAL REQUIREMENTS ON MONITORING METHODS:

A. For each sulfur dioxide emitting unit at a WEB source shall comply with the following, as applicable, to monitor and record sulfur dioxide mass emissions.

(1) If a unit is subject to 40 CFR Part 75 under a requirement separate from the WEB trading program, the unit shall meet the requirements contained in Part 75 with respect to monitoring, recording and reporting sulfur dioxide mass emissions.

(2) If a unit is not subject to 40 CFR Part 75 under a requirement separate from the WEB trading program, a unit shall use one of the following monitoring methods, as applicable:

(a) a continuous emission monitoring system (CEMS) for sulfur dioxide and flow that complies with all applicable

monitoring provisions in 40 CFR Part 75;

(b) if the unit is a gas- or oil-fired combustion device, the accepted monitoring methodology in Appendix D to 40 CFR Part 75, or, if applicable, the low mass emissions (LME) provisions (with respect to sulfur dioxide mass emissions only) of Section 75.19 of 40 CFR Part 75;

(c) one of the optional WEB protocols, if applicable, in 20.2.81.111 NMAC or 20.2.81.112 NMAC; or

(d) a petition for site-specific monitoring that the source submits for approval by the department, and approval by the U.S. environmental protection agency in accordance with Paragraph 5 of Subsection O of 20.2.81.106 NMAC.

(3) A permanently retired unit shall not be required to monitor under this section if such unit was permanently retired and had no emissions for the entire period for which the WEB source implements this Paragraph 3 and the account representative certifies in accordance with Subsection B of 20.2.81.109 NMAC that these conditions were met. In the event that a permanently retired unit recommences operation, the WEB source shall meet the requirements of this Section 20.2.81.106 NMAC in the same manner as if the unit was a new unit.

B. Notwithstanding Subsection A of this section, the WEB source with a unit that meets one of the conditions of Paragraph 1 of Subsection B of 20.2.81.106 NMAC may elect to have the provisions of this Paragraph 1 apply to that unit.

(1) Any of the following units may implement Subsection B of 20.2.81.106 NMAC:

(a) any smelting operation where all of the emissions from the operation are not ducted to a stack;

(b) any flare, except to the extent such flares are used as a fuel gas combustion device at a petroleum refinery; or

(c) any other type of unit without add-on sulfur dioxide control equipment, if no control level was assumed for the WEB source in establishing the floor level (and reducible allocation) provided in section C1 of the implementation plan.

(2) For each unit covered by Subsection B of 20.2.81.106 NMAC, the account representative shall submit a notice to request that Subsection B of 20.2.81.106 NMAC apply to one or more sulfur dioxide emitting units at a WEB source. The notice shall be submitted in accordance with the compliance dates specified in Paragraph 1 of Subsection M of 20.2.81.106 NMAC, and shall include the following information (in a format specified by the department with such additional, related information as may be requested):

(a) a notice of all units at the

applicable source, specifying which of the units are to be covered by Subsection B of 20.2.81.106 NMAC;

(b) consistent with the emission estimation methodology used to determine the floor level (and reducible allocation) for the source in accordance with section C1 of the implementation plan, the portion of the WEB source's overall allowance allocation that is attributable to any unit(s) covered by this paragraph; and

(c) an identification of any such units that are permanently retired.

(3) For each new unit at an existing WEB source for which the WEB source seeks to comply with this Subsection B of 20.2.81.106 NMAC; and for which the account representative applies for an allocation under the new source set-aside provisions of Subsection F of 20.2.81.104 NMAC, the account representative shall submit a modified notice under Paragraph 2 of Subsection B of 20.2.81.106 NMAC, that includes such new sulfur dioxide emitting unit(s). The modified notice shall be submitted in accordance with the compliance dates in Paragraph 1 of Subsection M of 20.2.81.106 NMAC, but no later than the date on which a request is submitted under Paragraph 1 of Subsection F of 20.2.81.104 NMAC for allocations from the set-aside.

(4) The department shall evaluate the information submitted by the WEB source in Paragraphs 2 and 3 of Subsection B of 20.2.81.106 NMAC, and may issue a notice to the source to exclude any units that do not qualify under this Subsection B of 20.2.81.106 NMAC or to adjust the portion of allowances attributable to units that do qualify to be consistent with the emission estimation methodology used to establish the floor level (and reducible allocation) for the source.

(5) The department shall allocate allowances equal to the adjusted portion of the WEB source's allowances under Paragraphs 2, 3, and 4 of Subsection B of 20.2.81.106 NMAC in a special reserve compliance account provided that no such treatment of the WEB source's allocation will be required for any unit that is permanently retired and had no emissions for the entire period for which the WEB source implements this Subsection B and the account representative certifies in accordance with 20.2.81.109 NMAC that these conditions are met. In the event that a permanently retired unit recommences operation, the WEB source shall meet the requirements of this Section 20.2.81.106 NMAC in the same manner as if the unit was a new unit.

(6) The account representative for a WEB source shall submit an annual emissions statement for each unit under this Subsection B of 20.2.81.106 NMAC in

accordance with Subsection O of 20.2.81.106 NMAC. The WEB source shall maintain operating records sufficient to estimate annual emissions in a manner consistent with the emission estimation methodology used to establish the floor level (and reducible allocation) for the source. In addition, if the estimated emissions from all such units at the WEB source are greater than the allowances for the current control year held in the special reserve compliance account under Paragraph 5 of Subsection B of 20.2.81.106 NMAC for the WEB source, the account representative shall report the excess amount as part of the annual report for the WEB source under 20.2.81.109 NMAC and be required to use other allowances in the standard compliance account for the WEB source to account for such emissions, in accordance with 20.2.81.109 NMAC.

(7) The remaining provisions of this section shall not apply to units covered by Subsection B of 20.2.81.106 NMAC except where otherwise noted.

(8) A WEB source may opt to modify the monitoring for an sulfur dioxide emitting unit to use monitoring under Subsection A of 20.2.81.106 NMAC, but any such monitoring change shall take effect on January 1 of the next compliance year. In addition, the account representative shall submit an initial monitoring plan at least 180 days prior to the date on which the new monitoring will take effect and a detailed monitoring plan in accordance with Subsection D of 20.2.81.106 NMAC. The account representative shall also submit a revised notice under Subsection B of 20.2.81.106 NMAC at the same time that the initial monitoring plan is submitted.

C. For any monitoring that the WEB source uses under this section (including Paragraph 1), the WEB source (and, as applicable, the account representative) shall implement, certify, and use such monitoring in accordance with this section, and shall record and report the data from such monitoring as required in this section. In addition, the WEB source (and, as applicable, the account representative) shall not:

(1) except for an alternative approved by the U.S. EPA administrator for a WEB source that implements monitoring under Paragraph 1 of Subsection A of 20.2.81.106 NMAC, use an alternative monitoring system, alternative reference method or another alternative for the required monitoring method without having obtained prior written approval in accordance with Paragraph 5 of Subsection O of 20.2.81.106 NMAC;

(2) operate an sulfur dioxide emitting unit so as to discharge, or allow to be discharged, sulfur dioxide emissions to the atmosphere without accounting for

these emissions in accordance with the applicable provisions of this section;

(3) disrupt the approved monitoring method or any portion thereof, and thereby avoid monitoring and recording sulfur dioxide mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing or maintenance is performed in accordance with the applicable provisions of this section; or

(4) retire or permanently discontinue use of an approved monitoring method, except under one of the following circumstances:

(a) during a period when the unit is exempt from the requirements of this section, including retirement of a unit as addressed in Paragraph 3 of Subsection A of 20.2.81.106 NMAC;

(b) the WEB source is monitoring emissions from the unit with another certified monitoring method approved under this section for use at the unit that provides data for the same parameter as the retired or discontinued monitoring method; or

(c) the account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with this section, and the WEB source recertifies thereafter a replacement monitoring system in accordance with the applicable provisions of this section.

D. Monitoring plan general provisions. The WEB source of a sulfur dioxide emitting unit that uses a monitoring method under Paragraph 2 of Subsection A of 20.2.81.106 NMAC shall meet the following requirements:

(1) prepare and submit to the department an initial monitoring plan for each monitoring method that the WEB source uses to comply with this section. In accordance with Subsection F of 20.2.81.106 NMAC, the plan shall contain sufficient information on the units involved, the applicable method, and the use of data derived from that method to demonstrate that all unit sulfur dioxide emissions are monitored and reported; the plan shall be submitted in accordance with the compliance deadlines specified in Subsection M of 20.2.81.106 NMAC;

(2) prepare, maintain and submit to the department a detailed monitoring plan prior to the first day of certification testing in accordance with the compliance deadline specified in Subsection M of 20.2.81.106 NMAC; the plan shall contain the applicable information required by Subsection D of 20.2.81.106 NMAC. The department may require that the monitoring plan (or portions thereof) be submitted electronically; the department also may require that the plan be submitted on an ongoing basis in electronic

format as part of the quarterly report submitted under Paragraph 1 of Subsection O of 20.2.81.106 NMAC or resubmitted separately within after any change is made to the plan in accordance with the following Paragraph 3 of Subsection D of 20.2.81.106 NMAC; and

(3) whenever the WEB source makes a replacement, modification, or change in one of the systems or methodologies provided for in Paragraph 2 of Subsection A of 20.2.81.106 NMAC, including a change in the automated data acquisition and handling system or in the flue gas handling system, that affects information reported in the monitoring plan (e.g., a change to serial number for a component of a monitoring system), then the WEB source shall update the monitoring plan in accordance with the compliance deadline specified in Subsection M of 20.2.81.106 NMAC.

E. A WEB source with a sulfur dioxide emitting unit that uses a method under Paragraph 1 of Subsection A of 20.2.81.106 NMAC (a unit subject to 40 CFR Part 75 under a program other than this WEB trading program) shall meet the requirements of Subsections D-I of 20.2.81.106 NMAC by preparing, maintaining and submitting a monitoring plan in accordance with the requirements of 40 CFR Part 75, provided that the WEB source also shall submit the entire monitoring plan to the department upon request.

F. Initial monitoring plan. The account representative shall submit an initial monitoring plan for each sulfur dioxide emitting unit (or group of units sharing a common methodology) that, except as otherwise specified in an applicable provision in 20.2.81.111 NMAC, contains the following information.

(1) For all sulfur dioxide emitting units involved in the monitoring plan:

(a) plant name and location;

(b) plant and unit identification numbers assigned by the department;

(c) type of unit (or units for a group of units using a common monitoring methodology);

(d) identification of all stacks or pipes associated with the monitoring plan;

(e) types of fuel(s) fired (or sulfur containing process materials used in the sulfur dioxide emitting unit), and the fuel classification of the unit if combusting more than one type of fuel and using a 40 CFR Part 75 methodology;

(f) type(s) of emissions controls for sulfur dioxide installed or to be installed, including specifications of whether such controls are pre-combustion, post-combustion, or integral to the combustion process;

(g) maximum hourly heat input

capacity, or process throughput capacity, if applicable;

(h) identification of all units using a common stack; and

(i) indicator of whether any stack identified in the plan is a bypass stack.

(2) For each unit and parameter required to be monitored, identification of monitoring methodology information, consisting of monitoring methodology, monitor locations, substitute data approach for the methodology, and general identification of quality assurance procedures. If the proposed methodology is a site-specific methodology submitted pursuant to Subparagraph d of Paragraph 2 of Subsection A of 20.2.81.106 NMAC, the description under this paragraph shall describe fully all aspects of the monitoring equipment, installation locations, operating characteristics, certification testing, ongoing quality assurance and maintenance procedures, and substitute data procedures.

(3) If the WEB source intends to petition for a change to any specific monitoring requirement otherwise required under this section, such petition may be submitted as part of the initial monitoring plan.

(4) The department may issue a notice of approval or disapproval of the initial monitoring plan based on the compliance of the proposed methodology with the requirements for monitoring in this section.

G. Detailed monitoring plan. The account representative shall submit a detailed monitoring plan that, except as otherwise specified in an applicable provisions in 20.2.81.111 NMAC or 20.2.81.112 NMAC, shall contain the following information.

(1) Identification and description of each monitoring component (including each monitor and its identifiable components, such as analyzer or probe) in a CEMS (e.g., sulfur dioxide pollutant concentration monitor, flow monitor, moisture monitor), a 40 CFR Part 75, Appendix D monitoring system (e.g., fuel flowmeter, data acquisition and handling system), or a protocol in 20.2.81.111 NMAC or 20.2.81.112 NMAC, including:

(a) manufacturer, model number and serial number;

(b) component or system identification code assigned by the facility to each identifiable monitoring component, such as the analyzer or probe;

(c) designation of the component type and method of sample acquisition or operation (e.g., in situ pollutant concentration monitor or thermal flow monitor);

(d) designation of the system as a primary or backup system;

(e) first and last dates the system reported data;

(f) status of the monitoring component; and

(g) parameter monitored.

(2) Identification and description of all major hardware and software components of the automated data acquisition and handling system, including:

(a) hardware components that perform emission calculations or store data for quarterly reporting purposes (provide the manufacturer and model number); and

(b) software components (provide the identification of the provider and model or version number).

(3) Explicit formulas for each measured emissions parameter, using component or system identification codes for the monitoring system used to measure the parameter that links the system observations with the reported concentrations and mass emissions. The formulas shall contain all constants and factors required to derive mass emissions from component or system code observations and an indication of whether the formula is being added, corrected, deleted, or is unchanged. The WEB source with a low mass emissions unit for which the WEB source is using the optional low mass emissions accepted methodology in Section 75.19(c) of 40 CFR Part 75 is not required to report such formulas.

(4) Inside cross-sectional area (square feet) at flow monitoring location (for units with flow monitors, only).

(5) If using CEMS for sulfur dioxide and flow, for each parameter monitored: scale, maximum potential concentration (and method of calculation), maximum expected concentration (if applicable) (and method of calculation), maximum potential flow rate (and method of calculations), span value, full-scale range, daily calibration units of measure, span effective date and hour, span inactivation date and hour, indication of whether dual spans are required, default high range value, flow rate span, and flow rate span value and full scale value in standard cubic feet per hour (scfh) for each unit or stack using sulfur dioxide or flow component monitors.

(6) If the monitoring system or accepted methodology provides for use of a constant, assumed, or default value for a parameter under specific circumstances, then the following information for each value of such parameter shall be included:

(a) identification of the parameter;

(b) default, maximum, minimum, or constant value, and units of measure for the value;

(c) purpose of the value;

(d) indicator of use during controlled and uncontrolled hours;

(e) types of fuel;

(f) source of the value;

(g) value effective date and hour;

(h) date and hour value is no longer effective (if applicable); and

(i) for units using the accepted methodology under Section 75.19 of 40 CFR Part 75, the applicable sulfur dioxide emission factor.

(7) Unless otherwise specified in Section 6.5.2.1 of Appendix A to 40 CFR Part 75, for each unit or common stack on which hardware CEMS are installed:

(a) the upper and lower boundaries of the range of operation (as defined in Section 6.5.2.1 of Appendix A to 40 CFR Part 75), or thousand of lb/hr of steam, or ft/sec (as applicable);

(b) the load or operating level(s) designated as normal in Section 6.5.2.1 of Appendix A to 40 CFR Part 75, or thousands of pounds per hour lb/hr of steam, or feet per second ft/sec (as applicable);

(c) the two load or operating levels (i.e., low, mid, or high) identified in Section 6.5.2.1 of Appendix A to 40 CFR Part 75 as the most frequently used;

(d) the date of the data analysis used to determine the normal load (or operating) level(s) and the two most frequently-used load (or operating) levels; and

(e) activation and deactivation dates when the normal load or operating level(s) change and are updated.

(8) For each unit that is complying with 40 CFR Part 75 for which the optional fuel flow-to-load test in Section 2.1.7 of Appendix D to 40 CFR Part 75 is used:

(a) the upper and lower boundaries of the range of operation (as defined in Section 6.5.2.1 of Appendix A to 40 CFR Part 75), expressed in thousand of lb/hr of steam;

(b) the load level designated as normal, pursuant to Section 6.5.2.1 of Appendix A to 40 CFR Part 75, expressed in thousands of lb/hr of steam; and

(c) the date of the load analysis used to determine the normal load level.

(9) Information related to quality assurance testing, including (as applicable): identification of the test strategy; protocol for the relative accuracy test audit; other relevant test information; calibration gas levels (percent of span) for the calibration error test and linearity check; calculations for determining maximum potential concentration, maximum expected concentration (if applicable), maximum potential flow rate, and span;

(10) If applicable, apportionment strategies under Sections 75.10 through 75.18 of 40 CFR Part 75.

(11) Description of site locations for each monitoring component in a monitoring system, including schematic diagrams and engineering drawings and any

other documentation that demonstrates each monitor location meets the appropriate siting criteria. For units monitored by a continuous emission monitoring system, diagrams shall include:

(a) a schematic diagram identifying entire gas handling system from unit to stack for all units, using identification numbers for units, monitor components, and stacks corresponding to the identification numbers provided in the initial monitoring plan and Paragraphs 1 and 3 of Subsection G of 20.2.81.106 NMAC; the schematic diagram must depict the height of any monitor locations; comprehensive or separate schematic diagrams shall be used to describe groups of units using a common stack; and

(b) stack and duct engineering diagrams showing the dimensions and locations of fans, turning vanes, air preheaters, monitor components, probes, reference method sampling ports, and other equipment that affects the monitoring system location, performance, or quality control checks.

(12) A data flow diagram denoting the complete information handling path from output signals of CEMS components to final reports.

H. In addition to supplying the information in Subsections F and G above, the WEB source with a sulfur dioxide emitting unit using either of the methodologies in Subparagraph b of Paragraph 2 of Subsection A of 20.2.81.106 NMAC shall include the following information in its monitoring plan for the specific situations described.

(1) For each gas-fired or oil-fired sulfur dioxide emitting unit for which the WEB source uses the optional protocol in Appendix D to 40 CFR Part 75 for sulfur dioxide mass emissions, the WEB source shall include the following information in the monitoring plan:

(a) parameter monitored;

(b) type of fuel measured, maximum fuel flow rate, units of measure, and basis of maximum fuel flow rate (i.e., upper range value or unit maximum) for each fuel flowmeter;

(c) test method used to check the accuracy of each fuel flowmeter;

(d) submission status of the data;

(e) monitoring system identification code;

(f) the method used to demonstrate that the unit qualifies for monthly gross calorific value (GCV) sampling or for daily or annual fuel sampling for sulfur content, as applicable;

(g) a schematic diagram identifying the relationship between the unit, all fuel supply lines, the fuel flowmeter(s), and the stack(s); the schematic diagram must

depict the installation location of each fuel flowmeter and the fuel sampling location(s); comprehensive and separate schematic diagrams shall be used to describe groups of units using a common pipe;

(h) for units using the optional default sulfur dioxide emission rate for "pipeline natural gas" or "natural gas" in Appendix D to 40 CFR Part 75, the information on the sulfur content of the gaseous fuel used to demonstrate compliance with either Section 2.3.1.4 or 2.3.2.4 of Appendix D to 40 CFR Part 75;

(i) for units using the 720 hour test under Section 2.3.6 of Appendix D to 40 CFR Part 75 to determine the required sulfur sampling requirements, report the procedures and results of the test; and

(j) for units using the 720 hour test under Section 2.3.5 of Appendix D to 40 CFR Part 75 to determine the appropriate fuel GCV sampling frequency, report the procedures used and the results of the test.

(2) For each sulfur dioxide emitting unit for which the WEB source uses the low mass emission accepted methodology of Section 75.19 to 40 CFR Part 75, the WEB source shall include the following information in the monitoring plan that accompanies the initial certification application:

(a) the results of the analysis performed to qualify as a low mass emissions unit under Section 75.19(c) to 40 CFR Part 75; this report shall include either the previous three years actual or projected emissions; the following items shall be included: a) current calendar year of application; b) type of qualification; c) years one, two, and three; d) annual measured, estimated or projected sulfur dioxide mass emissions for years one, two, and three; and e) annual operating hours for years one, two, and three;

(b) a schematic diagram identifying the relationship between the unit, all fuel supply lines and tanks, any fuel flowmeter(s), and the stack(s); comprehensive or separate schematic diagrams shall be used to describe groups of units using a common pipe;

(c) for units which use the long term fuel flow methodology under Section 75.19(c)(3) to 40 CFR Part 75, a diagram of the fuel flow to each unit or group of units and a detailed description of the procedures used to determine the long term fuel flow for a unit or group of units for each fuel combusted by the unit or group of units;

(d) a statement that the unit burns only gaseous fuel(s) and/or fuel oil and a list of the fuels that are burned or a statement that the unit is projected to burn only gaseous fuel(s) and/or fuel oil and a list of the fuels that are projected to be burned;

(e) a statement that the unit meets the applicability requirements in Sections 75.19(a) and (b) to 40 CFR Part 75 with respect to sulfur dioxide emissions; and

(f) any unit historical actual, estimated and projected sulfur dioxide emissions data and calculated sulfur dioxide emissions data demonstrating that the unit qualifies as a low mass emissions unit under Sections 75.19(a) and (b) to 40 CFR Part 75.

(3) For each gas-fired unit the WEB source shall include the following in the monitoring plan: current calendar year, fuel usage data as specified in the definition of gas-fired in Section 72.2 of 40 CFR Part 72, and an indication of whether the data are actual or projected data.

I. The specific elements of a monitoring plan under Subsection D of 20.2.81.106 NMAC shall not be part of an operating permit for a WEB source issued in accordance with the title V of the Clean Air Act, and modifications to the elements of the plan shall not require a permit modification.

J. Certification and recertification.

(1) All monitoring systems are subject to initial certification and recertification testing as specified in 40 CFR Part 75, 20.2.81.111 NMAC or ; 20.2.81.112 NMAC. Certification or recertification of a monitoring system by the U.S. environmental protection agency for a WEB source that is subject to 40 CFR Part 75 under a requirement separate from 20.2.81 NMAC shall constitute certification under the WEB trading program.

(2) The WEB source with a sulfur dioxide emitting unit not otherwise subject to 40 CFR Part 75 that monitors sulfur dioxide mass emissions in accordance with 40 CFR Part 75 to satisfy the requirements of this section shall perform all of the tests required by that regulation and shall submit the following:

(a) a test notice, not later than 21 days before the certification testing of the monitoring system, provided that the department may establish additional requirements for adjusting test dates after this notice as part of the approval of the initial monitoring plan under Subsection F of 20.2.81.106 NMAC;

(b) an initial certification application within 45 days after testing is complete;

(c) a monitoring system shall be considered provisionally certified while the application is pending, and the system shall be deemed certified if the department does not approve or disapprove the system within six months after the date on which the application is submitted; and

(d) whenever an audit of any monitoring certified under 20.2.81 NMAC,

and a review of the initial certification or recertification application, reveal that any system or component should not have been certified or recertified because it did not meet a particular performance specification or other requirement of 20.2.81 NMAC, both at the time of the initial certification or recertification application submission and at the time of the audit, the department will issue a notice of disapproval of the certification status of such system or component; for the purposes of this paragraph, an audit shall be either a field audit of the facility or an audit of any information submitted to the department regarding the facility; by issuing the notice of disapproval, the certification status is revoked prospectively, and the data measured and recorded shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the WEB source completes subsequently approved initial certification or recertification tests in accordance with the procedures in Subsection J of 20.2.81.106 NMAC; the WEB source shall apply the substitute data procedures in Paragraph 2 of Subsection L of 20.2.81.106 NMAC to replace, prospectively, all of the invalid, non-quality-assured data for each disapproved system or component.

K. Ongoing quality assurance and quality control. The WEB source shall satisfy the applicable quality assurance and quality control requirements of Part 75 or, if the WEB source is subject to a WEB protocol in 20.2.81.111 NMAC, the applicable quality assurance and quality control requirements in 20.2.81.111 NMAC on and after the date that certification testing commences.

L. Substitute data procedures.

(1) For any period after certification testing is complete in which quality assured, valid data are not being recorded by a monitoring system certified and operating in accordance with 20.2.81 NMAC, missing or invalid data shall be replaced with substitute data in accordance with 40 CFR Part 75 or, if the WEB source is subject to a WEB protocol in 20.2.81.111 NMAC or 20.2.81.112 NMAC, with substitute data in accordance with 20.2.81.111 NMAC.

(2) For a sulfur dioxide emitting unit that does not have a certified or provisionally certified monitoring system in place as of the beginning of the first control period for which the unit is subject to the WEB trading program, the WEB source shall:

(a) if the WEB Source will use a CEMS to comply with this section, substitute the maximum potential concentration of sulfur dioxide for the unit and the maxi-

imum potential flow rate, as determined in accordance with 40 CFR Part 75; the procedures for conditional data validation under Section 75.20(b)(3) may be used for any monitoring system under 20.2.81 NMAC that uses these 40 CFR Part 75 procedures, as applicable;

(b) if the WEB source will use the 40 CFR Part 75 Appendix D methodology, substitute the maximum potential sulfur content, density or gross calorific value for the fuel and the maximum potential fuel flow rate, in accordance with Section 2.4 of Appendix D to 40 CFR Part 75;

(c) if the WEB source will use the 40 CFR Part 75 methodology for low mass emissions units, substitute the sulfur dioxide emission factor required for the unit as specified in 40 CFR 75.19 and the maximum rated hourly heat input, as defined in 40 CFR 72.2; or

(d) if using a protocol in 20.2.81.111 NMAC or 20.2.81.112 NMAC, follow the procedures in the applicable protocol.

M. Compliance Deadline.

(1) The initial monitoring plan shall be submitted by the following dates.

(a) For each source that is a WEB source on or before the program trigger date, the monitoring plan shall be submitted 180 days after such program trigger date.

(b) For any existing source that becomes a WEB source after the program trigger date, the monitoring plan shall be submitted by September 30 of the year following the inventory year in which the source exceeded the emissions threshold.

(c) For any new WEB source, the monitoring plan shall be included with the permit application under 20.2.70 NMAC, 20.2.72 NMAC, 20.2.74 NMAC or 20.2.79 NMAC.

(2) A detailed monitoring plan under Subsection E of 20.2.81.106 NMAC shall be submitted no later than 45 days prior to commencing certification with the following Paragraph 3.

(3) Emission monitoring systems shall be installed, operational and shall have met all of the certification testing requirements of this 20.2.81.106 NMAC (including any referenced in 20.2.81.111 NMAC or 20.2.81.112 NMAC) by the following dates.

(a) For each source that is a WEB source on or before the program trigger date, two years prior to the start of the first control period as described in 20.2.81.109 NMAC.

(b) For any existing source that becomes a WEB source after the program trigger date, one year after the due date for the monitoring plan under Subparagraph b of Paragraph 2 of Subsection M of 20.2.81.106 NMAC.

(c) For any new WEB source, (or any new unit at a WEB source under Paragraph 3 Subparagraph a or b, the earlier of 90 unit operating days or 180 calendar days after the date the new source commences operation.

(4) The WEB source shall submit test notices and certification applications in accordance with the deadlines set forth in Paragraph 2 of Subsection J of 20.2.81.106 NMAC.

(5) For each applicable control period, the WEB source shall submit each quarterly report under Subsection O of 20.2.81.106 NMAC by no later than 30 days after the end of each calendar quarter and shall submit the annual report under Subsection O of 20.2.81.106 NMAC no later than 60 days after the end of each calendar year.

N. Recordkeeping.

(1) Except as provided in Paragraph 2 of Subsection N of 20.2.81.106 NMAC, the WEB source shall keep copies of all reports, registration materials, compliance certifications, sulfur dioxide emissions data, quality assurance data, and other submissions under 20.2.81 NMAC for a period of five years. In addition, the WEB source shall keep a copy of all account certificates of representation. Unless otherwise requested by the WEB source and approved by the department, the copies shall be kept on site at the source.

(2) The WEB source shall keep records of all operating hours, quality assurance activities, fuel sampling measurements, hourly averages for sulfur dioxide, stack flow, fuel flow, or other continuous measurements, as applicable, and any other applicable data elements specified in this section, 20.2.81.111 NMAC or in 20.2.81.112 NMAC. The WEB source shall maintain the applicable records specified in 40 CFR Part 75 for any sulfur dioxide emitting unit that uses a Part 75 monitoring method to meet the requirements of this section.

O. Reporting.

(1) Quarterly reports. For each sulfur dioxide emitting unit, the account representative shall submit a quarterly report within thirty days after the end of each calendar quarter. The report shall be in a format specified by the department to include hourly and quality assurance activity information and shall be submitted in a manner compatible with the emissions tracking database designed for the WEB trading program. If the WEB source submits a quarterly report under 40 CFR Part 75 to the U.S. EPA administrator, no additional report under this paragraph shall be required, provided, however, that the department may require that a copy of that report (or a separate statement of quarterly

and cumulative annual sulfur dioxide mass emissions) be submitted separately to the department.

(2) Annual report. Based on the quarterly reports, each WEB source shall submit an annual statement of total annual sulfur dioxide emissions for all sulfur dioxide emitting units at the source. The annual report shall identify the total emissions for all units monitored in accordance with Subsection A of 20.2.81.106 NMAC and the total emissions for all units with emissions estimated in accordance with Subsection B of 20.2.81.106 NMAC. The annual report shall be submitted within 60 days after the end of a control period.

(3) If the department so directs that any monitoring plan, report, certification, recertification, or emissions data required to be submitted under this section be submitted to the tracking system administrator.

(4) The department may review and reject any report submitted under this Subsection O of 20.2.81.106 NMAC that contains errors or fails to satisfy the requirements of this section, and the account representative shall resubmit the report to correct any deficiencies.

(5) A WEB source may petition for an alternative to any requirement specified in Paragraph 2 of Subsection A of 20.2.81.106 NMAC. The petition shall require approval of the department and the U.S. EPA administrator. Any petition submitted under this paragraph shall include sufficient information for the evaluation of the petition, including, at a minimum, the following information:

(a) identification of the WEB source and applicable sulfur dioxide emitting unit(s);

(b) a detailed explanation of why the proposed alternative is being suggested in lieu of the requirement;

(c) a description and diagram of any equipment and procedures used in the proposed alternative, if applicable;

(d) a demonstration that the proposed alternative is consistent with the purposes of the requirement for which the alternative is proposed and is consistent with the purposes of 20.2.81 NMAC and that any adverse effect of approving such alternative will be de minimis; and

(e) any other relevant information that the department may require.

(6) For any monitoring plans, reports, or other information submitted under 20.2.81.106 NMAC, the WEB source shall ensure that, where applicable, identifying information is consistent with the identifying information provided in the most recent certificate of representation for the WEB source submitted under 20.2.81.102 NMAC.

[20.2.81.106 NMAC - N, 12/31/03]

20.2.81.107 ALLOWANCE TRANSFERS:

A. Procedure. To transfer allowances, the account representative shall submit the following information to the tracking system administrator:

(1) the transfer account number(s) identifying the transferor account;

(2) the transfer account number(s) identifying the transferee account;

(3) the serial number of each allowance to be transferred; and

(4) the transferor's account representative's name and signature and date of submission.

B. Deadline. The allowance transfer deadline is midnight Pacific standard time March 1 of each year (or if this date is not a business day, midnight of the first business day thereafter) following the end of the control period. By this time, the transfer of the allowances into the WEB source's compliance account must be correctly submitted to the tracking system administrator in order to demonstrate compliance under Subsection A of 20.2.81.109 NMAC for that control period.

C. Retirement of Allowances. To transfer allowances for the purpose of retirement, the account representative shall submit the following information to the tracking system administrator:

(1) the transfer account number(s) identifying the transferor account;

(2) the serial number of each allowance to be retired; and

(3) the transferor's account representative's name and signature and date of submission accompanied by a signed statement acknowledging that each retired allowance as no longer available for future transfers from or to any account.

[20.2.81.107 NMAC - N, 12/31/03]

20.2.81.108 USE OF ALLOWANCES FROM A PREVIOUS YEAR:

A. Any allowance that is held in a compliance account or general account shall remain in such an account unless and until the allowance is deducted in conjunction with the compliance process, or transferred to another account.

B. In order to demonstrate compliance under Subsection A of 20.2.81.109 NMAC for a control period, WEB sources shall only use allowances allocated for that current control period or any previous year. Because all allowances held in a special reserve compliance account for a WEB source that monitors certain units in accordance with Subsection B of 20.2.81.106 NMAC will be deducted for compliance for each control period, no

banking of such allowances for use in a subsequent year is permitted by 20.2.81 NMAC.

C. If flow control procedures for the current control period have been triggered as outlined in section C4.2 of the sulfur dioxide milestones and backstop trading program implementation plan, then the use of allowances that were allocated for any previous year shall be limited as follows.

(1) The number of allowances that are held in each compliance account and general account as of the allowance transfer deadline for the immediately previous year and that were allocated for any previous year shall be determined.

(2) The number determined in Paragraph 1 shall be multiplied by the flow control ratio established in accordance with section C4.2 of the sulfur dioxide milestones and backstop trading program implementation plan to determine the number of allowances that were allocated for a previous year that can be used without restriction for the current control period.

(3) Allowances that were allocated for a previous year in excess of the number determined in (2) may also be used for the current control period. If such allowances are used to make a deduction, two allowances shall be deducted for each deduction of one allowance required under 20.2.81.109 NMAC.

D. Special provisions for the year 2018. After compliance with the 2017 allowance limitation has been determined in accordance with Subsection A of 20.2.81.109 NMAC, allowances allocated for any year prior to 2018 shall not be used for determining compliance with the 2018 allowance limitation or any future allowance limitation.

[20.2.81.108 NMAC - N, 12/31/03]

20.2.81.109 COMPLIANCE:

A. Compliance with Allowance Limitations.

(1) The WEB source shall hold allowances, in accordance with Paragraph 2 of Subsection A of 20.2.81.109 NMAC and 20.2.81.108 NMAC, as of the allowance transfer deadline in the WEB source's compliance account (together with any current control year allowances held for the WEB source by the department under Subsection B of 20.2.81.106 NMAC in an amount not less than the total sulfur dioxide emissions for the control period from the WEB source, as determined under the monitoring and reporting requirements of 20.2.81.106 NMAC.

(a) For each source that is a WEB source on or before the program trigger date, the first control period is the calendar year that is six years following the calendar

year for which sulfur dioxide emissions exceeded the milestone in accordance with procedures in section A of the sulfur dioxide milestones and backstop trading program implementation plan.

(b) For any existing source that becomes a WEB source after the program trigger date, the first control period is the calendar year that is four years following the inventory year in which the source exceeded the sulfur dioxide emissions threshold.

(c) For any new WEB source after the program trigger date the first control period is the first full calendar year that the source is in operation.

(d) If the WEB trading program is triggered in accordance with the 2013 review procedures in section A4 of the sulfur dioxide milestones and backstop trading program implementation plan, the first control period for each source that is a WEB source on or before the program trigger date is the year 2018.

(2) Allowance transfer deadline. An allowance may only be deducted from the WEB source's compliance account if:

(a) the allowance was allocated for the current control period or meets the requirements in 20.2.81.108 NMAC for use of allowances from a previous control period; and

(b) the allowance was held in the WEB source's compliance account as of the allowance transfer deadline for the current control period, or was transferred into the compliance account by an allowance transfer correctly submitted for recording by the allowance transfer deadline for the current control period.

(3) Compliance with allowance limitations shall be determined as follows.

(a) The total annual sulfur dioxide emissions for all sulfur dioxide emitting units at the source that are monitored under Subsection B of 20.2.81.106 NMAC, as reported by the source in Paragraph 2 or 4 of Subsection O of 20.2.81.106 NMAC, and recorded in the emissions tracking database shall be compared to the allowances held in the source's special reserve compliance account as of the allowance transfer deadline for the current control period, adjusted in accordance with 20.2.81.108 NMAC. If the emissions are equal to or less than the allowances in such account, all such allowances shall be retired to satisfy the obligation to hold allowances for such emissions. If the total emissions from such units exceeds the allowances in such special reserve account, the WEB source shall account for such excess emissions in the following Subparagraph b.

(b) The total annual sulfur dioxide emissions for all sulfur dioxide emitting units at the source that are monitored under

Subsection A of 20.2.81.106 NMAC, as reported by the source in Paragraph 2 or 4 of Subsection O of 20.2.81.106 NMAC, and recorded in the emissions tracking database, together with any excess emissions as calculated in the preceding Subparagraph a, shall be compared to the allowances held in the source's compliance account as of the allowance transfer deadline for the current control period, adjusted in accordance with 20.2.81.108 NMAC.

(4) Other than allowances in a special reserve compliance account for units monitored under Subsection B of 20.2.81.106 NMAC, to the extent consistent with 20.2.81.108 NMAC, allowances shall be deducted for a WEB source for compliance with the allowance limitation as directed by the WEB source's account representative. Deduction of any other allowances as necessary for compliance with the allowance limitation shall be on a first-in, first-out accounting basis in the order of the date and time of their recording in the WEB source's compliance account, beginning with the allowances allocated to the WEB source and continuing with the allowances transferred to the WEB source's compliance account from another compliance account or general account. The allowances held in a special reserve compliance account pursuant to Subsection B of 20.2.81.106 NMAC shall be deducted as specified in Subparagraph a of Paragraph 3 of Subsection A of 20.2.81.109 NMAC.

B. Certification of compliance.

(1) For each control period in which a WEB source is subject to the allowance limitation, the account representative of the source shall submit to the department a compliance certification report for the source.

(2) The compliance certification report shall be submitted no later than the allowance transfer deadline of each control period, and shall contain the following:

(a) identification of each WEB source;

(b) at the account representative's option, the serial numbers of the allowances that are to be deducted from a source's compliance account for compliance with the allowance limitation; and

(c) the compliance certification report according to Paragraph 3 of this section.

(3) In the compliance certification report, the account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the WEB source in compliance with the WEB trading program, whether the WEB source for which the compliance certification is submitted was operated during the control period covered by the report in

compliance with the requirements of the WEB trading program applicable to the source including:

(a) whether the WEB source operated in compliance with the sulfur dioxide allowance limitation;

(b) whether sulfur dioxide emissions data has been submitted to the department in accordance with Subsection A of 20.2.81.106 NMAC and other applicable guidance, for review, revision as necessary, and finalization for forwarding to the sulfur dioxide allowance tracking system for recording;

(c) whether the monitoring plan that governs the WEB source has been maintained to reflect the actual operation and monitoring of the source, and contains all information necessary to attribute sulfur dioxide emissions to the source, in accordance with Subsection a of 20.2.81.106 NMAC;

(d) whether all the sulfur dioxide emissions from the WEB source if applicable, were monitored or accounted for either through the applicable monitoring or through application of the appropriate missing data procedures;

(e) if applicable, whether any sulfur dioxide emitting unit for which the WEB source is not required to monitor in accordance with Paragraph 3 of Subsection A of 20.2.81.106 NMAC remained permanently retired and had no emissions for the entire applicable period; and

(f) whether there were any changes in the method of operating or monitoring the WEB source that required monitor recertification; if there were any such changes, the report shall specify the nature, reason, and date of the change, the method to determine compliance status subsequent to the change, and specifically, the method to determine sulfur dioxide emissions.

C. Penalties for any WEB source exceeding its allowance limitations.

(1) Allowance deduction penalties.

(a) If emissions from a WEB source exceed the allowance limitation for a control period, as determined in accordance with Subsection A of 20.2.81.109 NMAC, the source's allowance held in its compliance account will be reduced by an amount equal to two times the source's tons of excess emissions. If the compliance account does not have sufficient allowances allocated for that control period, the required number of allowances shall be deducted from the WEB source's compliance account regardless of the control period for which they were allocated, once allowances are recorded in the account.

(b) Any allowance deduction required under this section shall not affect

the liability of the owners and operators of the WEB source for any fine, penalty or assessment or their obligation to comply with any other remedy, for the same violation, as ordered under the Clean Air Act, implementing regulations or applicable state or tribal law. Accordingly, a violation can be assessed each day of the control period for each ton of sulfur dioxide emissions in excess of its allowance limitation if the department so chooses.

(2) Financial penalties. A financial penalty of \$5,000 per ton of sulfur dioxide emissions in excess of the WEB source's allowance limitation shall be levied. Each ton represents a separate violation.

D. Liability.

(1) WEB source liability for non-compliance. Separate and regardless of any automatic penalties assessed for allowance deduction penalty and financial penalty, a WEB source that violates any requirement of 20.2.81 NMAC is subject to civil and criminal penalties under the Air Quality Control Act and the Clean Air Act. Each day of the control period is a separate violation, and each ton of sulfur dioxide emissions in excess of a source's allowance limitation is a separate violation.

(2) General liability.

(a) Any provision of the WEB trading program that applies to a source or an account representative shall apply also to the owners and operators of such source.

(b) Any person who violates any requirement or prohibition of the WEB trading program shall be subject to enforcement pursuant to applicable state, tribal or federal law.

(c) Any person who knowingly makes a false material statement in any record, submission, or report under this WEB trading program shall be subject to criminal enforcement pursuant to the applicable state, tribal or federal law.

[20.2.81.109 NMAC - N, 12/31/03]

20.2.81.110 SPECIAL PENALTY PROVISIONS FOR YEAR 2018:

A. If the WEB trading program is triggered as outlined in section A of the sulfur dioxide milestones and backstop trading program implementation plan, and the first control period will not occur until after the year 2018, the following provisions shall apply for the 2018 emissions year.

(1) All WEB sources shall register, and open a compliance account within 180 days after the program trigger date, in accordance with Subsection A of 20.2.81.103 NMAC and 20.2.81.105 NMAC.

(2) The tracking system administrator shall record the allowances for the 2018 control period for each WEB source in

the source's compliance account once the department allocates the 2018 allowances under section C1 and D1 of the sulfur dioxide milestones and backstop trading program implementation plan.

(3) The allowance transfer deadline is midnight Pacific standard time on May 30, 2021. WEB sources may transfer allowances as provided in Subsection A of 20.2.81.107 NMAC until the allowance transfer deadline.

(4) A WEB source shall hold allowances allocated for 2018 including those transferred into the compliance account by an allowance transfer correctly submitted by the allowance transfer deadline, in an amount not less than the WEB source's total sulfur dioxide emissions for 2018. Emissions shall be determined using the pre-trigger monitoring provisions in section B of the sulfur dioxide milestones and backstop trading program implementation plan, and 20.2.73 NMAC.

(5) An allowance deduction penalty and financial penalty shall be assessed and levied in accordance with Subsection D of 20.2.8.108 NMAC, Paragraph 4 of Subsection A of 20.2.81.109 NMAC and Subsection C of 20.2.81.109 NMAC except that sulfur dioxide emissions shall be determined under Paragraph 4 of Subsection A of 20.2.81.110 NMAC.

B. The provisions in 20.2.81.110 NMAC shall continue to apply for each year after the 2018 emission year until:

(1) the first control period under the WEB trading program; or

(2) the department determined, in accordance with section A3.10 of the implementation plan, that the 2018 sulfur dioxide milestone has been met.

C. If 20.2.81.110 NMAC was implemented, the following shall apply to each emissions year after the 2018 emissions year.

(1) The tracking system administrator will record the allowances for the control period for the specific year for each WEB source in the source's compliance account once the department allocates the allowances under section C1 of the sulfur dioxide milestones and backstop trading program implementation plan.

(2) The allowance transfer deadline is midnight Pacific standard time on March 1 of each year (or if this date is not a business day, midnight of the first business day thereafter) following the end of the specific emissions year. WEB sources may transfer allowances as provided in Subsection A of 20.2.81.107 NMAC until the allowance transfer deadline.

(3) A WEB source must hold allowances allocated for that specific emissions year, or any year after 2018, including

those transferred into the compliance account by an allowance transfer correctly submitted by the allowance transfer deadline, in an amount not less than the WEB source's total sulfur dioxide emissions for the specific emissions year. Emissions are determined using the pre-trigger monitoring provisions in section B of the sulfur dioxide milestones and backstop trading program implementation plan, and 20.2.73 NMAC.

(4) An allowance deduction penalty and financial penalty shall be assessed and levied in accordance with Subsection D of 20.2.81.108 NMAC, Paragraph 4 of Subsection A of 20.2.81.109 NMAC, and Subsection C of 20.2.81.109 NMAC, except that sulfur dioxide emissions shall be determined under Paragraph 3 of Subsection C of 20.2.81.110 NMAC.

[20.2.81.110 NMAC - N, 12/31/03]

20.2.81.111 NMAC S U L F U R DIOXIDE MONITORING OF FUEL GAS COMBUSTION DEVICES:

A. Applicability.

(1) The provisions of this protocol are applicable to fuel gas combustion devices at petroleum refineries.

(2) Fuel gas combustion devices include boilers, process heaters, and flares used to burn fuel gas generated at a petroleum refinery.

(3) Fuel gas means any gas which is generated and combusted at a petroleum refinery. Fuel gas does not include:

(a) natural gas, unless combined with other gases generated at a petroleum refinery;

(b) gases generated by a catalytic cracking unit catalyst regenerator;

(c) gases generated by fluid coking burners;

(d) gases combusted to produce sulfur or sulfuric acid; or

(e) process upset gases generated due to startup, shutdown, or malfunctions.

B. Monitoring Requirements.

(1) Except as provided in Paragraphs 2 and 3 of 20.2.81.111 NMAC, fuel gas combustion devices shall use a continuous fuel gas monitoring system (CFGMS) to determine the total sulfur content (reported as H₂S) of the fuel gas mixture prior to combustion, and continuous fuel flow meters to determine the amount of fuel gas burned.

(a) Fuel gas combustion devices having a common source of fuel gas may be monitored for sulfur content at one location, if monitoring at that location is representative of the sulfur content of the fuel gas being burned in any fuel gas combustion device.

(b) The CFGMS shall meet the performance requirements in Performance

Specification 2 in Appendix B to 40 CFR Part 60, and the following.

(i) Continuously monitor and record the concentration by volume of total sulfur compounds in the gaseous fuel reported as ppmv H₂S.

(ii) Have the span value set so that the majority of readings fall between 10 and 95 percent of the range.

(iii) Record negative values of zero drift, for initial certification and daily calibration error tests.

(iv) Calibration drift shall be 5.0 percent of the span.

(v) Methods 15A, 16, or approved alternatives for total sulfur, are the reference methods for the relative accuracy test. The relative accuracy test shall include a bias test in accordance with Paragraph 3 of Subsection D of 20.2.81.111 NMAC.

(c) All continuous fuel flow meters shall comply with the provisions of Section 2.1.5 of Appendix D to 40 CFR Part 75.

(d) The hourly mass sulfur dioxide emissions rate for all the fuel combustion devices monitored by this approach shall be calculated using the following equation:

$$E_t = (C_S)(Q_f)(K)$$

where: E_t = Total sulfur dioxide emissions in lb/hr from applicable fuel gas combustion devices

C_S = Sulfur content of the fuel gas as H₂S(ppmv)

Q_f = Fuel gas flow rate to the applicable fuel gas combustion devices (scf/hr)

K = 1.660 x 10⁻⁷ (lb/scf)/ppmv

(2) In place of a CFGMS in Paragraph 1 of Subsection B of 20.2.81.111 NMAC, fuel gas combustion devices having a common source of fuel gas may be monitored with an sulfur dioxide CEMS flow CEMS and (if necessary) a moisture monitoring system at only one location, if the CEMS monitoring at that location is representative of the sulfur dioxide emission rate (lb sulfur dioxide/scf fuel gas burned) of all applicable fuel gas combustion devices. Continuous fuel flow meters shall be used in accordance with Paragraph 2 of Subsection B of 20.2.81.111 NMAC, and the fuel gas combustion device monitored by a CEMS shall have separate fuel metering.

(a) Each CEMS for sulfur dioxide and flow, and (if applicable) moisture, shall comply with the operating requirements, performance specifications, and quality assurance requirements of 40 CFR Part 75.

(b) All continuous fuel flow meters shall comply with the provisions of Section 2.1.5 of Appendix D to 40 CFR Part 75.

(c) The sulfur dioxide hourly mass emissions rate for all the fuel gas combustion devices monitored by this approach shall be determined by the ratio of the amount of fuel gas burned by the CEMS-monitored fuel gas combustion device to the total fuel gas burned by all applicable fuel gas combustion devices using the following equation:

$$E_t = (E_m)(Q_t)/(Q_m)$$

where: E_t = Total sulfur dioxide emissions in lb/hr from applicable fuel gas combustion devices.

E_m = sulfur dioxide emissions in lb/hr from the CEMS-monitored fuel gas combustion device, calculated using Equation F-1 or (if applicable) F-2 in Appendix F to 40 CFR Part 75

Q_t = Fuel gas flow rate (scf/hr) from applicable fuel gas combustion devices.

Q_m = Fuel gas flow rate (scf/hr) to the CEMS-monitored fuel gas combustion device.

(3) In place of a CFGMS in Paragraph 1 of Subsection B of 20.2.81.111 NMAC, fuel gas combustion devices having a common source of fuel gas may be monitored with an sulfur dioxide - diluent CEMS at only one location, if the CEMS monitoring at that location is representative of the sulfur dioxide emission rate (lb sulfur dioxide/mmBtu) of all applicable fuel gas combustion devices. If this option is selected, the owner or operator shall conduct fuel gas sampling and analysis for gross calorific value (GCV), and shall use continuous fuel flow metering in accordance with Paragraph 1 of Subsection B of 20.2.81.111 NMAC, with separate fuel metering for the CEMS-monitored fuel gas combustion device.

(a) Each sulfur dioxide - diluent CEMS shall comply with the applicable provisions for sulfur dioxide monitors and diluent monitors in 40 CFR Part 75, and shall use the procedures in Section 3 of Appendix F to Part 75 for determining sulfur dioxide emission rate (lb/mmBtu) by substituting the term sulfur dioxide for no_x in that section, and using a K factor of 1.660 x 10⁻⁷ (lb/scf) ppmv instead of the NO_x K factor.

(b) All continuous fuel flow meters and fuel gas sampling and analysis for GCV to determine the heat input ratio shall comply with the applicable provisions of Section 2.1.5 and 2.3.4 of Appendix D to 40 CFR Part 75.

(c) The sulfur dioxide hourly mass emissions rate for all the fuel gas combustion devices monitored by this approach shall be determined by the ratio of the fuel gas heat input to the CEMS-monitored fuel gas combustion device to the total fuel gas heat input to all applicable fuel gas combus-

tion devices using the following equation:

$$E_t = (E_m)(Q_t)/(GCV) / 10^6$$

where: E_t = Total sulfur dioxide emissions in lbs/hr from applicable fuel gas combustion devices.

E_m = sulfur dioxide emissions in lb/mmBtu from the CEMS - monitored fuel gas combustion device.

Q_t = Fuel gas flow rate (scf/hr) to the applicable fuel gas combustion devices.

GCV = Fuel Gross Calorific Value (Btu/scf)

10⁶ = Conversion from Btu to million Btu

(d) The owner or operator shall calculate total sulfur dioxide mass emissions for each calendar quarter and each calendar year based on the emissions in lb/hr and equations F-3 and F-4 in Appendix F to 40 CFR Part 75, Appendix F.

C. Certification and recertification requirements. All monitoring systems are subject to initial certification and recertification testing as follows.

(1) The owner or operator shall comply with the initial testing and calibration requirements in performance specification 2 in Appendix B of 40 CFR Part 60 and Subparagraph b of Paragraph 1 of Subsection B of 20.2.81.111 NMAC for each CFGMS.

(2) Each CEMS for sulfur dioxide and flow or each sulfur dioxide-diluent CEMS shall comply with the testing and calibration requirements specified in 40 CFR Part 75, Section 75.20 and appendices A and B, except that each sulfur dioxide-diluent CEMS shall meet the relative accuracy requirements for a NO_x-diluent CEMS (lb/mmBtu).

(3) A continuous fuel flow meter shall comply with certification requirements in Section 2.1.5 of Appendix D of 40 CFR Part 75.

D. Quality assurance/quality control requirements.

(1) A quality assurance and quality control (QA/QC) plan shall be developed and implemented for each CEMS for sulfur dioxide and flow or the sulfur dioxide-diluent CEMS in compliance with Sections 1, 1.1, and 1.2 of Appendix B of 40 CFR Part 75.

(2) A quality assurance and quality control plan shall be developed and implemented for each continuous fuel flow meter and fuel sampling and analysis in compliance with Sections 1, 1.1, and 1.3 Appendix B of 40 CFR Part 75. The owner or operator shall meet the requirements in Section 2.1.6 of Appendix D to 40 CFR Part 75, and may use the procedures set forth in Section 2.1.7 of that appendix.

(3) A quality assurance and quality control plan shall be developed and implemented for each CFGMS in compliance with Sections 1 and 1.1 of Appendix B

to 40 CFR Part 75, and the following.

(a) Perform a daily calibration error test of each CFGMS at two gas concentrations, one low level and one high level. Calculate the calibration error as described in Appendix A to 40 CFR Part 75. An out of control period occurs whenever the error is greater than 5.0 percent of the span value.

(b) In addition to the daily calibration error test, an additional calibration error test shall be performed whenever a daily calibration error test is failed, whenever a monitoring system is returned to service following repairs or corrective actions that may affect the monitor measurements, or after making manual calibration adjustments.

(c) Perform a linearity test once every operating quarter. Calculate the linearity as described in Appendix A to 40 CFR Part 75. An out of control period occurs whenever the linearity error is greater than 5.0 percent of a reference value, and the absolute value of the difference between average monitor response values and a reference value is greater than 5.0 ppm.

(d) Perform a relative accuracy test audit once every four operating quarters. Calculate the relative accuracy as described in Appendix A to 40 CFR Part 75. An out of control period occurs whenever the relative accuracy is greater than 20.0 percent of the mean value of the reference method measurements.

(e) Using the results of the relative accuracy test audit, conduct a bias test in accordance with Appendix A to 40 CFR Part 75, and calculate and apply a bias adjustment factor if required.

E. Missing data procedures.

(1) For any period in which valid data are not being recorded by an sulfur dioxide CEMS or flow CEMS specified in this section, missing or invalid data shall be replaced with substitute data in accordance with the requirements in subpart D of 40 CFR Part 75.

(2) For any period in which valid data are not being recorded by an sulfur dioxide-diluent CEMS specified in this section, missing or invalid data shall be replaced with substitute data on a rate basis (lb/mmBtu) in accordance with the requirements for sulfur dioxide monitors in subpart D of 40 CFR Part 75.

(3) For any period in which valid data are not being recorded by a continuous fuel flow meter or for fuel gas GCV sampling and analysis specified in this section, missing or invalid data shall be replaced with substitute data in accordance with missing data requirements in Section 2.4 of Appendix D to 40 CFR Part 75.

(4) For any period in which valid data are not being recorded by the CFGMS specified in this section, hourly missing or invalid data shall be replaced with substitute data in accordance with the missing data requirements for units performing hourly gaseous fuel sulfur sampling in Section 2.4 of Appendix D to 40 CFR Part 75.

F. Monitoring plan and reporting requirements. In addition to the general monitoring plan and reporting requirements of 20.2.81.106 NMAC, the owner or operator shall meet the following additional requirements.

(1) The monitoring plan shall identify each group of units that are monitored by a single monitoring system under this 20.2.81.111 NMAC, and the plan shall designate an identifier for the group of units for emissions reporting purposes. For purpose of submitting emissions reports, no apportionment of emissions to the individual units within the group is required.

(2) If the provisions of Paragraph 2 or 3 of Subsection B of 20.2.81.111 NMAC are used, provide documentation and an explanation to demonstrate that the sulfur dioxide emission rate from the monitored unit is representative of the rate from non-monitored units.

[20.2.81.111 NMAC - N, 12/31/03]]

20.2.81.112 NMAC PREDICTIVE FLOW MONITORING SYSTEMS FOR KILNS WITH POSITIVE PRESSURE FABRIC FILTER:

A. Applicability. The provisions of this protocol are applicable to cement kilns or lime kilns that:

(1) are controlled by a positive pressure fabric filter;

(2) combust only a single fuel, no fuel blends; and

(3) have operating conditions upstream of the fabric filter that the WEB source documents would reasonably prevent reliable flow monitor measurements; this protocol does not modify the sulfur dioxide monitoring requirements in 20.2.81.106 NMAC.

B. Monitoring requirements.

(1) A cement or lime kiln with a positive pressure fabric filter shall use a predictive flow monitoring system (PFMS) to determine the hourly kiln exhaust gas flow.

(2) A PFMS is the total equipment necessary for the determination of exhaust gas flow using process or control device operating parameter measurements and a conversion equation, a graph, or computer program to produce results in cubic feet per hour.

(3) The PFMS shall meet the following performance specifications.

(a) Sensors readings and conversion of sensor data to flow in cubic feet per hour must be automated.

(b) The PFMS must allow for the automatic or manual determination of failed monitors. At a minimum a daily determination must be performed.

(c) The PFMS shall have provisions to check the calibration error of each parameter that is individually measured. The owner or operator shall propose appropriate performance specifications in the initial monitoring plan for all parameters used in the PFMS comparable to the degree of accuracy required for other monitoring systems used to comply with 20.2.81 NMAC. The parameters shall be tested at two levels, low: 0 to 20 percent of full scale, and high: 50 to 100 percent of full scale. The reference value need not be certified.

(d) The relative accuracy of the PFMS must be ≤ 10.0 percent of the reference method average value, and include a bias test in accordance with Paragraph 3 of Subsection D of 20.2.81.112 NMAC.

C. Certification Requirements. The PFMS is subject to initial certification testing. The source owner or operator shall:

(1) demonstrate the ability of the PFMS to identify automatically or manually a failed monitor;

(2) provide evidence of calibration testing of all monitoring equipment. Any tests conducted within the previous 12 months of operation that are consistent with the QA/QC plan for the PFMS are acceptable for initial certification purposes; and

(3) perform an relative accuracy test audit and accompanying bias test once every four operating quarters. Calculate the relative accuracy (and bias adjustment factor) as described in Appendix A to 40 CFR Part 75. An out of control period occurs whenever the flow relative accuracy is greater than 10.0 percent of the mean value of the reference method.

D. Quality assurance and quality control requirements. A quality assurance and quality control plan shall be developed and implemented for each PFMS in compliance with Sections 1 and 1.1 of Appendix B of 40 CFR Part 75, and the following:

(1) perform a daily monitor failure check;

(2) perform calibration tests of all monitors for each parameter included in the PFMS. At a minimum, calibrations shall be conducted prior to each relative accuracy test audit; and

(3) perform a relative accuracy test audit and accompanying bias test once every four operating quarters. Calculate the relative accuracy (and bias adjustment factor) as described in Appendix A to 40 CFR

Part 75. An out of control period occurs whenever the flow relative accuracy is greater than 10.0 percent of the mean value of the reference method.

E. Missing data. For any period in which valid data are not being recorded by the PFMS specified in this section, hourly missing or invalid data shall be replaced with substitute data in accordance with the flow monitor missing data requirements for non-load based units in subpart D of 40 CFR Part 75.

F. Monitoring plan requirements. In addition to the general monitoring plan requirements of 20.2.81.106 NMAC, the owner or operator shall meet the following additional requirements.

(1) The monitoring plan shall document the reasons why stack flow measurements upstream of the fabric filter are unlikely to provide reliable flow measurements over time.

(2) The initial monitoring plan shall explain the relationship of the proposed parameters and stack flow, and discuss other parameters considered and the reasons for not using those parameters in the PFMS. The department may require that the subsequent monitoring plan include additional explanation and documentation for the reasonableness of the proposed PFMS.

[20.2.81.112 NMAC - N, 12/31/03]

HISTORY OF 20.2.81 NMAC:

Pre-NMAC History: None.

History of Repealed Material:

[RESERVED]

Other History: [RESERVED]

**NEW MEXICO
ENVIRONMENTAL
IMPROVEMENT BOARD
ENVIRONMENTAL
PROTECTION DIVISION
Air Quality Bureau**

This is an amendment to 20.2.73 NMAC, Sections 7 and 300 effective on 12/31/03.

20.2.73.7 DEFINITIONS: In addition to the terms defined in Part 2 (20.2.2 NMAC - definitions), as used in this part:

A. "air pollution control equipment" means any device, equipment, process or combination thereof the operation of which would limit, capture, reduce, confine, or otherwise control air contaminants or convert for the purposes of control any air contaminant to another form, another chemical or another physical state;

B. "commencement"

means that an owner or operator has undertaken a continuous program of construction or modification;

C. "construction"

means fabrication, erection, installation or relocation of a stationary source, including but not limited to temporary installations and portable stationary sources;

D. "emission report or inventory" means a listing, by source, of the amount of air pollutants discharged into the atmosphere of a community;

[D]E. "fugitive emissions"

are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening;

[E]F. "modification"

means any physical change in, or change in the method of operation of, a stationary source which results in an increase in the potential emission rate of any regulated air contaminant emitted by the source or which results in the emission of any regulated air contaminant not previously emitted, but does not include:

(1) a change in ownership of the source;

(2) routine maintenance, repair or replacement;

(3) installation of air pollution control equipment, and all related process equipment and materials necessary for its operation, undertaken for the purpose of complying with regulations adopted by the board or pursuant to the federal Clean Air Act; or

(4) unless previously limited by enforceable permit conditions;

(a) an increase in the production rate, if such increase does not exceed the operating design capacity of the source;

(b) an increase in the hours of operation; or

(c) use of an alternative fuel or raw material if, prior to January 6, 1975, the source was capable of accommodating such fuel or raw material, or if use of an alternate fuel or raw material is caused by any natural gas curtailment or emergency allocation or any other lack of supply of natural gas;

[F]G. "nonattainment area"

means, for any air pollutant, an area which has been designated as a nonattainment area under section 107 of the federal act;

[G]H. "operator"

means the person or persons responsible for the overall operation of a facility;

[H]I. "owner"

means the person or persons who own a facility or part of a facility;

[I]J. "part"

means an air quality control regulation under Title 20, Chapter 2 of the New Mexico administrative code, unless otherwise noted; as adopted or amended by the board;

[K]K. "portable stationary source"

means a source which can be relocated to another operating site with limited dismantling and reassembly, including for example but not limited to moveable sand and gravel processing operations and asphalt plants;

[K]L. "potential emission rate"

means the emission rate of a source at its maximum capacity to emit a regulated air contaminant under its physical and operational design, provided any physical or operational limitation on the capacity of the source to emit a regulated air contaminant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its physical and operational design only if the limitation or the effect it would have on emissions is enforceable by the department pursuant to the Air Quality Control Act or the federal act;

[L]M. "potential to emit"

means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design; any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is federally enforceable; the potential to emit for nitrogen dioxide shall be based on total oxides of nitrogen;

[M]N. "regulated air contaminant"

means any air pollutant, the emission or ambient concentration of which is regulated pursuant to the New Mexico Air Quality Control Act or the federal act;

[N]O. "shutdown"

means the cessation of operation of any air pollution control equipment, process equipment or process for any purpose, except routine phasing out of batch process units;

[O]P. "stationary source"

means any building, structure, equipment, facility, installation (including temporary installations), operation or portable stationary source which emits or may emit any air contaminant; any research facility may group its sources for the purpose of this part at the discretion of the secretary of the department;

Q. "WEB source"

means a stationary source that meets the applicability requirements of 20.2.81.101 NMAC;

R. "western backstop sulfur dioxide trading program"

means 20.2.81 NMAC, triggered as a backstop in accordance with the provisions in the sulfur dioxide milestones and backstop trading program implementation plan, if necessary,

to ensure that regional sulfur dioxide emissions are reduced.

20.2.73.300 EMISSION INVENTORY REQUIREMENTS:

A. Applicability. The requirements of Section 300 this Part (20.2.73.300 NMAC) apply to the owner or operator of any stationary source located outside of Bernalillo County which:

(1) has been issued a permit under Part 72 (20.2.72 NMAC - construction permits) during any period of time, except for toxic air pollutant permits issued under Part 72 (20.2.72 NMAC), Sections 401 to 499;

(2) is required to file a notice of intent under Section 200 of this part (20.2.73.200 NMAC); or

(3) emits in excess of 1 ton of lead or 10 tons of total suspended particulate, PM₁₀, sulfur dioxide, nitrogen oxides, carbon monoxide, or volatile organic compounds in any calendar year including and subsequent to 1990.

B. Reporting requirements.

(1) Any source which emits, or has the potential to emit, 5 tons per year or more of lead or lead compounds, or 100 tons per year or more of PM₁₀, sulfur oxides, nitrogen oxides, carbon monoxide, or volatile organic compounds shall submit an emissions report annually.

(2) Any source defined as a major source of hazardous air pollutants under Part 70 (20.2.70 NMAC - operating permits) shall submit an emissions report annually.

(3) Any source which is located in an ozone nonattainment area and which emits, or has the potential to emit, 25 tons per year or more of nitrogen oxides or volatile organic compounds shall submit an emissions report annually.

(4) Any source which is not required by Paragraph (1), (2), or (3) of Subsection B of this section (20.2.73.300 NMAC) to submit an emission report shall submit an emissions report under this part upon request by the department, but no more frequently than annually.

(5) Except as provided in Paragraph (8) of Subsection B of this section (20.2.73.300 NMAC), the department shall provide to the owner or operator required by this section (20.2.73.300 NMAC) to submit an emissions report a complete copy of the most current emissions report for their stationary source which is on file with the department. The department shall provide this copy to the owner or operator at least 90 days prior to the date when the source is required to submit an emissions report.

(6) The owner or operator shall submit to the department a complete, cor-

rect and current emissions report in the format specified by the department which reflects emissions during the previous calendar year.

(7) Except as provided in Paragraph (8) of Subsection B of this section (20.2.73.300 NMAC) the owner or operator shall submit the emission report by April 1 of each year in which the source is required to submit an emission report.

(8) Sources for which a date for submitting an annual emission report is specified in a current operating permit issued under Part 70 (20.2.70 NMAC - operating permits) shall submit such report on that date. The department shall provide a copy of the previous emissions report upon request by the owner or operator of such source.

C. Content of emissions reports.

Emissions report contents shall include:

(1) the name, address, and physical location of the stationary source;

(2) the name and telephone number of the person to contact regarding the emissions report;

(3) a certification signed by the owner, or operator, or a responsible official as defined in Part 70 (20.2.70 NMAC) attesting that the statements and information contained in the emissions report are true and accurate to the best knowledge and belief of the certifying official, and including the full name, title, signature, date of signature, and telephone number of the certifying official; for sources subject to Part 70 (20.2.70 NMAC), the certification shall be made as required under that part;

(4) smelters shall submit an annual report of sulfur input, in tons/year.

~~(4)~~(5) for each emission point, as required by the department:

(a) stack and exhaust gas parameters;

(b) type of control equipment and estimated control efficiency;

(c) schedule of operation;

(d) estimated actual emissions, including fugitive emissions and emissions occurring during maintenance, start-ups, shutdowns, upsets, and downtime of total suspended particulate, PM₁₀, sulfur oxides, nitrogen oxides, carbon monoxide, volatile organic compounds, and lead in tons per year and a description of the methods utilized to make such estimates, including calculations;

(e) the annual process or fuel combustion rates; and

(f) the fuel heat, sulfur, and ash content; and

~~(5)~~(6) all information required under the federal act.

D. Additional content for emissions reports from sources in ozone

nonattainment areas. Emissions reports from sources located in ozone nonattainment areas shall include, in addition to the contents specified by Subsection C of this section (20.2.73.300 NMAC), the following information:

(1) typical daily process rate during the peak ozone season, where the peak ozone season is specified by the department; and

(2) estimated actual emissions of nitrogen oxides and volatile organic compounds, which shall be reported:

(a) for each emissions point; and

(b) for each process and fuel type contributing to emissions from each point; and

(c) in units of tons per year for annual emissions; and

(d) in units of pounds per day for a typical day during the peak ozone season.

E. Waiver of reporting requirements for insignificant emissions.

The department may waive the requirements of Paragraph (4) of Subsection C of this section (20.2.73.300 NMAC) for emissions which the department determines to be insignificant under Part 70 (20.2.70 NMAC), except that:

(1) for sources in nonattainment areas, reporting of emissions of pollutants for which the area is nonattainment shall not be waived;

(2) reporting of emissions for which reporting is required under the federal act shall not be waived.

F. Emission tracking requirements for sulfur dioxide emission inventories.

All stationary sources with actual emissions of one hundred (100) tons per year or more of sulfur dioxide in the year 2000, or in any subsequent year, shall submit an annual inventory of sulfur dioxide emissions, beginning with the 2003 emission inventory. A source that meets these criteria that then emits less than 100 tons per year in a later year shall submit a sulfur dioxide inventory for tracking compliance with the regional sulfur dioxide milestones until the western backstop sulfur dioxide trading program has been fully implemented and emission tracking has occurred under 20.2.81.106 NMAC.

(1) All WEB sources will be subject to the following federally enforceable provisions:

(a) submit an annual inventory of sulfur dioxide emissions;

(b) document the emissions monitoring/estimation methodology used, and demonstrate that the selected methodology is acceptable under the inventory program;

(c) include emissions from start up, shut down, and upset conditions in the annual total inventory;

(d) use 40 CFR Part 75 methodol-

ogy for reporting emissions for all sources subject to the federal acid rain program:

(e) maintain all records used in the calculation of the emissions, including but not limited to the following:

(i) amount of fuel consumed,

(ii) percent sulfur content of fuel and how the content was determined,

(iii) quantity of product monitoring data,

(iv) emissions monitoring data,

(v) operating data, and

(vi) how the emissions are calculated;

(f) maintain records of any physical changes to facility operations or equipment, or any other changes that may affect the emissions projections; and

(g) retain records for a minimum of ten years from the date of establishment, or if the record was the basis for an adjustment to the milestone, 5 years after the date of an implementation plan revision, whichever is longer.

(2) The state shall retain emission inventory records for non-utilities for 1996 and 1998 until the year 2018 to ensure that changes in emissions monitoring techniques can be tracked.

NEW MEXICO BOARD OF NURSING

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 12 NURSING AND HEALTH CARE RELATED PROVIDERS
PART 6 NURSE LICENSURE COMPACT**

16.12.6.1 ISSUING AGENCY:
New Mexico Board of Nursing.
[16.12.6.1 NMAC - N, 1-2-04]

16.12.6.2 SCOPE: This rule applies to all registered and licensed practical nurses in New Mexico and nurse licensure compact states.
[16.12.6.2 NMAC - N, 1-2-04]

16.12.6.3 STATUTORY AUTHORITY: Nursing Practice Act, Sections 61-3-24.1, 61-3-24.2 and 61-3-24.3 NMSA 1978 Comp. permits the operation of the nurse licensure compact.
[16.12.6.3 NMAC - N, 1-2-04]

16.12.6.4 DURATION: Permanent.
[16.12.6.4 NMAC - N, 1-2-04]

16.12.6.5 EFFECTIVE DATE:

January 2, 2004 unless a later date is cited at the end of a section.

[16.12.6.5 NMAC - N, 1-2-04]

16.12.6.6 OBJECTIVE: To promote, preserve and protect the public health, safety and welfare of the citizens of the state of New Mexico.

[16.12.6.6 NMAC - N, 1-2-04]

16.12.6.7 DEFINITIONS:

A. "Board" means party state's regulatory body responsible for issuing nurse licenses.

B. "Information system" means the coordinated licensure information system.

C. "Primary state of residence" means the state of a person's declared fixed permanent and principal home for legal purposes; domicile.

D. "Public" means any individual or entity other than designated staff or representatives of party state boards or the national council of state board of nursing, inc.

[16.12.6.7 NMAC - N, 1-2-04]

16.12.6.8 ISSUANCE OF A LICENSE BY A COMPACT PARTY STATE:

A. A nurse applying for a license in a home party state shall produce evidence of the nurse's primary state of residence. Such evidence shall include a declaration signed by the licensee. Further evidence that may be requested may include but is not limited to:

- (1) driver's license with a home address;
- (2) voter registration card displaying a home address; or
- (3) federal income tax return declaring the primary state of residence.

B. A nurse changing primary state of residence, from one party state to another party state, may continue to practice under the former home state license and multi-state licensure privilege during the processing of the nurse's licensure application in the new home state for a period not to exceed thirty (30) days.

C. The licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance and the thirty (30) day period in paragraph (2) shall be stayed until resolution of the pending investigation.

D. The former home state license shall no longer be valid upon the issuance of a new home state license.

E. If a decision is made by the new home state denying licensure, the new home state shall notify the former home state within ten (10) business days

and the former home state may take action in accordance with that state's law and rules.

[16.12.6.8 NMAC - N, 1-2-04]

16.12.6.9 LIMITATIONS ON MUTI-STATE LICENSURE PRIVILEGE:

Home state boards shall include in all licensure disciplinary orders and/or agreements that limit practice and/or require monitoring the requirement that the licensee subject to said order and/or agreement will agree to limit the licensee's practice to the home state during the pendency of the disciplinary order and/or agreement. This requirement may, in the alternative, allow the nurse to practice in other party states with prior written authorization from both the home state and such other party state boards.

[16.12.6.9 NMAC - N, 1-2-04]

16.12.6.10 INFORMATION SYSTEM:

A. Levels of access.
(1) The public shall have access to nurse licensure information limited to:

- (a) the nurse's name;
- (b) jurisdiction(s) of licensure;
- (c) license expiration date(s);
- (d) licensure classification(s) and status(s);

(e) public emergency and final disciplinary actions, as defined by contributing state authority, and;

(f) the status of multi-state licensure privileges.

(2) Non-party state boards shall have access to all information system data except current significant investigative information and other information as limited by contributing party state authority.

(3) Party state boards shall have access to all information system data contributed by the party states and other information as limited by contributing non-party state authority.

B. The license may request in writing to the home state board to review the data relating to the licensee in the information system. In the event a licensee asserts that any data relating to him or her is inaccurate, the burden of proof shall be upon the licensee to provide evidence that substantiates such claim. The board shall verify and within ten (10) business days correct inaccurate data to the information system.

C. The board shall report to the information system within ten (10) business days:

(1) disciplinary action, agreement or order requiring participation in alternative programs or which limit practice or require monitoring (except agreements and orders relating to participation in alternative

programs, required to remain nonpublic by contributing state authority);

(2) dismissal of complaint; and

(3) changes in status of disciplinary action, or licensure encumbrance.

D. Current significant investigative information shall be deleted from the information system within ten (10) business days upon report of disciplinary action, agreement or order requiring participation in alternative programs or agreements which limit practice or require monitoring or dismissal of a complaint.

E. Changes to licensure information in the information system shall be completed with ten (10) business days upon notification by a board.

[16.12.6.10 NMAC - N, 1-2-04]

16.12.6.11 MULTISTATE LICENSURE PRIVILEGE-REGISTRATION:

A. A nurse not licensed in New Mexico, who wishes to practice in this state pursuant to a multistate licensure privilege as provided in the Nurse Licensure Compact shall provide to the New Mexico board of nursing a completed registration form within thirty (30) days after beginning to practice, that contains:

(1) the nurse's full name;

(2) home state residence address;

(3) temporary residence address in New Mexico;

(4) phone number or e-mail address;

(5) the identity of the nurse's home state;

(6) the type of nursing license the nurse holds;

(7) a declaration that the license is current and in good standing; and

(8) name, address and phone number of the employing agency.

B. The nurse who has practiced nursing in New Mexico pursuant to a multistate licensure privilege as provided in the Nurse Licensure Compact who wishes to cease practicing in the state shall notify the board in writing of the date upon which the nurse will no longer practice.

[16.12.6.11 NMAC - N, 1-2-04]

HISTORY 16.12.6 NMAC:
[RESERVED]

NEW MEXICO BOARD OF NURSING

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 12 NURSING AND HEALTH CARE RELATED PROVIDERS
PART 7 TRIAL PROGRAM FOR MEDICATION AIDES TO SERVE**

PERSONS IN LICENSED NURSING FACILITIES

16.12.7.1 ISSUING AGENCY:

New Mexico Board of Nursing.

[16.12.7.1 NMAC - N, 1-2-04]

16.12.7.2 SCOPE: The rule applies to a trial program for medication aides and medication aide training programs which serve residents in licensed nursing facilities.

[16.12.7.2 NMAC - N, 1-2-04]

16.12.7.3 STATUTORY

AUTHORITY: Section 61-3-10 NMSA, permits the operation of a trial program for certification of medication aides and training programs in licensed nursing facilities. Section 61-3-10 NMSA directs the board of nursing to conduct a trial program in five regions of the state for the certification of no more than one hundred medication aides and the approval of medication aide training programs to serve persons in licensed nursing facilities. Section 61-2-6 NMSA (1995) Pamphlet and the Uniform Licensing Act Section 61-1-1 NMSA, et. Seq. sets forth conditions for hearing and discipline.

[16.12.7. 3 NMAC - N, 1-2-04]

16.12.7.4 DURATION: Pilot ends December 31, 2004, but current CMA's may continue to practice at the facility they worked in for clinical training until decision of the state legislature.

[16.12.7.4 NMAC - N, 1-2-04]

16.12.7.5 EFFECTIVE DATE: January 2, 2004 unless a later date is cited at end of a section.

[16.12.7.5 NMAC - N, 1-2-04]

16.12.7.6 OBJECTIVE :

Pursuant to the Nursing Practice Act, this part establishes the requirements for fees, examination, recertification, standards and functions, supervision/direction, and disciplinary action for medication aides who serve persons in licensed nursing facilities. It also establishes requirements for approval of medication aide programs, minimum standards for medication aide programs, and the medication aide task force/advisory committee for medication aides who serve residents in licensed nursing facilities.

[16.12.7.6 NMAC - N, 1-2-04]

16.12.7.7 DEFINITIONS:

A. "Administrator" means the operating officer of an agency.

B. "Board" means the NM board of nursing.

C. "Certified medication aide (CMA)" means a person who under the supervision/direction of a registered

nurse, in licensed nursing facilities is permitted to administer medications as outlined in these rules.

D. "Clinical preceptor" means a licensed nurse at each participating nursing facility that is physically present and providing 1:1 direct supervision for the clinical experience.

E. "CMA coordinator" means a designated licensed nurse at each participating nursing facility that is responsible for coordination of the pilot medication aide program at the nursing facility, oversight of the clinical preceptor, liaison with the nurse educator and submission of reports to the nurse educator.

F. "Curriculum" means a detailed course outline, description, or syllabus, which includes objectives, content, teaching-learning activities and evaluation strategies.

G. "Delegation of medication administration" means authorizing and supervising licensed and certified staff (certified medication aides) in the performance of medication administration.

H. "Medications" means substances intended for use in diagnosis, care, mitigation, treatment or prevention of a disease.

I. "Medication aide program" means the formal program of study, certification, continuing education, standards of functions, disciplinary action, and minimum standards.

J "NPA": means the nursing practice act.

K. "Nurse educator" means a registered nurse who is the pilot program administrator and is developing and teaching the pilot program at the selected sited in New Mexico.

L. "Nursing facility" means a facility that serves persons/residents that is licensed as a nursing facility by the department of health and is in substantial compliance therewith.

M. "OTC medications" means medications that are purchased over the counter without a prescription. OTC medications must be stored in original manufacturer's packaging and affixed with the original manufacturer's labeling. Physician's orders (see Paragraph 1 of Subsection B of 16.12.5.10. NMAC) with adequate instructions must be obtained prior to the administration of OTC medications by the certified medication aide.

N. "Properly labeled container" means a medication container which includes the name, address and telephone number of the pharmacy, the name of the prescriber, the full name of the resident, the date the order was filled, the brand and generic name of the drug, the dosage of the drug, strength of the drug, lot number, expi-

ration date, adequate instructions for use and cautionary label as necessary.

O. "PRN" means instruction to give a medication as needed. Requires judgment.

P. "Resident" means admitted to and receiving care of treatment in a department of health licensed nursing facility.

Q. "Routine medication" means a medication for which the frequency of administration, amount, strength, and method of administration are specifically fixed as determined by the physician or person authorized to order medications in the state of New Mexico. Routine does not include medications for which the time of administration, the amount, the strength of dosage, the method of administration or the reason for administration is left to judgment or discretion.

R. "Supervision/direction" means initial verification of a person's knowledge and skills in the performance of a specific functions and/or activity followed by periodic observation, direction and evaluation of that person's knowledge and skills as related to the specific function and/or activity.

S. "ULA": means the Uniform Licensing Act.
[16.12.7.7 NMAC - N, 1-2-04]

16.12.7.8 FEES:

A. Payment of fees will be in the form specified by the board of nursing. Fees are not refundable.

(1) Initial medication aide certification by examination.....\$30.00

(2) R e - e x a m i n a -
tion.....\$15.00

B. During the trial program, approved training programs shall, by contract or agreement, provide remuneration to the board of nursing for costs associated with oversight of the medication aide program.
[16.12.7.8 NMAC - N, 1-2-04]

16.12.7.9 CERTIFICATION BY EXAMINATION REQUIREMENTS FOR MEDICATION AIDES:

A. Prerequisites.

(1) Be a minimum of eighteen (18) years of age.

(2) Be a high school graduate or hold a g.e.d.

(3) Hold a valid CNA certification with the NM nurse aide registry.

(4) Provide documentation of a minimum of 6 months experience as a CNA at the participating agency/site, within the last one (1) year.

(5) Pass a pre-test with a score of at least 80% prior to the initiation of training as a medication aide.

(6) Obtain a written recommendation from the director of nursing at the participating agency prior to the initiation of training as a medication aide.

(7) Provide proof of current CPR certification.

(8) Successfully complete a board-approved program for the preparation of medication aides.

(9) Complete the required application forms within the deadlines and according to all policies.

(10) Remit the required fee.

B. Applications and fees for the medication aide examination must be submitted to the board office at least thirty (30) days prior to the date of the examination.

(1) Applications containing fraudulent or misrepresented information could be the basis for denial of certification.

(2) Incomplete applications for certification become null and void one (1) year after date of last noted activity.

(3) Verification of successful completion, indicating the date of completion of the medication aide pilot program, including the clinical practice part of the program, must be received, in the board office directly from the nursing facility which provided the medication aide pilot program prior to the exam date.

(4) An admission letter, which includes the time, date and place of the examination will be issued to all eligible candidates.

(5) If an applicant is scheduled to write the medication aide examination and is unable to attend, the applicant must give written notification to the board no later than seven (7) days subsequent to the examination date.

(6) The reexamination fee will be charged for all failed examinations and non-excused absences.

(7) Results of the examination shall be reported to individual applicant approximately four (4) weeks following the examination date. Successful candidates shall also be issued a certificate.

(8) Candidates' examination results will be issued to employing agencies three (3) working days after release to the candidates.

C. Medication aide certification examination.

(1) The board shall develop and maintain the board-approved examination for medication aides.

(2) The examination may be administered at board-approved exam administration centers.

(3) Board-approved examination centers shall comply with the security procedures, developed by the board, for distribution and administration of the examina-

tion.

(4) The task force shall set the examination date(s) during the trial program.

(5) Applicants for certification as a medication aide shall be required to pass the medication aide examination with a minimum of 80% of the items answered correctly.

(6) Failed examinations must be repeated in their entirety on all subsequent attempts.

(7) The examination may be taken a maximum of two times. After the second failure, the applicant must provide proof of repeating and completing the board-approved medication aide program to be eligible to sit for the exam.

(8) Applicants observed giving and/or receiving unauthorized assistance during the writing of the examination shall be physically removed from the examination center and the individual(s) shall be referred to the board by a written complaint(s) filed by the examiner.
[16.12.7.9 NMAC - N, 1-2-04]

16.12.7.10 STANDARDS OF FUNCTIONS FOR THE MEDICATION AIDE:

A. The purpose of this section is to establish standards for the supervision/direction of medication aides; to identify basic functions for the medication aide and; to identify prohibited functions for the medication aide.

B. Authorized functions of the medication aide - medication aides who have been certified by the NM board of nursing may, under the supervision/direction of a registered nurse, administer routine medications with the exception of intramuscular, intravenous, subcutaneous, and nasogastric medication.

(1) The medications must have been ordered by a person authorized in the state to prescribe them.

(2) The medication must be prepared by the person who will administer it.

(3) The medication must be removed from a previously dispensed properly labeled container and verified with the physician's order.

(4) The resident's identify must be verified before the medication is administered.

(5) The actual act of swallowing must be witnessed.

(6) The medication must be recorded in the resident's chart including: the name of the drug, dose administered, date and time of administration, and any adverse effect of the drug. The person who administers the drug must affix their signature to the chart.

(7) Drug administration errors

must immediately be reported to the registered nurse, by the medication aide.

(8) Adverse reactions must immediately be reported to the registered nurse, by the medication aide.

(9) Administer PRN medications only after contacting and receiving authorization from a licensed practical or registered nurse to administer the PRN medication. Authorization is required for each individual instance of PRN administration of a medication. In addition to recording the information required in Section B of paragraph 6 of 16.12.7.10 NMAC, the effectiveness of the drug must also be recorded.

C. Prohibited functions of the medication aide

(1) Shall not administer medication by intramuscular, intravenous or subcutaneous route, nor by nasogastric, gastrostomy, jejunostomy or PEG tube, nor by nebulizer.

(2) Shall not take medication orders.

(3) Shall not alter medication dosage as ordered by the prescriber.

(4) Shall not administer medications in any agency other than a department of health licensed nursing facility by which the medication aide is employed.

(5) Shall not perform any function or service for residents for which a nursing license is required under the nursing practice act.

(6) Shall not administer medication without the supervision/direction of a registered nurse.

D. Supervision/direction.

(1) A registered nurse shall periodically provide supervision/direction to certified medication aides administering medications as follows:

(a) instruction regarding medication, dose, time, route, method of administration, documentation, and resident observation;

(b) a registered nurse shall be available 24 hours a day (on call) to supervise medication aides as needed;

(c) for the first six (6) months after a medication aide begins administering medications, observe at least six (6) separate medication passes for each medication aide, once per month, to ensure that medications are properly prepared and administered, and to verify that medication aides are performing within their scope of practice; after the first six (6) months, the registered nurse must observe each CMA at least once every 3 months (quarterly). If a medication aide is not administering medications regularly, the nurse must determine an appropriate schedule for observation not to be less than every three (3) months;

(d) develop and institute a yearly performance evaluation of each CMA; the

performance evaluation shall be based upon the standards listed in Paragraph 1 of Subsection A of 16.12.7.17 NMAC of these rules; the performance evaluation shall also include a review of the number of medication errors committed by the CMA; the performance evaluation process shall be reviewed and approved by the board.

(2) A registered nurse shall monitor an agency's medication aides, not less than once every month to include the following:

(a) review the resident's record in collaboration with the consultant pharmacist reports;

(b) review all drug administration errors and incident reports filed since the registered nurse's last review;

(c) review the controlled substance record;

(d) meet with each medication aide to review and discuss problems, difficulties, or irregularities in administering medications and to provide appropriate instruction;

(e) prepare and submit to the administrator of the nursing facility and the board of nursing a written, signed report of findings, medication errors/occurrences, safety violations, observations, problems, irregularities, and recommendations in medication administration;

(f) submit a work schedule for CMAs and the supervising nursing to the board of nursing as requested.

(3) The licensed nurse assures the proper procurement, storage, labeling and returning of medication according to agency policies and board of pharmacy regulations 16.19.11 NMAC nursing home drug control.

(4) The licensed practical nurse, under the supervision/direction of the registered nurse may assist in the responsibilities of the registered nurse as stated in Subsection D of 16.12.7.10 NMAC.

[16.12.7.10 NMAC - N, 1-2-04]

16.12.7.11 DISCIPLINARY ACTION:

A. The board shall conduct hearings upon charges relating to discipline of a CMA or the denial, suspension or revocation of a medication aide certificate in accordance with the ULA [61-3-10, NMSA, 1978] for the purpose of protecting the public.

B. Grounds for action.

(1) Incapable of functioning as a medication aide which is defined to include, but not limited to, the following:

(a) inability to function with reasonable skill and safety as a medication aide for any reason including, but not limited to, the use of drugs, alcohol or controlled substances which could impair judgment;

(b) performance of unsafe or unacceptable care of residents in the administration of medications or failure to conform to the essential standards and prevailing standards of medication aides, in which actual injury need not be established;

(c) omitting to record information regarding medications and medication administration, which could be relevant to the client's care;

(d) demonstrating a lack of competence through repeated medication errors.

(2) Incapable of functioning as a responsible member of the health care team which is defined to include, but not limited to, the following:

(a) falsifying or altering resident records, or personnel records for the purpose of reflecting incorrect or incomplete information;

(b) misappropriation of money, drugs or property;

(c) obtaining or attempting to obtain any fee for resident services for one's self or for another through, fraud, misrepresentation or deceit;

(d) obtaining, possessing, administering or furnishing prescription drugs to any person, including, but not limited to one's self, except as directed by a person authorized by law to prescribe;

(e) failure to follow established procedures and documentation regarding controlled substances;

(f) obtaining or attempting to obtain a certificate to function as a medication aide for one's self or for another through fraud, deceit, misrepresentation or any other act of dishonesty in any phase of the certification by examination or recertification process;

(g) failure to report a medication aide, who is suspected of violating the NPA, administrative rules and/or 16.12.5.NMAC;

(h) exceeding the scope of functions of a medication aide;

(i) intentionally abusing, neglecting or exploiting a resident;

(j) intentionally engaging in sexual contact toward or with a resident in a manner that is commonly recognized as outside of the medication aide's scope of tasks;

(k) administering medications without the supervision/direction of a registered nurse;

(l) conviction of a felony.

C. Disciplinary proceedings - disciplinary proceedings are conducted in accordance with the administrative rules of the New Mexico board of nursing and pursuant to the uniform licensing act.

[16.12.7.11 NMAC - N, 1-2-04]

16.12.7.12 APPROVAL OF MEDICATION AIDE PILOT PROGRAMS:

A. The purpose of the rules, related to medication aide pilot programs in department of health licensed nursing facilities is to set reasonable requirements that protect the health and well-being of the residents of department of health licensed nursing facilities. NPA [Section 61-3-10 NMSA, 1978]. The objectives include promoting safe and effective care of residents receiving medications from CMAs; establishing minimum standards for the evaluation and approval of trial medication aide pilot programs; granting recognition and approval that a medication aide pilot program is meeting the required minimum standards; and establishing eligibility of graduates of the medication aide pilot program to apply for certification by examination.

B. All new medication aide pilot program's approved nurse educators shall participate in an orientation/training that will be presented by board staff. [16.12.7.12 NMAC - N, 1-2-04]

16.12.7.13 TYPES OF APPROVAL:

A. Initial program approval - any agency wishing to obtain approval of a medication aide pilot program shall submit, in writing, an application for approval to the board's task force. Incomplete applications will not be reviewed. The task force shall evaluate the application and make a recommendation to the board regarding the approval of the medication aide pilot program. The board of nursing shall approve medication aide pilot programs at regularly scheduled board meetings.

(1) The initial application for approval shall be consistent with the minimum standards for medication aide pilot programs and shall contain the following:

- (a) objectives of the medication aide program;
- (b) organizational chart;
- (c) name of the administrator;
- (d) name and resume of the nurse educator(s) and other faculty;
- (e) program curriculum;
- (f) hours to be spent on each topic;
- (g) evaluation tools (written and clinical proficiency);
- (h) required fee.

(2) Representatives of the medication aide pilot program may be scheduled to meet with the task force to present the proposed program.

(a) Upon the task force's approval of the application, a recommendation for approval shall be made to the board.

(b) Applications not approved will be returned and may be resubmitted for approval when complete and deficiencies

have been corrected.

(3) After receipt of the task force's report and recommendation(s), the board may:

- (a) grant approval of a program;
- (b) defer a decision regarding approval;
- (c) deny approval;
- (d) direct staff to make a pre-approval evaluation visit.

B. Full approval, for a period not to exceed the time limits of the trial program (December 31, 2004), shall be granted to medication aide pilot programs if, in the opinion of the board, the program demonstrates compliance with 16.12.7.17 NMAC, minimum standards for medication aide pilot programs.

(1) To ensure continued compliance with 16.12.7.17 NMAC, minimum standards for medication aide pilot programs, the trial medication aide programs shall be evaluated through a written report.

(a) During the period of full approval, at least one site-visit will be made to medication aide pilot program sites to evaluate compliance with these administrative rules [Section 61-3-10 NMSA, 1978].

(b) Periodic written board-approved evaluation reports shall be submitted to the task force by designated deadlines for task force review and for compilation into a final written report with recommendations to the board of nursing.

(c) A representative of the medication aide pilot program may request or be requested to meet with the task force to clarify and respond to questions regarding the written evaluation.

(d) The board shall submit a final report with recommendations for continuation to the legislature in December 2004.

(e) All activity at the trial medication aide pilot program shall cease until direction has been received from the legislature regarding continuation of the program as either a trial or permanent program.

(2) Prior to the expiration of the trial pilot program (December 31, 2004), an approval visit shall be made by at least two (2) representatives appointed by the board. The report of the visit shall be submitted to the task force for review and findings therein will become part of the final written report to the board.

[16.12.7.13 NMAC - N, 1-2-04]

16.12.7.14 WITHDRAWAL OF TRIAL PROGRAM OR SITE APPROVAL:

A. The board may withdraw approval of a trial medication aide pilot program at any time within the trial period when a program fails to provide evidence of compliance with the minimum standards for medication aide programs or

any other portion of these rules.

B. When the board withdraws approval, a written notice detailing the reasons shall be provided to the officials of the medication aide program.

C. The medication aide pilot program shall be removed from the list of board approved trial medication aide pilot programs.

[16.12.7.14 NMAC - N, 1-2-04]

16.12.7.15 PROGRAM/SITE VISITS:

A. Types.

(1) Evaluation visit: visit made to medication aide pilot program or site by board representatives, as required by the trial program evaluation protocol or at the request of the board, for the purpose of evaluating a program's progress and compliance with the rules governing this trial medication aide program.

(2) Consultation visit: visit made to the medication aide pilot program or site by the board representatives at the request of the program officials.

(3) Course visit: visit which may be done at anytime to a participating medication aide program or site.

B. The board reserves the right to make unannounced visits.

C. A report of the visit made by representative(s) of the board, shall be provided to the medication aide pilot program or site, the task force, and the board for final disposition.

D. The survey team for visits shall be comprised of a least one professional board staff member and one member of the task force.

[16.12.7.15 NMAC - N, 1-2-04]

16.12.7.16 CHANGES REQUIRING NOTIFICATION TO THE TASK FORCE OR BOARD APPROVAL:

A. Once a trial medication aide pilot program has been granted approval by the board, there shall be no:

(1) major curriculum changes and/or reorganization of the curriculum;

(2) major changes in the program's objectives or goals;

(3) changes in the required didactic and/or clinical hours.

B. Changes requiring notification to the task force and board.

(1) Changes in the internal, administrative or organizational plan of the agency which affects the medication aide pilot program.

(2) Changes in the licensure status of the nursing facility.

(3) Changes in medications aide program faculty.

C. The board shall determine whether a trial pilot program site

experiencing any or all of the changes requiring notification may continue to participate in the trail pilot program.

(1) A trial medication aide pilot program site may be asked to cease operation when there is evidence of:

(a) substantial non-compliance with the minimum standards for medication aide pilot programs in this trial;

(b) disruptions in retaining qualified nurse educators and/or clinical preceptors resulting in disorganization of the program and breakdown of supervision and teaching in the program;

(c) failure to remain in substantial compliance with department of health licensure requirements for past two survey/resurveys; or suspension of licensure;

(d) non-compliance with the medication aide pilot program's stated philosophy, objectives, policies, and curriculum resulting in unsatisfactory student achievement;

(e) failure to provide clinical experience and/or supervision necessary to achieve the objectives of the medication aide pilot program;

(f) substantial non-compliance with any portion of these rules.

(2) The medication aide pilot program shall be advised, in writing, of the board's decision regarding continuing participation in the program.

[16.12.7.16 NMAC - N, 1-2-04]

16.12.7.17 MINIMUM STANDARDS FOR MEDICATION AIDE PROGRAMS:

A. Objectives - there shall be written objectives for the medication aide pilot program which serve as the basis for the planning, implementation, and evaluation of the program.

(1) The objectives shall be developed by the medication aide pilot program faculty and shall describe the competencies of the medication aide and shall include:

(a) principles of safety in the administration of medication;

(b) six (6) rights in preparing and administering drugs;

(c) methods commonly used to safeguard drugs;

(d) process of infection control;

(e) terms related to administration of medications;

(f) abbreviations commonly used when prescribing and administering drugs;

(g) uses, dosages, and necessary precautions in administering drugs;

(h) ability to correctly calculate dosages;

(i) appropriately reporting changes in a resident's condition;

(j) importance of remaining with resident while he/she ingest medication;

(k) accurate documentation of medication administration;

(l) legal parameters of the medication aide role;

(m) authorized and prohibited functions;

(n) responsibility for own actions;

(o) maintenance of confidential information;

(p) appropriate skills in medication administration and;

(q) understanding of the resident population.

(2) The objectives shall be written clearly; and shall identify expected competencies of the beginning medication aide.

(3) The objectives shall be reviewed annually and revised as necessary by the nurse educator.

B. Curriculum.

(1) The curriculum shall be developed, implemented, evaluated by the medication aide pilot program faculty within the framework of the objectives.

(2) The curriculum shall extend over a period of time sufficient to provide essential, sequenced learning experiences which enable a student to develop competence consistent with principles of learning and sound educational practice.

(a) There shall be a minimum of sixty (60) hours of classroom study.

(b) There shall be a minimum of forty (40) hours of supervised clinical experience. Supervised clinical experience shall provide opportunities for the application of theory and for the achievement of stated objectives in a resident care setting and shall include clinical learning experiences to develop the skills required by the individual to function safely as a medication aide. The nurse educator or clinical preceptor must be physically present and accessible to the student in the resident care area.

(3) The curriculum shall provide, at a minimum, instruction in the subject areas listed in attachment A (see 16.12.5.20 NMAC).

(4) A standardized evaluation tool shall be developed by the task force for the pilot program.

C. Administration and organization of the pilot program.

(1) There shall be a current organizational chart showing the position of the medication aide pilot program within the overall structure of the nursing facility, clearly indicating the lines of authority and responsibility and channels of communication.

(2) The administration of the nursing facility shall provide support for the medication aide pilot program to obtain the resources needed for the program to achieve its purpose.

(3) There shall be a nurse educa-

tor that meets the following qualifications:

(a) is a registered nurse holding a current license to practice in New Mexico;

(b) shall have a least two (2) years of recent, within the last five (5) years, nursing practice experience including at least six (6) months experience in licensed nursing facilities;

(c) shall have a current resume on file with the board of nursing;

(d) shall have verification of board of nursing orientation for nurse educators.

(4) There shall be a nurse educator to administer the program who shall be responsible for:

(a) the development and implementation of the medication aide pilot program;

(b) creation and maintenance of an environment conducive to teaching and learning;

(c) liaison with other personnel;

(d) selection of the clinical experience and arrangement for direct supervision for students;

(e) instruction and evaluation of student performance, termination, grading and progression in conjunction with the clinical preceptor;

(f) provision for a system of permanent records, and records and reports essential to the operation of the medication aide pilot program;

(g) communication with the board of nursing.

(5) Other health care providers, in addition to the nurse educator, may be appropriate faculty for classroom instructions such as physicians and pharmacists.

D. Faculty CMA pilot program coordination..

(1) Each nursing facility shall have a designated licensed nurse to serve as the CMA coordinator.

(2) The CMA coordinator is responsible for:

(a) coordination of the program at the nursing facility;

(b) liaison with the nurse educator and provide reports to the nurse educator;

(c) selection of the clinical experience for students;

(d) organization and oversight of the clinical preceptors.

(3) The clinical preceptor is responsible for:

(a) instruction and evaluation of student performance, termination, grading and progression in conjunction with the nurse educator;

(b) being physically present in the nursing facility, providing 1:1 supervision during the student clinical experience.

E. Records.

(1) The student's record shall be maintained by the nursing facility and include:

- (a) admission data;
- (b) pre-test, testing and evaluation records;
- (c) classroom and clinical attendance;
- (d) final course grade;
- (e) copy of application for certification examination;
- (f) current CPR certification.

(2) The clinical preceptor's record shall include:

- (a) verification of current licensure as a registered or licensed practical nurse in NM;
- (b) verification of orientation for clinical preceptors conducted by the nurse educator.

[16.12.7.17 NMAC - N, 1-2-04]

16.12.7.18 MEDICATION AIDE TRIAL PROGRAM IN LICENSED NURSING FACILITIES TASK FORCE:

A. Composition and appointment of task force - The board shall appoint an advisory committee composed of individuals with expertise in long-term care, including at least one representative from the university of New Mexico, the department of health and the New Mexico nurses association.

(1) Facilities, nursing facilities and individuals shall be requested to submit nominations for task force appointments.

(2) Members of the committee shall serve for the duration of the trial program (December 31, 2004).

B. Responsibility of the task force:

- (1) oversight of the trial program;
- (2) the advisory committee shall review applications for initial program approval;
- (3) advise the board on development and implementation of the program;
- (4) participate in the evaluation of trial program;
- (5) produce a written evaluation with recommendations to the board of nursing that shall serve as the basis for the board's written evaluation report on the program to the legislature no later than December 15, 2004;
- (6) members of the task force shall accompany board professional staff on evaluation/site visits to programs participating in the trial medication aide pilot program.

[16.12.7.18 NMAC - N, 1-2-04]

(5) produce a written evaluation with recommendations to the board of nursing that shall serve as the basis for the board's written evaluation report on the program to the legislature no later than December 15, 2004;

(6) members of the task force shall accompany board professional staff on evaluation/site visits to programs participating in the trial medication aide pilot program.

[16.12.7.18 NMAC - N, 1-2-04]

16.12.7.19 ATTACHMENT A - CURRICULUM SUBJECT AREAS:

A. Orientation to federal, state and local regulations

- (1) nurse role
- (2) medication aide role
- (3) drug laws and regulations
- (4) state board of pharmacy
- (5) state board of nursing

B. General orientation to nursing facilities

- (1) philosophy and objectives
- (2) organization and structure

C. Orientation to the medication aide position

- (1) review of job specifications
- (2) expectations and responsibilities

(3) personnel policies and procedures

D. Orientation to the resident population

- (1) types of residents in facility
- (2) challenges of administering medications in a nursing facility

(a) disabilities of residents

- (i) physical
- (ii) psychological

- (b) number of residents
- (c) number of medications
- (d) changes in medications
- (e) changes in residents, nurses,

orders

- (f) time guidelines
- (3) interdisciplinary care plan
- (4) role of the medication aide

- (a) observing and reporting
- (b) participating in goal settings
- (c) attending care plan meetings
- (d) participating in implementing

care plan

- (e) participating in discharge planning
- (f) understanding the duties and contributions of other health team members
- (g) charting and reporting

E. Legal aspects and responsibilities of medication administration

- (1) resident rights
- (a) confidentiality
- (b) privacy
- (c) HIPAA
- (d) right to refuse and all others
- (2) facility policies
- (3) negligence and malpractice
- (4) ethical aspects
- (5) legal/ethical issues with records/charting
- (6) medication errors identification and reporting process
- (7) incident reporting

F. Introduction to anatomy, physiology and pathophysiology

- (1) overview of 10 systems of the body and functions of system
- (2) four basic physiological processes of drug action
- (3) review of common health problems of residents' in nursing facilities

G. Fundamentals of pharmacology

- (1) definitions/abbreviations
- (2) terminology
- (3) classifications
- (4) controlled/non controlled medications
- (5) PRN medications
- (6) identification of chemical, generic, official brand/trade names
- (7) common responses to medications

- (a) desired effect
- (b) side effects
- (c) adverse reactions
- (d) allergic response
- (8) alcohol/drug abuse
- (9) drug interaction
- (a) food
- (b) synergistic
- (c) antagonistic
- (d) potentiation
- (10) sources of information
- (a) supervising nurse
- (b) written material
- (c) internet
- (d) poison control
- (e) pharmacist
- (11) methods of distribution
- (a) unit does
- (b) bulk, others

H. Systems/medications

- (1) content for each system/drugs including:
- (a) anatomy and physiology
- (b) common medical disorders
- (c) observations, recording and reporting
- (d) common medications including:
- (i) at least 50 most common medications used with elderly
- (ii) generic/trade names
- (iii) use
- (iv) dosage range
- (v) major side effects
- (vi) contraindications
- (2) cardiovascular system
- (a) cardiac glycosides
- (b) antiarrhythmics
- (c) antihypertensives
- (d) anticoagulants
- (e) diuretics
- (f) vasodilators
- (3) respiratory system
- (a) antitussives
- (b) expectorants
- (c) antihistamines
- (d) decongestants
- (e) bronchodilators
- (f) antispasmodics
- (4) digestive system/bowels
- (a) antacids
- (b) antiemetics
- (c) emetics
- (d) anti-diarrheals

(1) content for each system/drugs including:

- (a) anatomy and physiology
- (b) common medical disorders
- (c) observations, recording and reporting
- (d) common medications including:
- (i) at least 50 most common medications used with elderly
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(2) cardiovascular system

- (a) cardiac glycosides
- (b) antiarrhythmics
- (c) antihypertensives
- (d) anticoagulants
- (e) diuretics
- (f) vasodilators

(3) respiratory system

- (a) antitussives
- (b) expectorants
- (c) antihistamines
- (d) decongestants
- (e) bronchodilators
- (f) antispasmodics

(4) digestive system/bowels

- (a) antacids
- (b) antiemetics
- (c) emetics
- (d) anti-diarrheals

- (e) cathartics
- (f) bulk forming laxatives
- (g) stool softeners
- (h) lubricants
- (5) excretory system/urinary
- (a) urinary tract antiseptics
- (b) sulfonamides
- (c) antibiotics
- (d) acidifiers
- (e) alkalizers
- (f) electrolytes/minerals/ph modifiers
- (6) integumentary
- (a) antipruritis
- (b) antihistamines
- (c) antibiotics
- (d) antifungals
- (e) steroids
- (f) local anesthetics
- (g) decubital agents
- (h) scabicides
- (i) enzymes
- (7) musculoskeletal system
- (a) nsaid's
- (b) relaxants
- (c) analgesics
- (d) opiod analgesics
- (8) nervous system
- (a) antiparkinsonian
- (b) anticonvulsants
- (c) cholinergics/alzheimers
- (d) anticholinergics
- (e) psychotropics
- (f) tranquilizers/antianxiety
- (g) sedatives/hypnotics
- (h) antidepressants
- (i) antipsychotics
- (9) endocrine system/reproductive system
- (a) thyroid hormones
- (b) insulin and hypoglycemics
- (c) corticosteroids
- (d) estrogens
- (e) progestins
- (10) sensory system - eye, ear, nose, and throat
- (a) ophthalmic anti-infectives
- (b) ophthalmic anti-inflammatory agents
- (c) miotics
- (d) mydriatics
- (e) ophthalmic vasoconstrictors
- (f) otics anti-infectives
- (g) otic anti-inflammatory
- (h) ceruminolytic agents
- (i) oral and nasal agents
- I. Other
- (1) nutrition
- (a) vitamins
- (b) minerals
- (c) appetite stimulants
- (d) appetite depressants
- (e) digestive supplements
- (2) herbs
- (a) anti-depressants
- (b) hormones

- (c) memory
- (d) use with prescribed medications
- (3) temperature
- (a) antipyretics
- (b) other anti-inflammatories
- (4) infections
- (a) antibiotics
- (b) sulfonamides
- (5) cancers
- (a) pain management
- (b) cancers in nursing facilities
- (c) hospice
- J. First aide and emergency procedures including review of:
 - (1) cardiac and respiratory emergencies
 - (2) victims of choking
 - (3) first aid
- K. Introduction to administration of medication including:
 - (1) administering procedures (distribution)
 - (2) measurements
 - (3) preparing and administering (care and handling)
 - (4) safety precautions
 - (5) proper storage of medications
 - (6) ordering, receiving and disposing of drugs
 - (7) aseptic (clean) techniques
 - (8) hand washing
 - (9) standard precautions
 - (10) military time review
- L. Administering medications
 - (1) "six rights" (medication, dose, resident, route, time and documentation)
 - (2) observations while administering medications
 - (3) follow-up after administering medications
 - (4) practical skills/demonstration of process of medication administration
- M. Documentation
 - (1) medication
 - (2) resident condition
 - (3) behavior documentation
- N. Skills
 - (1) hand washing
 - (2) administering
 - (a) oral tablets/capsules/liquids/powders/crushed
 - (b) ophthalmic ointments/drops
 - (c) otic medications
 - (d) nasal medications/dropper and atomizer
 - (e) vaginal creams and suppositories
 - (f) rectal suppositories
 - (g) penile creams
 - (h) topical agents/lotion/liniment/ointment/cream
 - (i) metered dose inhalers
 - (j) transdermal patches
 - (k) PRN medications

- (3) crushing or mixing medications
 - (4) taking and recording vital signs
- [16.12.7.19 NMAC - N, 1-2-04]

HISTORY 16.12.7 **NMAC:**
[RESERVED]

NEW MEXICO BOARD OF NURSING

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 12 NURSING AND HEALTH CARE RELATED PROVIDERS
PART 8 TRIAL PROGRAM FOR MEDICATION AIDES TO SERVE STUDENTS IN PUBLIC SCHOOLS**

16.12.8.1 ISSUING AGENCY:
New Mexico Board of Nursing.
[16.12.8 NMAC - N, 1-2-04]

16.12.8.2 SCOPE: The rule applies to a trial program for medication aides and medication aide training programs which serve students in public schools.
[16.12.8.2 NMAC - N, 1-2-04]

16.12.8.3 STATUTORY AUTHORITY: Section 61-3-10.4 NMSA, permits the operation of a trial program for certification of medication aides and training programs in public schools. Section 61.3-10-4 NMSA directs the board of nursing to adopt rules to establish a school medication aides training pilot program to educate and certify persons as school medication aides to administer prescription drugs or other medication to public school students during school hours. Section 61-2-6 NMSA (1975) Pamphlet and the Uniform Licensing Act Section 61-1-1 NMSA, et. Seq. sets forth conditions for hearing and discipline.
[16.12.8.3 NMAC - N, 1-2-04]

16.12.8.4 DURATION: Ends December 15, 2004.
[16.12.8.4 NMAC - N, 1-2-04]

16.12.8.5 EFFECTIVE DATE: January 2, 2004 unless a later date is cited at the end of a section.
[16.12.8.5 NMAC - N, 1-2-04]

16.12.8.6 OBJECTIVE : Pursuant to the nursing practice act, this part establishes the requirements for fees, examination, recertification, standards and functions, supervision/direction, and disciplinary action for medication aides who

serve students in public schools. It also establishes requirements for approval of medication aide programs, minimum standards for medication aide programs, and the medication aide task force/advisory committee for medication aides who serve students in public schools.
[16.12.8.6 NMAC - N, 1-2-04]

16.12.8.7 DEFINITIONS:

A. "Administrator" means the operating officer (superintendent or principal) of a public school/school district.

B. "Board" means the NM board of nursing.

C. "certified medication aide (CMA)" means a person who under the supervision/direction of a registered nurse in public schools is permitted to administer medications as outlined in these rules.

D. "Curriculum" means a detailed course outline, description, or syllabus, which includes objectives, content, teaching-learning activities and evaluation strategies.

E. "Delegation of medication administration" means authorizing and supervising licensed and certified staff (certified medication aides) in the performance of medication administration.

F. "Medications" means substances intended for use in diagnosis, care, mitigation, treatment or prevention of a disease.

G. "Medication aide program" means the formal program of study, certification, continuing education, standards of functions, disciplinary action, and minimum standards.

H. "NPA" means the nursing practice act.

I. "OTC medications" means medications that are purchased over the counter without a prescription, OTC medications must be stored in original manufacturer's packaging and affixed with the original manufacturer's labeling. Physician's orders (see Paragraph 1of Subsection B of 16.12.5.10 NMAC) with adequate instructions must be obtained prior to the administration of OTC medications by the certified medication aide.

J. "Properly labeled container" means a medication container which includes the name, address and telephone number of the pharmacy, the name of the prescriber, the full name of the resident, the date the order was filled, the brand and generic name of the drug, the dosage of the drug, strength of the drug, lot number, expiration date, adequate instructions for use and cautionary label as necessary.

K. "PRN" means instruction to give a medication as needed.

Requires judgment.

L. "Public schools/school district" means the area of land established as a political subdivision of the state for the administration of public schools and segregated geographically for taxation and bonding purposes.

M. "Students/school aged child" means school aged child who is enrolled in a public school, and who receives care through the school health office in a public school setting.

N. "Routine medication" means a medication for which the frequency of administration, amount, strength, and method of administration are specifically fixed as determined by the physician or person authorized to order medications in the state of New Mexico. Routine does not include medications for which the time of administration, the amount, the strength of dosage, the method of administration or the reason for administration is left to judgment or discretion.

O. "School health assistant" means an unlicensed person who is hired by a public school/school district to assist the SDE licensed school nurse in the care of students.

P. "SDE licensed school nurse": means a school nurse who is currently licensed as an associate, professional or supervisory school nurse by the state of department of education.

Q. "Supervision/direction" means initial verification of a person's knowledge and skills in the performance of a specific functions and/or activity followed by periodic observation, direction and evaluation of that person's knowledge and skills as related to the specific function and/or activity.

R. "ULA": means the uniform licensing act.
[16.12.8.7 NMAC - N, 1-2-04]

16.12.8.8 FEES:

A. Payment of fees will be accepted in the form specified by the board of nursing. Fees are not refundable.

(1) Initial medication aide certification by examination.....\$30.00

(2) Re-examination.....\$15.00

B. During the trial program, approved training programs shall, by contract or agreement, provide remuneration to the board of nursing for costs associated with oversight of the medication aide program, as well as for initial certification by examination. Re-examination fees are the responsibility of the CMA candidate(s).
[16.12.8.8 NMAC - N, 1-2-04]

16.12.8.9 CERTIFICATION

BY EXAMINATION REQUIREMENTS FOR MEDICATION AIDES:

A. Prerequisites:
(1) be a minimum of eighteen (18) years of age;

(2) be a high school graduate or hold a g.e.d.;

(3) have completed a 16 hour department of health and state department of education approved health assistant training by October 3, 2003;

(4) obtain approval from the supervisory school nurse, at the participating, public school/school district prior to the initiation of training as a medication aide;

(5) provide proof of current CPR and first aide certification;

(6) successfully complete a board-approved program for the preparation of medication aides;

(7) complete the required application forms within the deadlines and according to all policies;

(8) remit the required fee (not applicable during the pilot period).

B. Applications and fees for the medication aide examination must be submitted to the board office at least thirty (30) days prior to the date of the examination.

(1) Applications containing fraudulent or misrepresented information could be the basis for denial of certification.

(2) Incomplete applications for certification become null and void one (1) year after date of last noted activity.

(3) Verification of successful completion, indicating the date of completion of the medication aide program, including the clinical practice part of the program, must be received, in the board office directly from the agency which provided the medication aide program, at least thirty (30) days prior to the exam date.

(4) An admission letter, which includes the time, date and place of the examination will be issued to all eligible candidates.

(5) If an applicant is scheduled to write the medication aide examination and is unable to attend, the applicant must give written notification to the board no later than seven (7) days subsequent to the examination date.

(6) The reexamination fee will be charged for all failed examinations and non-excused absences.

(7) Results of the examination shall be reported, by mail only, to individual applicants approximately two (2) weeks following the examination date. Successful candidates shall also be issued a certificate.

(8) Candidates' examination results will be mailed to employing school district three (3) working days after release to the candidates.

C. Medication aide certification examination.

(1) The board shall develop and maintain the board approved examination for medication aides.

(2) The examination may be administered at board approved examination centers.

(3) Board approved examination centers shall comply with the security procedures, developed by the board, for distribution and administration of the examination.

(4) The task force shall set the examination date(s) during the trial program.

(5) Applicants for certification as a medication aide shall be required to pass the medication aide examination with a minimum of 80% of the items answered correctly.

(6) Failed examinations must be repeated in their entirety on all subsequent attempts.

(7) The examination may be taken a maximum of three times. After the third failure, the applicant must provide proof of repeating and completing the board approved medication aide program to be eligible to sit for the exam.

(8) Applicants observed giving and/or receiving unauthorized assistance during the writing of the examination shall be physically removed from the examination center and the individual(s) shall be referred to the board by a written complaint(s) filed by the examiner.
[16.12.8.9 NMAC - N, 1-2-04]

16.12.8.10 STANDARDS OF FUNCTIONS FOR THE MEDICATION AIDE:

A. The purpose of this section is to establish standards for the supervision/direction of medication aides; to identify basic functions for the medication aide and to identify prohibited functions for the medication aide.

B. Authorized functions of the medication aide - medication aides who have been certified by the NM board of nursing may, under the supervision/direction of a registered nurse, administer routine medications with the exception of intramuscular, intravenous, or subcutaneous.

(1) The medications must have been ordered by a person authorized in this state to prescribe them.

(2) The medications must be prepared by the person who will administer it.

(3) The medication must be removed from a previously dispensed, properly labeled container and verified with the physician's order.

(4) The student's identity must be verified before the medication is adminis-

tered.

(5) The actual act of swallowing must be witnessed.

(6) The medication must be recorded in the student's chart or medication administration record including: the name of the drug, dose administered, date and time of administration, and any adverse effect of the drug. The person who administers the drug must affix their signature to the chart according to facility policies.

(7) Drug administration errors must immediately be reported to the registered nurse, by the medication aide.

(8) Adverse reactions must immediately be reported to the registered nurse, by the medication aide.

(9) Administer PRN medications only after receiving authorization from an SDE licensed registered nurse to administer the PRN medication. Authorization is required for each individual instance of PRN administration of a medication. In addition, to recording the information required in Subsection B of paragraph (6) of 16.12.7.10 NMAC, the effectiveness of the drug must also be recorded.

C. Prohibited functions of the medication aide:

(1) shall not administer medication by intramuscular, intravenous or subcutaneous route;

(2) shall not take medication orders;

(3) shall not alter medication dosage as ordered by the prescriber;

(4) shall not perform any function or service for students for which a nursing license is required under the nurse practice act;

(5) shall not administer medication without the supervision/direction of an SDE licensed registered nurse.

D. Supervision/direction.

(1) An SDE licensed registered nurse shall periodically provide supervision/direction to certified medication aides administering medications as follows:

(a) instruction regarding medication, dose, time, route, method of administration, documentation, and resident observation;

(b) a registered nurse shall be available (on call) during school hours to supervise medication aides as needed;

(c) for the first six (6) months after a medication aide begins administering medications, observe at least six (6) separate medication passes for each medication aide, once per month, to ensure that medications are properly prepared and administered, and to verify that medication aides are performing within their scope of practice; after the first six (6) months, the SDE licensed registered nurse must observe each CMA at least once every three (3) months

(quarterly); if a medication aide is not administering medications regularly, the nurse must determine an appropriate schedule for observation not to be less than every three (3) months;

(d) develop and institute a yearly performance evaluation of each CMA; the performance evaluation shall be based upon the standards listed in Paragraph 1 of Subsection A of 16.12.7.17 NMAC of these rules; the performance evaluation shall also include a review of the number of medication errors committed by the CMA; the performance evaluation process shall be reviewed and approved by the board.

(2) An SDE licensed registered nurse shall monitor a school's medication aides, not less than once (1) every month to include the following:

(a) review the student's medication record;

(b) review all drug administration errors and incident reports filed since the SDE licensed registered nurse's last review;

(c) review the controlled substance record, if applicable;

(d) meet with each medication aide to review and discuss problems, difficulties, or irregularities in administering medications and to provide appropriate instruction;

(e) meet with the school administrator to report, review, and discuss problems or irregularities occurring in medication administration;

(f) prepare and submit to the school administrator, and the board of nursing, a written, signed report of findings, observations, problems, irregularities, and recommendations in medication administration;

(g) submit a written, signed report of medication errors and other safety violations to the board of nursing and the administrator of the agency;

(h) submit a work schedule for CMAs and the supervising nurse to the board of nursing as requested.

(3) The SDE licensed registered nurse assures the proper procurement, storage, labeling and returning of medication according to school/school district policies and the guidelines established in the New Mexico school health manual.
[16.12.8.10 NMAC - N, 1-2-04]

16.12.8.11 DISCIPLINARY ACTION:

A. The board shall conduct hearings upon charges relating to discipline of a CMA or the denial, suspension or revocation of a medication aide certificate in accordance with the ULA [61-3-10 NMSA, 1978] for the purpose of protecting the public.

B. Grounds for action.

(1) Incapable of functioning as a medication aide which is defined to include, but not limited to, the following:

(a) inability to function with reasonable skill and safety as a medication aide for any reason including, but not limited to, the use of drugs, alcohol or controlled substances which could impair judgment;

(b) performance of unsafe or unacceptable care of students in the administration of medications or failure to conform to the essential standards and prevailing standards of medication aides, in which actual injury need not be established;

(c) omitting to record information regarding medications and medication administration, which could be relevant to the student's care.

(2) Incapable of functioning as a responsible member of the health care team which is defined to include, but not limited to, the following:

(a) falsifying or altering student records, or personnel records for the purpose of reflecting incorrect or incomplete information;

(b) misappropriation of money, drugs, or property;

(c) obtaining or attempting to obtain any fee for student services for one's self or for another through fraud, misrepresentation or deceit;

(d) obtaining, possessing, administering or furnishing prescription drugs to any person, including, but not limited to, one's self, except as directed by a person authorized by law to prescribe;

(e) failure to follow established procedures and documentation regarding controlled substances;

(f) obtaining or attempting to obtain a certificate to function as a medication aide for one's self or for another through fraud, deceit, misrepresentation or any other act of dishonesty in any phase of the certification by examination or recertification process;

(g) failure to report a medication aide, who is suspected of violating the nursing practice act, administrative rules and/or 16.12.5 NMAC;

(h) exceeding the scope of functions of a medication aide;

(i) intentionally abusing, neglecting or exploiting a student;

(j) intentionally engaging in sexual contact toward or with a student in a manner that is commonly recognized as outside of the medication aide's scope of practice;

(k) administering medications without the supervision/direction of a registered nurse;

(l) conviction of a felony.

[16.12.8.11 NMAC - N, 1-2-04]

16.12.8.12 APPROVAL OF

MEDICATION AIDE PROGRAMS:

A. The purpose of the rules, related to medication aide programs in public school settings is to set reasonable requirements that protect the health and well-being of students in public schools in New Mexico. Nursing practice act Section 61-3-10-2 NMSA, 1978]. The objectives include promoting safe and effective care of students receiving medications from CMAs; establishing minimum standards for the evaluation and approval of trial medication aide programs; granting recognition and approval that a medication aide program is meeting the required minimum standards; and establishing eligibility of graduates of the medication aide program to apply for certification by examination.

B. All new medication aide program's approved nurse educators shall participate in an orientation/curriculum training that will be presented by department of health and board staff.

[16.12.8.12 NMAC - N, 1-2-04]

16.12.8.13 TYPES OF APPROVAL:

A. Initial program approval - any school/school district wishing to participate in the department of health standardized medication aide program shall submit, in writing, an application for approval to the board's task force. Incomplete applications will not be reviewed. The task force shall evaluate the application and make a recommendation to the board regarding the approval of the medication aide program. The board of nursing shall approve medication aide programs at regularly scheduled board meetings.

(1) The initial application for approval shall be consistent with the minimum standards for medication aide programs and shall contain the following:

(a) objectives of the medication aide program;

(b) organizational chart;

(c) name of the superintendent, supervisory nurse, principals, nurses, and health assistants at participating sites;

(d) name and resume of the nurse educator(s) and other faculty;

(e) standardized program curriculum;

(f) hours to be spent on each topic;

(g) evaluation tools (written and clinical proficiency);

(h) required fee.

(2) Representatives of the medication aide program may be scheduled to meet with the task force to present the proposed program.

(a) Upon the task force's approval of the application, a recommendation for

approval shall be made to the board.

(b) Applications not approved will be returned and may be resubmitted for approval when complete and deficiencies have been corrected.

(3) After receipt of the task force's report and recommendation(s), the board may:

(a) grant approval of a program;

(b) defer a decision regarding approval;

(c) deny approval;

(d) direct staff to make a pre-approval evaluation visit.

B. Full approval, for a period not to exceed the time limits of the trial program (December 31, 2004), shall be granted to medication aide programs if, in the opinion of the board, the program demonstrates compliance with 16.12.7.17 NMAC, minimum standards for medication aide programs.

(1) To ensure continued compliance with 16.12.7.17 NMAC, minimum standards for medication aide programs, the trial medication aide programs shall be evaluated through a written report.

(a) During the period of full approval, at least one site-visit will be made to medication aide program sites to evaluate compliance with these administrative rules [Section 61.3-10-2 NMSA, 1978].

(b) Periodic written board approved evaluation reports shall be submitted to the task force by designated deadlines for task force review and for compilation into a final written report with recommendations to the board of nursing.

(c) A representative of the medication aide program may request or be requested to meet with the task force to clarify and respond to questions regarding the written evaluation.

(d) The board shall submit a final report with recommendations for continuation to the legislature in December 2004.

(e) All activity of the trial medication aide program shall cease until direction has been received from the legislature regarding continuation of the program as either a trial or permanent program.

(2) Prior to the expiration of the trial program (December 15, 2004), an approval visit shall be made by at least two (2) representatives appointed by the board. The report of the visit shall be submitted to the task force for review and findings therein will become part of the final written report to the board.

[16.12.8.13 NMAC - N, 1-2-04]

16.12.8.14 WITHDRAWAL OF TRIAL PROGRAM/SITE APPROVAL:

A. The board may withdraw approval of a trial medication aid program/site at any time within the trial period

when a program/site fails to provide evidence of compliance with the minimum standards for medication aide programs or any other portion of these rules.

B. When the board withdraws approval, a written notice detailing the reasons shall be provided to the officials of the medication aide program.

C. The medication aide program/site shall be removed from the list of board approval trial medication aide programs.

[16.12.8.14 NMAC - N, 1-2-04]

16.12.8.15 PROGRAM/SITE VISITS:

A. Types.

(1) Evaluation visit: visit made to a medication aide program/site by board representatives, as required by the trial program evaluation protocol or at the request of the board, for the purpose of evaluating a program's progress and compliance with the rules governing this trial medication aide program.

(2) Consultation visit: visit made to the medication aide program/site by the board representatives at the request of the program officials.

(3) Course visit: visit which may be done at anytime to a participating medication aide program/site.

B. The board reserves the right to make unannounced visits.

C. A report of the visit made by representative(s) of the board shall be provided to the medication aide program, the task force, and the board for final disposition.

D. The survey team for visits shall be comprised of a least one professional board staff member and one member of the task force.

[16.12.8.15 NMAC - N, 1-2-04]

16.12.8.16 CHANGES REQUIRING NOTIFICATION TO THE TASK FORCE OR BOARD APPROVAL:

A. Once a trial medication aide program has been granted approval by the board, there shall be no:

(1) major curriculum changes and/or reorganization of the curriculum;

(2) major changes in the program's objectives or goals;

(3) changes in the required didactic and/or clinical hours.

B. Changes requiring notification to the task force and board.

(1) Changes in the internal, administrative or organizational plan of the agency which affects the medication aide program.

(2) Changes in the licensure status of the agency.

(3) Changes in medications aide

program faculty.

C. The board shall determine whether a trial program site program experiencing any or all of the changes requiring notification may continue to participate in the trial program.

(1) A trial medication aide program site may be asked to cease operation when there is evidence of:

(a) substantial non-compliance with the minimum standards for medication aide programs in this trial;

(b) disruption in retaining qualified nurse educators resulting in disorganization of the program and breakdown of supervision and teaching in the program;

(c) non-compliance with the medication aide program's stated philosophy, objectives, policies, and curriculum resulting in unsatisfactory student achievement;

(d) failure to provide clinical experience and/or supervision necessary to achieve the objectives of the medication aide program;

(e) substantial non-compliance with any portion of these rules.

(2) The medication aide program shall be advised, in writing, of the board's decision regarding continuing participation in the program.

[16.12.8.16 NMAC - N, 1-2-04]

16.12.8.17 MINIMUM STANDARDS FOR MEDICATION AIDE PROGRAMS:

A. Objectives - there shall be written objectives for the medication aide program which serve as the basis for the planning, implementation, and evaluation of the program.

(1) The objectives shall be developed by the medication aide program faculty and shall describe the competencies of the medication aide and shall include:

(a) principles of safety in the administration of medication;

(b) six (6) rights of preparing and administering drugs;

(c) methods commonly used to safeguard drugs;

(d) process of infection control;

(e) terms related to administration of medications;

(f) abbreviations commonly used when prescribing and administering drugs;

(g) uses, dosages, and necessary precautions in administering drugs;

(h) ability to correctly calculate dosages;

(i) appropriately reporting changes in a student's condition;

(j) importance of remaining with student while he/she ingests medication;

(k) accurate documentation of medication administration;

(l) legal parameters of the med-

ication aide role;

(m) authorized and prohibited functions;

(n) responsibility for own actions;

(o) maintenance of confidential information;

(p) appropriate skills in medication administration and;

(q) understanding of the student population.

(2) The objective shall be written clearly; and shall identify expected competencies of the beginning medication aide.

(3) The objectives shall be reviewed annually and revised as necessary by the nurse educator.

B. Curriculum.

(1) The curriculum shall be developed, implemented, evaluated by the medication aide program faculty within the framework of the objectives.

(2) The curriculum shall extend over a period of time sufficient to provide essential, sequenced learning experiences which enable a student to develop competence consistent with principles of learning and sound educational practice.

(a) There shall be a minimum of forty (40) hours of classroom study, in addition to the prerequisite sixteen (16) hours provided through the department of health/state department of education approved school health assistant training

(b) There shall be a minimum of twenty (20) hours of clinical experience supervised by a SDE licensed school nurse. Supervised clinical experience shall provide opportunities for the application of theory and for the achievement of stated objectives in a resident care setting and shall include clinical learning experiences to develop the skill required by the individual to function safely as a medication aide. The nurse educator or clinical preceptor must be physically present and accessible to the CMA candidate in the student care area.

(3) The curriculum shall provide, at a minimum, instruction in the subject areas listed in attachment A (see 16.12.5.20 NMAC).

(4) A standardized evaluation tool shall be developed by the task force for pilot program.

C. Administration and organization.

(1) There shall be a current organizational chart showing the position of the medication aide program within the overall structure of the agency, clearly indicating the lines of authority and responsibility and channels of communication.

(2) The administration of the agency shall provide support for the medication aide program to obtain the resources needed for the program to achieve its purpose.

(3) There shall be a nurse educator to administer the program who shall be responsible for:

- (a) the development and implementation of the medication aide program;
- (b) creation and maintenance of an environment conducive to teaching and learning;
- (c) liaison with other personnel;
- (d) arrangement for direct supervision of the student's clinical experience by the clinical preceptor;
- (e) provision for a system of permanent records, and records and reports essential to the operation of the medication aide program;
- (f) communication with the board of nursing.

D. Faculty.

(1) Each program shall have a nurse educator who is a registered nurse holding a current license to practice in New Mexico.

(2) The nurse educator shall have a least two (2) years of recent, within the last five (5) years, nursing practice experience including at least six (6) months experience in the public school setting.

(3) The nurse educator shall select the clinical experience for students and a nurse educator/clinical preceptor must be physically present in the school while students are engaged in clinical experience.

(4) The ratio of preceptor to students, during supervised clinical experience, shall be one-on-one.

(5) The nurse educator shall be responsible for instruction and evaluation of student performance, termination, grading and progression.

(6) Other health care providers, in addition to the nurse educator, may be appropriate faculty for classroom instructions such as physicians and pharmacists.

E. Records.

(1) The nurse educator's record shall include:

- (a) verification of current licensure as a registered nurse in New Mexico;
- (b) continuing education record reflecting minimum standard met for relicensure period;
- (c) resume;
- (d) teaching experience;
- (e) verification of board of nursing orientation for nurse educators;
- (f) board of nursing appointment letter to position of nurse educator.

(2) The student's record shall include:

- (a) admission date;
- (b) pre-test, testing and evaluation records;
- (c) classroom and clinical attendance;
- (d) final course grade;

(e) copy of application for certification examination;

- (f) continuing education attendance records (post-certification);
- (g) current CPR certification.

(3) The clinical preceptor's record shall include:

- (a) verification of current licensure as a registered or licensed practical nurse in NM;
- (b) clinical teaching experience;
- (c) verification of orientation for clinical preceptors conducted by nurse educator.

[16.12.8.17 NMAC - N, 1-2-04]

16.12.7.18 MEDICATION AIDE TRIAL PROGRAM IN PUBLIC SCHOOL TASK FORCE:

A. Composition and appointment of task force - the board shall appoint an advisory committee composed of individuals with expertise in school health, including at least one representative from the university of New Mexico, the department of health and the New Mexico school nurse association.

(1) Facilities, agencies and individuals shall be requested to submit nominations for task force appointments.

(2) Members of the committee shall serve for the duration of the trail program (December 15, 2004).

B. Responsibility of the task force.

(1) Oversight of the trail program.

(2) The advisory committee shall review applications for initial program approval.

(3) Advise the board on development and implementation of the program.

(4) Participate in the evaluation of trial program.

(5) Produce a written evaluation with recommendations to the board of nursing that shall serve as the basis for the board's written evaluation report on the program to the legislature no later than December 15, 2004.

(6) Members of the task force shall accompany board professional staff on evaluation/site visits to programs participating in the trial medication aide program.

[16.12.8.18 NMAC -N, 1-2-04]

16.12.8.19 ATTACHMENT A - SUBJECT/CURRICULUM AREAS:

A. Overview of programs

- (1) number of hours
- (2) classroom
- (3) clinical
- (4) tests
- (5) final
- (6) classroom/clinical rules
- (7) pilot program review
- (8) certification by exam require-

ments for medication aides

B. Orientation to federal, state and local regulations

- (1) nurse role
- (2) medication aide role
- (3) drug laws and regulations
- (4) state board of pharmacy
- (5) state board of nursing

C. Orientation to the medication aide position

- (1) review of job specifications
- (2) expectations and responsibilities
- (3) personnel policies and procedures

D. Orientation to the school age child population

- (1) types of students in facility
- (2) challenges of administering medications in a public school setting

- (a) disabilities of students
 - (i) physical
 - (ii) psychological
- (b) number of medications
- (c) changes in medications
- (d) changes in students, nurses, orders

- (e) time guidelines
- (3) interdisciplinary care plan
- (4) role of the medication aide
- (a) observing and reporting
- (b) participating in implementing care plan

- (c) understanding the duties and contributions of other health team members.
- (d) charting and reporting

E. Legal aspects and responsibilities of medication administration including

- (1) student rights
- (a) confidentiality
- (b) privacy
- (c) HIPAA
- (d) right to refuse and all others
- (2) school/district policies
- (3) negligence and malpractice
- (4) ethical aspects
- (5) legal/ethical considerations concerning student records/charting
- (6) medication errors identification and reporting process
- (7) incident reporting

F. Introduction to anatomy, physiology and pathophysiology

- (1) overview of 10 systems of the body and functions of system
- (2) review of common health problems of students in schools

G. Fundamentals of pharmacology

- (1) definitions/abbreviations
- (2) terminology
- (3) classifications
- (4) controlled/non-controlled medications
- (5) identification

effects

- (6) desired drug effects
- (7) drug adverse action/side effects
- (8) alcohol/drug abuse
- (9) drug interaction
- (a) food
- (b) synergistic
- (c) antagonistic
- (d) additive
- (10) allergic reactions
- (11) sources of information
- (a) supervising nurse
- (b) written material
- (c) internet
- (d) poison control
- (e) pharmacist
- (12) methods of distribution
- H. Systems/medications
- (1) content for each system/drugs including:
- (a) anatomy and physiology
- (b) common medical disorders
- (c) observations, recording and reporting
- (d) common medications including:
 - (i) common medication used with school aged children
 - (ii) generic/trade names
 - (iii) dosage range
 - (iv) action
 - (v) major side effects
 - (vi) contraindications
 - (vii) PRN's
- (2) cardiovascular system
- (a) cardiac glycosides
- (b) antiarrhythmics
- (c) antihypertensives
- (d) anticoagulants
- (e) diuretics
- (f) vasodilators
- (3) respiratory system
- (a) antitussives
- (b) expectorants
- (c) antihypertensives
- (d) decongestants
- (e) bronchodilators
- (f) antispasmodics
- (4) digestive system/bowels
- (a) cathartics
- (b) irritants
- (c) stool softeners
- (d) bulk laxatives
- (e) lubricants
- (f) antacids
- (g) antiemetics
- (h) antinauseants
- (i) carminatives
- (5) excretory system (kidneys/bladder)
- (a) diuretics
- (b) urinary tract antiseptics
- (c) electrolytes and fluids
- (d) sulfonamides
- (e) acidifiers
- (f) alkalinizers

- (6) integumentary (skin) mucus membranes
- (a) antipyretics
- (b) antihistamines
- (c) antibiotics
- (d) antifungals
- (e) steroids
- (f) irritants
- (g) local anesthetics
- (h) scabicides
- (7) musculoskeletal system/nervous system
- (a) relaxants
- (b) antiparkinsonians
- (c) anticonvulsants
- (d) analgesics
- (e) tranquilizers
- (f) sedatives
- (g) irritants
- (h) local anesthetics
- (i) scabicides
- (j) keratolytics
- (k) enzymes
- (8) endocrine system/reproductive system
- (a) corticosteroids
- (b) andrenergics
- (c) thyroid hormones
- (d) insulin and hypoglycemics
- (e) estrogens
- (f) progestins
- (g) testosterone
- (h) pituitary drugs
- (9) sensory system - eye, ear, nose, and throat
- (a) ophthalmic anti-infectives
- (b) ophthalmic anti-inflammatory agents
- (c) miotics
- (d) mydriatics
- (e) ophthalmic vasoconstrictors
- (f) otics
- (g) oral and nasal agents
- I. Other
- (1) nutrition
- (a) vitamins
- (b) minerals
- (c) appetite stimulants
- (d) appetite depressants
- (e) digestive supplements
- (2) herbs used with prescribed medications
- (3) temperature
- (a) antipyretics
- (b) other anti-inflammatories
- (4) infections
- (a) antibiotics
- (b) sulfonamides
- J. First aide and emergency procedures including review of:
- (1) cardiac and respiratory emergencies
- (2) victims of choking
- (3) first aid
- K. Introduction to admin-

istration of medication including:

- (1) administering procedures (distribution)
- (2) measurements
- (3) preparing and administering (care and handling)
- (4) safety precautions
- (5) proper storage of medications
- (6) ordering, receiving and disposing of drugs
- (7) aseptic (clean) techniques
- (8) hand washing
- (9) standard precautions
- (10) PRN's
- L. Administering medications
- (1) "six rights" (medication, dose, student, route, time and documentation)
- (2) observations while administering medications
- (3) follow-up after administering medications
- (4) practical skill (see Subsection P of 16.12.7.19 NMAC)
- (5) description of progress of medication administration
- M. Documentation
- (1) medication
- (2) student condition
- (3) behavior documentation
- N. Psychotropic medications
- (1) introduction to many of the most common used with students
- (2) how they work
- (3) how they are used
- (4) common adverse reactions
- (5) classifications
- (6) observations
- (7) abuse
- O. Skills
- (1) hand washing
- (2) administering
- (a) oral tablets/capsules
- (b) liquids
- (c) powdered medications
- (d) ophthalmic ointments/drops
- (e) otic medications
- (f) nasal medications/dropper and atomizer
- (g) vaginal, rectal creams and suppositories
- (h) topical agents
- (i) lotion
- (ii) liniment
- (iii) ointment/cream
- (i) metered dose inhalers
- (3) crushing or mixing medications
- (a) tablets
- (b) capsules
- (c) all others
- (4) taking and recording vital signs

[16.12.8.19 NMAC - N, 1-2-04]

HISTORY 16.12.8 **NMAC:**
[RESERVED]

NEW MEXICO BOARD OF NURSING

This is an amendment to Sections 16.12.1.2, 16.12.1.8 and 16.12.1.9 NMAC, effective 01-02-04. This action amends these Sections by removing unnecessary language and adding new language due to changes in the role in accordance with the current (NMAC) New Mexico Administrative Code Requirements.

16.12.1.2 SCOPE: These rules apply to [A]all [New Mexico licensed] nurses licensed in New Mexico and all nurses not licensed in this state whose home state is not New Mexico and who wish to practice in New Mexico pursuant to a multi-state license privilege as provided in the nurse licensure compact; certified medication aides, and programs serving persons with developmental disabilities in programs that are funded by the department of health and related training programs, hemodialysis technicians and training programs, and nursing education programs. [1-1-98; 16.12.1.2 NMAC – Rn, 16 NMAC 12.1.2, 7-30-01; A, 1-2-04]

16.12.1.8 ADMINISTRATION:

A. Members of the board are appointed by the governor and are accountable to the governor for the enforcement of the Nursing Practice Act, Section 61-3-1 *et seq.*, NMSA, 1978.

(1) Rules are adopted by the board to further define the Nursing Practice Act and the functions of the board.

(a) Request for exceptions to the rules may be made, in writing to the board. All requests will be considered by the board at its next regularly scheduled meeting following receipt of the request.

(b) Board staff shall not make exceptions to the rules.

(2) A code of conduct shall be adopted by the board, and shall be reviewed annually at a regularly scheduled meeting of the board.

(3) The board shall meet at least once every three months.

(a) A meeting notice resolution, consistent with the Open Meetings Act, Section 10-15-1 *et seq.*, NMSA, 1978, shall be adopted by the board and shall be reviewed annually at a regularly scheduled board meeting.

(b) A schedule of regular meeting dates shall be approved by the board at a regular meeting prior to the beginning of the next calendar year, and shall be published in the board's fall/winter newsletter, and on the board's website.

(4) The board may appoint advisory committees consisting of at least one member who is a board member and at least two members expert in the pertinent field of health care to assist it in the performance of its duties, Section 61-3-10, M. NMSA, 1978.

(a) Exception: no current board members shall be appointed to an advisory committee for the diversion program, Section 61-3-29, B. NMSA, 1978.

(b) Members of advisory committees who fail to attend three consecutive committee meetings shall automatically be removed as a member of the committee.

(c) Advisory committee members may be reimbursed as provided in the Per Diem and Mileage Act, Section 10-8-8 NMSA, 1978 for travel to a committee meeting and/or function.

(i) Mileage may be paid when there is a total of sixty (60) miles or more traveled,

(ii) Per diem may be paid for overnight stays only upon prior approval of the executive director or assistant director.

(5) The board shall elect a chairman, vice-chairman and secretary annually. The term of office begins with the meeting subsequent to the election. Any member of the board may serve as an officer of the board.

(6) Board members shall not be involved with the administration and/or management of the board office.

(7) Board may appoint site visitors who have expertise in the pertinent field of education/health care to accompany board staff on visits to educational programs, health care institutions/facilities, etc. to assist it in the performance of its duties and responsibilities. Site visitors may be reimbursed as provided in the Per Diem and Mileage Act, Section 10-8-1 to 10-8-8 NMSA, 1978, for travel to a committee meeting and/or function.

(a) Mileage may be paid when there is a total of sixty (60) miles or more traveled, and

(b) Per diem may be paid for overnight stays only upon prior approval of the executive director or assistant director.

B. The board shall hire an executive director who is accountable to the board for the administration and management of the board office, including but not limited to the fiscal operation, records, hiring and firing of personnel. The operation of the board office shall be in accordance with the state of New Mexico statutes and rules.

(1) The executive director shall not have the power to grant, deny or withdraw approval for schools of nursing or to revoke, suspend or withhold any license

authorized by the NPA.

(2) The executive director, or designee, shall represent the board to the public.

C. Honorarium: members of the board and board staff, when speaking on behalf of the board of nursing, may accept an honorarium. The honorarium shall be made in the name of the New Mexico board of nursing and deposited in the nursing fund with the state of New Mexico.

D. Verification of license/certificate

(1) Employers and other interested persons may request verification of the status of a license/certificate.

(2) Verification of relicensure/recertification status is available [the third (3rd) working day after approval of the licensure/recertification application in the board office] immediately by phone and 24 hours on board website.

(3) ~~[All] [r] Requests for verification of licensure/certification to other boards of nursing [shall be processed weekly, and shall be sent directly to the board of nursing in question] should be submitted through the NCSBN web based system.~~

E. Reimbursement for disciplinary witnesses and experts on behalf of the state.

(1) Individuals subpoenaed as a disciplinary witness for the state may be reimbursed for mileage as provided for in the Per Diem and Mileage Act, Section 10-8-1 to 10-8-8 NMSA, 1978, when sixty (60) miles or more are traveled to a disciplinary hearing.

(2) Individuals who serve as an expert witness for the state in a disciplinary matter may be reimbursed by the board in an amount not to exceed: two hundred dollars (\$200.00) for reviewing the file, research and advisement in the matter, and three hundred dollars (\$300.00) for testifying at a disciplinary hearing.

(3) The executive director may approve additional reimbursement for the review of files and testimony of expert witnesses when such reimbursement is essential to the prosecution of the case.

F. Telephonic attendance at board meetings by board members

(1) Pursuant to the provisions of the Open Meetings Act, Section 10-15-1 C NMSA, 1978, as amended, board members may participate in a meeting of the board by means of a conference telephone or similar communications equipment.

(2) Board members participation in meeting telephonically shall constitute presence in person at the meeting. Telephonic participation may only occur when it is difficult or impossible for the person to be physically present. That is, there

are circumstances beyond the member's control which make attendance in person extremely burdensome.

(3) Each board member participating telephonically must be identified when speaking and all participants must be able to hear all other participants.

(4) Members of the public attending the meeting must be able to hear all members of the board and members of the public who speak during the meeting.

G. Use of fax: The board of nursing may accept and send facsimile of documents with the exception of ~~documents in which a fee must be included or in which an official seal is required and~~ communications related to participants of the diversion program.

[1-1-98; 16.12.1.8 NMAC – Rn & A, 16 NMAC 12.1.8, 7-30-01; A, 11-16-01; A, 1-2-04]

16.12.1.9 DISCIPLINARY ACTION:

A. Authority of board of nursing: The board may deny, revoke, or suspend any license or certificate held or applied for under the NPA, or reprimand or place a license or certificate on probation on the grounds stated in Section 61-3-28 NMSA, 1978.

B. Disciplinary philosophy: the board of nursing accepts its mandate to regulate nursing, medication aides and hemodialysis technicians for the protection of the citizens of New Mexico. In its role as a regulatory body, the board recognizes that it is responsible for conducting hearings upon charges related to violations of the Nursing Practice Act, Section 61-3-1 through 61-3-30 NMSA, 1978 and/or its rules, and to take disciplinary actions against licensees or certificate holders who violate the statute or rules. The board considers all alleged violations based on the merits of each case and the potential danger to the public. The board will consider remedial measures of corrective action rather than denial, suspension or revocation of a license or certificate except in cases where there is a real or potential danger to the public. The board will deny, suspend or revoke a license or certificate when it has evidence that the public's health, safety and welfare may be in danger. The board is responsible for promoting, preserving and protecting the public health, safety and welfare through the adoption of rules that allow licensees and certificate holders to function safely and competently within the parameters of their license/certificate. The board is also responsible for ensuring that licensees and certificate holders have access to the laws and rules governing nursing in order that they may function within the legal boundaries of the nursing practice act and

its rules.

C. Grounds for action.

(1) For purposes of Section 61-3-28 (A) (3) NMSA 1978, supra, "incompetence" is defined as follows: In performing nursing functions, whether direct patient care or the administration/management of that care, a nurse is under a legal duty to possess and to apply the knowledge, skill and care that is ordinarily possessed and exercised by other nurses of the same licensure status and required by the generally accepted standards, of the profession including those standards set forth in 16.12.2.12 NMAC of these rules. The failure to possess or to apply to a substantial degree such knowledge, skill and care constitutes incompetence for purposes of disciplinary proceedings. Charges of incompetence may be based on a single act of incompetence or on a course of conduct or series of acts or omissions, which extend over a period of time and which, taken as a whole, demonstrates incompetence. It shall not be necessary to show that actual harm resulted from the act or omission or series of acts or omissions, so long as the conduct is of such a character that harm could have resulted to the patient/client or to the public from the act or omission or series of acts or omissions.

(2) For the purpose of Section 61-3-28 (A) (6) NMSA, 1978, supra, "unprofessional conduct" includes, but is not limited to, the following:

(a) dissemination of a patient/client's health information and/or treatment plan acquired during the course of employment to individuals not entitled to such information and where such information is protected by law and/or hospital/agency policy from disclosure;

(b) falsifying or altering patient/client records or personnel records for the purpose of reflecting incorrect or incomplete information;

(c) misappropriation of money, drugs or property;

(d) obtaining or attempting to obtain any fee for patient/client services for one's self or for another through fraud, misrepresentation, or deceit;

(e) aiding, abetting, assisting or hiring an individual to violate the nursing practice act or duly promulgated rules of the board of nursing;

(f) obtaining, and/or attempting to obtain possessing, administering or furnishing prescription drugs to any person, including but not limited to one's self, except as directed by a person authorized by law to prescribe;

(g) failure to follow established procedure and documentation regarding controlled substances;

(h) failure to make or keep accu-

rate, intelligible entries in records as required by law, policy and standards for the practice of nursing;

(i) obtaining or attempting to obtain a license to practice nursing for one's self or for another through fraud, deceit, misrepresentation or any other act of dishonesty in any phase of the licensure by examination or endorsement process, or relicensure process;

(j) practicing nursing in New Mexico without a valid, current New Mexico license or permit, or aiding, abetting or assisting another to practice nursing without a valid, current New Mexico license;

(k) failure to report a nurse(s) who is suspected of violating the New Mexico Nursing Practice Act and/or rules;

(l) intentionally engaging in sexual contact with and/or toward a patient/client in a manner that is commonly recognized as outside the scope of the individual nurse's practice;

(m) ~~[Abandoning a patient(s)/client(s) when the abandonment results or may result in potential or actual harm or danger to the patient(s)/client(s).]~~ patient abandonment occurs when the nurse has accepted the patient assignment thus establishing a nurse-patient relationship and then severed the relationship/disengaged from the relationship without giving reasonable notice to a qualified person who can make arrangements for the continuation of nursing care by others; this is to be distinguished from employment abandonment, such as, but not limited to, contract issues, no call, no show; refusal to work mandatory overtime; refusal to float to unfamiliar areas, or resignation from a position; the board has no jurisdiction over employment issues;

(n) engaging in the practice of nursing when judgment or physical ability is impaired by alcohol or drugs or controlled substances;

(o) committing acts which constitute grounds for disciplinary action pursuant to Section 61-3-28 (A) (1), (2) NMSA, 1978--where the conviction arises from employment as a nurse, (3),(4)--where the intemperance, addiction, incompetence or unfitness has manifested itself during the course of employment as a nurse in a fashion which is contrary to the provision of good health care, (5)--where the mental incompetence has manifested itself during the course of employment as a nurse in a fashion which is contrary to the provisions of good health care, and (7);

(p) failure to follow state and federal laws, policies and procedures for the prescription and distribution of dangerous drugs including controlled substances;

(q) practice which is beyond the

scope of licensure;

(r) delegation of medication administration, evaluation and nursing judgment to non-licensed persons;

(s) verbally and/or physically abusing a patient/client;

(t) failure to maintain appropriate professional boundaries which may cause harm to the patient.

D. Grounds for disciplinary action against hemodialysis technicians and medication aides listed under 16.12.4.11 NMAC and 16.12.5.11 NMAC.

E. Parental Responsibility Act Compliance: This subsection is adopted pursuant to the Parental Responsibility Act, Section 40-5A-1 through 40-5A-13, NMSA, 1978.

(1) All terms defined in the Parental Responsibility Act shall have the same meanings in this subsection.

(a) "HSD" means the New Mexico human services department.

(b) "Statement of compliance" means a certified statement from HSD stating that an applicant or licensee/certificate holder is in compliance with the judgment and order for support.

(c) "Statement of non-compliance" means a certified statement from HSD stating that an applicant or licensee/certificate holder is not in compliance with a judgment and order for support.

(2) If an applicant or licensee/certificate holder is not in compliance with a judgment and order for support, the board:

(a) shall deny an application for a license/certificate;

(b) shall deny the renewal of a license/certificate; and

(c) has grounds for suspension or revocation of the license/certificate.

(3) Upon receipt of HSD's certified list of obligors not in compliance with a judgment and order for support; the board shall match the applicant against the current certified list of board licensees/certificate holders and applicants.

(a) Upon the later receipt of an application for licensure, certification or renewal, the board shall match the applicant against the current certified list.

(b) By the end of the month in which the certified list is received, the board shall report to HSD the names of board applicants and licensees/certificate holders who are on the certified list and the action the board has taken in connection with such applicants and licensees/certificate holders.

(4) Upon determination that an applicant or licensee/certificate holder appears on the certified list, the board shall issue a notice of contemplated action (NCA) in accordance with the Uniform Licensing Act, Section 61-1-1, *et seq.*, NMSA, 1978, to take the appropriate

action.

(a) The NCA shall state that the board has grounds to take such action unless the licensee/certificate holder or applicant:

(i) mails a letter (certified mail return receipt requested) within twenty (20) days of receipt of the notice of contemplated action requesting a hearing; and

(ii) provides the board, prior to the scheduled hearing date, with a statement of compliance from HSD.

(b) If the applicant or licensee/certificate holder disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or licensee/certificate holder should contact the HSD child support enforcement division.

(5) In any hearing under this subsection, relevant evidence is limited to the following:

(a) a statement of non-compliance is conclusive evidence that requires the board to take the appropriate action under Paragraph (2) of Subsection E of 16.12.1.9 NMAC, unless;

(b) the applicant or licensee/certificate holder provides the board with a subsequent statement of compliance which shall preclude the board from taking any action under this subsection.

(6) When disciplinary action is taken under this subsection solely because the applicant or licensee/certificate holder is not in compliance with a judgment and order for support, the order shall state that the applicant or licensee/certificate holder shall be reinstated upon presentation of a subsequent statement of compliance. Reinstatement following board action under this subsection shall require the licensee or certificate holder to meet the requirements for reinstatement and payment of the appropriate reinstatement fee.

F. Disciplinary proceedings: are conducted in accordance with the Uniform Licensing Act, Section 61-1-1 *et seq.*, NMSA, 1978 and Open Meetings Act, Section 10-15-1 *et seq.*, NMSA, 1978.

(1) Filing of a complaint.

(a) A written complaint must be filed with the board of nursing before a disciplinary proceeding can be initiated.

(i) A complaint is an allegation of a wrongful act(s) or an omission(s).

(ii) A complaint may include knowledge of a judgment or settlement against a licensee.

(b) A written complaint may be filed by any person, including a member of the board.

(c) A nurse who suspects that a nurse or certificate holder has violated any provision of the Nursing Practice Act and/or rules of the board must file a written com-

plaint with the board of nursing; except when the nurse or certificate holder suspected of violating the Nursing Practice Act and/or rules of the board is a patient and patient confidentiality is involved.

(2) Investigation of a complaint.

(a) Complaints alleging a violation of the Nursing Practice Act and/or rules adopted by the board may be investigated to determine whether a violation of applicable law or rule has occurred.

(b) The investigation may result in one following inter alia.

(i) A board motion to issue a notice of contemplated action (NCA) if a violation exists; or

(ii) A board motion to dismiss the complaint because no violations exists.

(3) Notice of contemplated action.

(a) The NCA shall be drafted by the administrative prosecuting attorney.

(b) The executive director of the board, or an assistant director in the director's absence, shall sign all NCAs on behalf of the board.

(c) NCAs are served on the licensee or certificate holder in accordance with the ULA.

(4) Request for a hearing, notice of hearing, and request for continuance.

(a) Notice of hearing, designating the date, time and place of the hearing, shall be mailed to the licensee or certificate holder via certified mail upon receipt of a written request for a hearing.

(b) The licensee or certificate holder may request to explore a settlement by negotiating a stipulation and agreement with the administrative prosecuting attorney at any time prior to the hearing.

(i) If a settlement is negotiated, the proposed stipulation and agreement shall be presented to the board for final approval.

(ii) The proposed stipulation and agreement does not divest the board of its authority to require a formal hearing or final approval, amendment, or rejection.

(iii) If a settlement is not reached, a hearing shall be held.

(c) Once a hearing has been scheduled, a request for a continuance must be presented, along with evidence to support the request to the board, in writing, at least ten (10) days prior to the scheduled hearing. The board may approve or deny the request.

(i) A motion to continue the hearing must contain an affirmative statement that the licensee or applicant waives his or her right to a hearing held not more than sixty (60) days from the date of service of the notice of hearing.

(ii) One continuance may be granted in each case if proof is submitted to verify good cause such as illness, availability of new evidence or unavailability of the licensee or licensee's attorney. The board may approve or deny the request.

(d) If a person fails to appear before the board after requesting a hearing, the board may proceed to consider the matter as a default and make a decision.

(e) If no request for a hearing is made within the time and manner required by the ULA, the board may take the action contemplated in the NCA at its next regularly scheduled meeting. Such action shall be final and is not subject to judicial review.

(5) Administrative hearing.

(a) All hearings shall be conducted by the board or, at the direction of the board by a hearing officer. The hearing officer shall have authority to rule on all motions. If the board does not appoint a hearing officer or if the hearing officer is unavailable or unable to proceed, the board chair or other board member designated by the board shall have the authority to decide pre-hearing or preliminary matters on behalf of the board. This authority shall be in accordance with the requirements of the case in a manner that ensures an efficient and orderly hearing and expedites the final resolution of the case.

(b) All hearings before the board shall be conducted in the same manner as a hearing in a court of law with the exception that the rules of evidence may be relaxed in the board hearing.

(i) Hearsay evidence is admissible if it is of a kind commonly relied upon by reasonable prudent people in the conduct of serious affairs.

(ii) Disciplinary action against a nursing license or certificate holder must not be based solely on hearsay evidence.

(c) The board may take testimony, examine witnesses and direct a continuance of any case.

(d) The board may hold closed, or open, deliberations before or during a hearing for the settlement or simplification of issues with the consent of the person whose license or certificate is involved.

(e) The executive director, or in the director's absence, an assistant director or designee shall have the power to issue subpoenas to compel the attendance of witnesses or the production of books, documents or records pertinent to the matter of a case before the board.

G. Decision of the board.

(1) The decision must be rendered by the board at a public meeting where a quorum of the members are present and participating in the decision.

(2) A copy of the written decision

shall be mailed via certified mail to the applicant/licensee or certificate holder in accordance with the Uniform Licensing Act, Section 61-1-14 NMSA, 1978.

H. Request/motion to reopen disciplinary proceedings: An applicant who has been denied a license or certificate in New Mexico or a licensee or certificate holder who has had disciplinary action taken by the board and who wishes to have the case reopened must submit a written request/motion to reopen their case prior to filing a petition for review with the district court.

(1) The board shall be polled to consider whether to grant or refuse the applicant/licensee or certificate holder request/motion to reopen the case, Uniform Licensing Act 61-1-21 and Open Meetings Act 10-15-1-E NMSA, 1978. (1990 supplement)

(2) The board's decision to grant or refuse the request/motion to reopen the case shall be made, signed by the executive director or an assistant director in the director's absence, and sent to the applicant/licensee or certificate holder within fifteen (15) days after receipt of the request/motion. The administrative prosecuting attorney shall be apprised of any decision of the board to reopen a case and shall be given an opportunity to respond to the motion.

(3) The formal hearing of the case shall be scheduled for the board's next regularly scheduled meeting. A notice of hearing shall be mailed, by certified mail, to the applicant/licensee or certificate holder within fifteen (15) days after service of the decision to grant the request/motion to reopen.

(4) The decision to grant or refuse the reopening of a case shall be in the discretion of the board, and the decision shall not be reviewable except for an abuse of discretion.

I. Public notification of disciplinary action: The disciplinary action of the board shall be made public in accordance with the Open Meetings Act, Section 10-15-1 *et seq.*, NMSA, 1978 by the following means:

(1) Information regarding disciplinary action shall be coded in computer, license and/or certificate file.

(2) Submission of disciplinary action to the *national council of state board's disciplinary data bank/national practitioner data bank* (NPDB).

(3) Publication of the disciplinary action in the board's newsletter and on the board's website.

J. Reinstatement of license or certificate

(1) Individuals who request reinstatement of their license or certificate or who request that their probation be lifted

must be prepared to provide the board with evidence to support their request. This evidence may be in the form of written reports or verbal testimony from individuals who have knowledge of the licensee's or certificate holder's activities and progress during the period of probation, suspension or revocation.

(2) Requests for reinstatement of a revoked license or certificate shall not be considered by the board prior to the expiration of one year from the date of the order of revocation, unless provided for in the order of revocation. The date at which time the board chairman's signature is affixed to the order of revocation or suspension is the controlling date, unless otherwise specified in the order.

(3) Requests for reinstatement of a suspended license or certificate shall be considered at such time as provided by the board in the order of suspension.

(4) Reinstatement of a revoked or suspended license requires proof of meeting the renewal requirements as set forth in these rules adopted by the board, and payment of the reinstatement of current or lapsed license fee.

K. Complaints regarding firms, associations, institutions and corporations violating the Nursing Practice Act.

(1) The board of nursing shall accept and determine the disposition of written complaints regarding firms, associations, institutions and corporations violating the Nursing Practice Act, causing the violation of the Nursing Practice Act, or asking employees to violate the Nursing Practice Act by policy or directive.

(2) The agency shall be given the opportunity to respond in writing to the allegations in the complaint.

(3) If the board of nursing determines a violation of the Nursing Practice Act has occurred, the board of nursing shall identify and refer the complainant in writing to the appropriate authority for prosecution with a request to be kept apprised of the disposition of the case.

(4) If it is determined by the board of nursing that a violation of Section 61-3-30 A-H, NMSA, 1978 of the Nursing Practice Act has occurred, the board of nursing shall inform the agency to whom the complaint is referred of the requirements set out in Section 61-3-30 NMSA, 1978 of the Nursing Practice Act.

(5) The board shall keep a record of the number of complaints received and the disposition of said complaints.

[1-1-98, 2-26-99; 16.12.1.9 NMAC – Rn & A, 16 NMAC 12.1.9, 7-30-01; A, 11-16-01; A, 1-2-04]

NEW MEXICO BOARD OF NURSING

This is an amendment to Sections 16.12.2.2, 16.12.2.7, 16.12.2.9, 16.12.2.10, 16.12.2.11, 16.12.2.12, 16.12.2.13, 16.12.2.14 and 16.12.2.15 NMAC, effective 1-2-04. This action amends these Sections by removing unnecessary language and adding new language due to changes in the role in accordance with the current (NMAC) New Mexico Administrative Code Requirements.

16.12.2.2 SCOPE: This rule applies to all ~~licensed~~ nurses licensed in New Mexico and all nurses not licensed in this state whose home state is not New Mexico and who wish to practice in New Mexico pursuant to a multi-state license privilege as provided in the nurse licensure compact.

[1-1-98; 16.12.2.2 NMAC – Rn, 16 NMAC 12.2.2, 7-30-01; A, 1-2-04]

16.12.2.7 DEFINITIONS:

A. Definitions beginning with the letter A:

(1) **“actually engaged in nursing”**, employed, engaged, or holding a position which requires licensure or in which the maintenance of licensure as a nurse is expected;

(2) **“administration of medications”**, a process whereby a prescribed drug or biological agent is given to a patient/client by a person licensed to administer medications; the administration of medications is a procedure which requires a knowledge of anatomy, physiology, pathophysiology and pharmacology; when administering a medication, the licensed person is required to assess the patient/client’s health status and disease process before and after the administration of the medication and to evaluate the patient/client’s response to the drug or biological agent;

(3) **“affidavit”**, a sworn written statement made to affirm a statement of fact;

(4) **“approval”**, the review and acceptance of a specific activity;

(5) **“approval agency”**, agency, institution or organization with the authorization to award CE credit;

(6) **“approved equivalent”**, a program reviewed and accepted by the board of nursing as meeting necessary regulatory/statutory requirements;

(7) **“assessment”**, the review and interpretation by a licensed individual of specific data necessary to determine the patient/client’s care and treatment needs. (Also see data collection);

(8) **“assignment of nursing activity”**, ~~[assignment involves making a lateral shift of nursing care responsibilities by one licensed nurse to another licensed nurse who has the same level of responsibility and accountability, and similar knowledge and skills.]~~ assignment of nursing activity involves appointing or designating another licensed nurse the responsibility and accountability for the performance of nursing intervention;

(9) **“assisting an individual to take a medication”**, implies that the individual is responsible for his own care or parent/legal guardian/surrogate can determine if the individual is receiving the expected response from the medication; the definition for administration of medications by licensed persons as defined above should not be confused with assisting an individual to take a medication;

(10) **“audit”**, an examination and verification of CE and practice documents.

B. Definitions beginning with the letter B:

(1) **“basic nursing education”**, the scholastic route to initial licensure;

(2) **“board”**, the New Mexico board of nursing;

C. Definitions beginning with the letter C:

(1) **“certificate”**, a legal document granting permission to an unlicensed person to perform specific functions generally considered the practice of nursing under the direction of a licensed nurse;

(2) **“collaboration”**, practice in conjunction with another health professional;

(3) **“competency”**, competency in nursing is the ability to perform skillfully and proficiently the role of the licensee; the role encompasses essential knowledge, judgment, attitudes, values, skills and abilities, which are varied in range and complexity; competency is a dynamic concept and is based on educational training, preparation, and expertise;

(4) **“consultation”**, to communicate regularly to set goals and objectives and to review and document outcomes;

(5) **“contact hours”**, a unit of measurement to describe an approved, organized learning experience;

(6) **“continuing education”**, planned learning experiences beyond a basic nursing education program; these experiences are designed to promote the development of knowledge, skills and attitudes for the enhancement of nursing practice, thus improving health care to the public;

(7) **“continuing education unit (CEU)”**, ten contact hours of participation in an organized CE experience under responsible sponsorship, capable direction,

and qualified instruction.

D. Definitions beginning with the letter D:

(1) **“data collection”**, the process of obtaining uninterrupted information, material, fact and/or clinical observations which will be used in the assessment process; data collection is not limited to licensed individuals;

(2) **“delegation of nursing activity”**, delegation involves authorizing and supervising licensed and unlicensed persons in the performance of specific tasks that are within the scope of nursing practice;

(3) **“department of public safety”**, the New Mexico department of public safety or other state’s department of public safety;

(4) **“direct supervision for graduate permit holders”**, at a minimum, the person responsible for the direct supervision must be in the facility or on the unit with the graduate permit holder observing, directing and evaluating the performance of the permit holder; the supervisor must not be engaged in other activities that would prevent them from providing direct supervision.

E. Definitions beginning with the letter E:

(1) **“educational institution”**, refers to an institution within the educational system which is organized and accredited for teaching and study (university, high school, post-secondary, approved area vocational institution);

(2) **“eligible for graduation”**, individual who has met all the requirements of an educational program.

F. **“Final transcript”**, an official record of course work and grades, issued by a school, which indicates date of program completion and certificate or degree awarded.

G. **“Generally recognized organization”**, an association of nurses with common goals and concerns expressed through structured by laws. Rules and regulations, and whose recognition derives from both the profession and the public.

H. Definitions H - Reserved

I. Definitions beginning with the letter I:

(1) **“inactive list”**, compilation of those licenses that are in good standing but not current;

[+](2) **“initial license”**, the process of achieving the legal privilege to practice within a professional category upon the completion of all educational requirements and the successful writing of the national licensing examination;

[2](3) **“institution of higher education”**, college or university.

J. **“Jurisdiction”**, the

licensure or regulatory authoritative body for nursing within a specific geographic area for which there is endorsement in New Mexico.

K. Definitions **K - Reserved**

L. Definitions beginning with the letter L:

(1) **“lapsed status”**, a license which was not renewed by the expiration date on the license;

(2) **“legal guardian”**, a person lawfully invested with the power, and charged with the duty, of taking care of the person and managing the property and rights of another person who is considered incapable of administering his own affairs;

(3) **“letter of authorization”**, a document issued by the board which authorizes an individual to practice nursing in New Mexico under the auspices of an approved preceptorship for an advanced nursing expanded scope of practice ~~[or] prescriptive authority or for an advanced practice nurse from a compact state;~~

(4) **“license”**, a legal document granting an individual the privilege and authority to engage in the practice of an occupation/profession;

(5) **“licensure by endorsement”**, the process of achieving the legal privilege to practice within a professional category, in New Mexico, by individuals licensed in other jurisdictions, upon fulfilling all requirements set by this state.

~~[(6) **“limited license”**: a document issued by the board which authorizes an individual to practice nursing in NM under the auspices of an approved refresher course.]~~

M. Definitions beginning with the letter M:

(1) **“medical emergency”**, a situation resulting from a disaster in which the number of persons requiring nursing care exceeds the availability of New Mexico registered nurses and/or licensed practical nurses;

(2) **“monitoring system”**, a mechanism whereby programs may be approved for CE hours within a geographic area;

(3) **“must”**, a requirement.

N. Definitions beginning with the letter N:

(1) **“national licensing examination”**, examination for licensure as provided by the national council of state boards of nursing, inc.;

(2) **“nationwide criminal history record”**, information concerning a person’s arrests, indictments or other formal criminal charges and any dispositions arising there from, 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 systems, the department of public safety or the repositories of criminal history information of other states;

(3) **“nationwide criminal history screening”**, a criminal history background investigation of an applicant for licensure by examination or endorsement 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.

O. Definitions **O - Reserved**

P. Definitions beginning with the letter P:

~~[(1) **“passport photograph”**: recent commercial photograph, approximately 2x2 inches only.]~~

~~[(2)](1) **“permit-to-practice for GCNSs”**, a document conferring the privilege to practice as a graduate clinical nurse specialist, at a specific place of employment, under the direct supervision of a licensed CNS, CNP or physician; such permits will carry set expiration dates, are not renewable and are not transferable;~~

~~[(3)](2) **“permit-to-practice for GNs and GPNs”**, a document conferring the privilege to practice nursing at a specific place of employment, under direct supervision of a RN only. Such permits will carry set expiration dates, are not renewable or transferable;~~

~~[(4)](3) **“permit-to-practice for GNPs”**, a document conferring the privilege to practice as a graduate nurse practitioner, at a specific place of employment, under the direct supervision of a physician or a certified nurse practitioner; direct supervision of a physician, licensed CNP or CNS is required for prescription writing; such permit will carry set expiration dates, are not renewable and are not transferable;~~

~~[(5)](4) **“permit-to-practice for GRNAs”**, a document conferring the privilege to administer anesthesia to any person, as a GRNA, at a specific place of employment, functioning in an interdependent role under the direction of and in collaboration with a licensed physician, osteopathic physician, dentist or podiatrist licensed in New Mexico; such permits will carry set expiration dates, and are not renewable or transferable;~~

~~[(6)](5) **“post-graduate program”**, any specialized knowledge and/or skills sought after completion of a basic nursing educational program which does not necessarily lead to an advanced degree;~~

~~[(7)](6) **“private practice”**, employment status of an individual nurse who is self-employed.~~

Q. Definitions **Q - Reserved**

R. Definitions beginning with the letter R:

(1) **“reactivation”**, the process of making current a license which has been in abeyance as a result of failure to comply with the necessary renewal requirements; this process does not involve board action at any juncture;

(2) **“recognized national or state institutions/organizations”**, institutions and organizations recognized as providers of CE for nurses;

~~[(3)] **“refresher course”**: an organized and board approved program of CE providing review and updating of nursing theory and practice.]~~

~~[(4)](3) **“reinstatement”**, the process whereby a license which has been subject to revocation or suspension, is returned to its former status by individual board action; this process always involves board action, and requires filing of a form and payment of the reinstatement fee;~~

~~[(5)](4) **“ relicensure”**, the process of renewal, reactivation or reinstatement of a New Mexico nursing license.~~

S. Definitions beginning with the letter S:

(1) **“state approved program”**, a basic nursing education program approved or accredited by a state board of nursing and/or a nationally recognized nursing education accreditation body;

(2) **“shall”**, mandatory; a requirement;

(3) **“should”**, a suggestion or recommendation; not a requirement;

(4) **“sponsor/provider”**, any person, organization, agency, or institution which organizes, develops, implements, and evaluates a CE activity;

(5) **“supervision/direction”**, initial verification of a person’s knowledge and skills in the performance of a specific function and/or activity followed by periodic observation, direction and evaluation of that person’s knowledge and skills as related to the specific functions and/or activity;

(6) **“surrogate”**, an individual, other than a patient’s agent or guardian, authorized under the uniform health-care decisions act to make a health-care decision for the patient.

T. “Temporary license”, a nonrenewable, nontransferable document indicating a legal privilege to practice as a RN, LPN, CNP, CNS, or CRNA, on a conditional basis for a specific period of time.

U. “Uniform licensing act”, New Mexico statute which provides procedures to be utilized in disciplinary proceedings.

[1-1-98; 16.12.2.7 NMAC – Rn & A, 16 NMAC 12.2.7, 7-30-01; A, 12-31-01; A, 1-

2-04]

16.12.2.9 FEES: Payment of fees will be accepted ~~[ONLY]~~ in the form ~~[of a U.S. money order, cashier's check, credit card, or cash (in the exact amount)]~~ specified by the board. Fees are not refundable.

A.	Licensure by examination.....	\$ 90 110
B.	Reexamination fee (RN).....	\$ 45 55
C.	Reexamination fee (LPN).....	\$30
D.	Licensure by endorsement (RN).....	\$ 90 110
E.	Licensure by endorsement (LPN).....	\$90
[E] E.	Renewal.....	\$ 60 93
[F] G.	Reactivation from lapsed status (includes renewal fee).....	\$ 90 110
[G] H.	Reinstatement of lapsed license following board action.....	\$150
[H] L.	Reinstatement of current license following board action.....	\$100
[I] J.	Duplicate license (written request required).....	\$ 45 20
[J] K.	Initial nurse practitioner authorization.....	\$50
[K] L.	Initial certified RN anesthetist licensure.....	\$50
[L] M.	Initial clinical nurse specialist.....	\$50
[M] N.	Reactivation of special-ty portion of license.....	\$ 25 50
O.	<u>I n a c t i v e Status</u>	\$10
P.	<u>T e m p o r a r y license</u>	\$30
Q.	<u>E v a l u a t i o n of non US Graduate</u>	\$50

[1-1-98; 16.12.2.9 NMAC - Rn & A, 16 NMAC 12.2.9, 7-30-01; A, 1-2-04]

16.12.2.10 L I C E N S U R E

REQUIREMENTS FOR REGISTERED AND PRACTICAL NURSES: Licensure with the New Mexico board of nursing is mandatory and is the responsibility of the individual nurse, pursuant to the nursing practice act. For states who are a part of the nurse licensure compact, licensure in New Mexico can only be issued to applicants who declare New Mexico as their primary state of residence.

A. Prerequisites for licensure of RNs and LPNs by examination in New Mexico.

(1) Completion of and eligible for graduation from a board approved course of study for the preparation of registered nurses or practical nurses, or an acceptable level of education as determined by the board or graduation from a program which is equivalent to an approved program of nursing in the United States.

(a) RN and PN graduates from non-U.S. nursing programs ~~[must have an evaluation of their nursing education credentials sent to the NM board of nursing directly from a board recognized educational credentialing agency].~~

(i) may have an evaluation of their nursing education credentials sent to the New Mexico board directly from a board recognized educational credentialing agency; or

(ii) may request an official transcript sent to the New Mexico board directly from the non- US nursing program; if the transcript is not in English, a copy of a translated transcript certified by a qualified translator must be sent directly to the New Mexico board.

(b) RN applicants educated in non-U.S. nursing programs may submit a copy, certified by a notary, of the commission of graduates of foreign nursing school's (CGFNS) examination certificate in lieu of an evaluation of their educational credentials; Puerto Rico applicants who are graduates of NLNAC accredited registered nurse programs are eligible to sit the NCLEX-RN.

(2) Completion of the required board of nursing application for licensure by examination according to instructions and including the required fee. ~~[and passport photograph.]~~

(3) Completion of NCLEX application for the testing service according to instructions.

B. Nationwide criminal background check. Applicants for initial licensure in New Mexico are subject to a state and national criminal background check at their cost.

~~[(1)] [Furnish directly to the board, two full sets of fingerprints on fingerprint cards issued by the board.]~~

~~[(2)] [Complete and sign a release~~

~~of information on the authorization for criminal background check application.]~~

~~[(3)] [Submit the required fee.]~~

~~[(4)](1) Submit two (2) full sets of fingerprints, completed Finger Print Certificate Form, signed authorization for criminal background check and fee.~~

~~(2) Applications for exam or endorsement will not be processed without submission of fingerprints, Finger Print Certificate Form, Authorization for Criminal Background Check form and fee.~~

~~[(5) The board must receive results of the criminal background check prior to issuance of the license.]~~

~~[(6)](3) If the criminal background check reveals a felony or violation of the Nursing Practice Act, the applicant/licensee will be notified to submit copies of legal documents and other related information to the board who will make the determination if the applicant is eligible for licensure or if disciplinary action will be taken.~~

C. Complete application for licensure by examination, certification of eligibility for graduation or official transcript and fee must be received by the board office prior to being granted permission to take the national licensing examination (NCLEX). Certification of eligibility for graduation or official transcript, indicating date requirements for graduation from the nursing program were met and certificate or degree awarded or to be awarded, must be received in the board office directly from the registrar's office.

D. Results of the examination shall be reported, by mail, to the individual applicant within four (4) weeks following the applicant's examination date. Examination results shall be released to the applicant's nursing program, and boards of nursing unless otherwise instructed, in writing, by applicant.

E. An initial license shall be valid for two (2) years.

F. Applications containing fraudulent or misrepresented information could be the basis for denial or revocation of licensure.

G. If the licensure process is not completed, the application becomes null and void one (1) year after date of last noted activity.

H. Permits-to-practice may be issued for employment at a specific institution(s) in New Mexico. Permits ~~[are]~~ can be faxed or mailed directly to the New Mexico employing institution(s).

(1) To be eligible for a permit-to-practice, the applicant must:

(a) complete the application process to take the NCLEX within twelve (12) weeks of graduation; the permit to practice for RN and PN graduates of U.S.

schools may be issued for a period not to exceed ~~[twenty-four (24) weeks]~~ six months from the date of application; permits to practice may not be issued by New Mexico for employment at specific institution(s) in compact states; permits to practice will not be issued for applicants who declare residency in other compact states;

(b) RN and PN graduates from non-U.S. nursing programs may be issued a permit to practice in New Mexico for a period not to exceed ~~[twenty-four (24) weeks]~~ six months from the date of application;

(c) assure that prospective New Mexico employer(s) submit a letter of intent to employ to the board office, on agency letterhead, indicating the name of a specific New Mexico employer and name and nursing license number of the RN who is responsible for assuring direct supervision by a registered nurse;

(d) submit fingerprint cards and documents and fee to initiate a state and national criminal background check.

(2) Permits-to-practice cannot be transferred or renewed.

(3) Written notification from employer must be made to the board office in case of lost or stolen permit-to-practice.

(4) Permits-to-practice shall be valid until the examination results are disseminated but shall not exceed the expiration date on the permit.

~~[(a)]~~ Candidates who successfully complete the National Licensure Examination will not receive the results until the board has received the report on the state and national criminal background check.]

~~[(b)]~~ (5) Candidates who were not successful on the national licensure examination will receive the results as soon as they are available.

~~[(5)]~~ (6) Applicants who hold a graduate permit and do not become licensed prior to expiration date of the permit, may not continue to practice as a graduate nurse or graduate practical nurse.

I. Applicants who fail the examination may apply to retake the examination a maximum of ~~[four (4)]~~ eight (8) times per year, but must wait ~~[ninety-one (91)]~~ forty-five (45) days to retest.

(1) A fee will be charged by the board for all reexaminations.

(2) Applicants for reexamination must meet all NCLEX requirements for retaking the examination.

J. National council licensure examination.

(1) Applicants for licensure as RNs shall be required to pass the NCLEX for RNs.

(2) Applicants for licensure as PNs shall be required to pass the NCLEX for PNs.

(3) Applicants observed giving and/or receiving unauthorized assistance during the taking of the national licensing examination shall be referred to the board by a sworn complaint.

K. Prerequisites for licensure of registered nurses and licensed practical nurses by endorsement.

(1) Verification DIRECTLY from the licensing authority which shall include:

(a) graduation from an approved nursing program or an acceptable level of education as determined by the board or a nursing program which is equivalent to an approved program of nursing in the United States; and

(b) initial licensure by passing a national licensure examination in English or a state constructed licensure examination prior to October 1986.

(2) Applicants from licensing authorities which do not verify graduation from a nursing education program, must assure that a final transcript is sent to the board of nursing DIRECTLY from the educational institution or custodian of records verifying graduation from an approved nursing program or equivalent, or

(3) RN and PN graduates from non-U.S. nursing programs: ~~[must request an evaluation of their nursing education credentials be sent to the NM board of nursing DIRECTLY from a board recognized educational credentialing agency. RN and PN graduates in non-U.S. nursing programs may submit a copy, certified by a notary, of the commission on graduates of foreign nursing schools' (CGFNS) examination certificate in lieu of an evaluation of the educational credentials.]~~

(a) may have an evaluation of their nursing education credentials sent to the New Mexico board directly from a board recognized educational credentialing agency or;

(b) may request an official transcript sent to the New Mexico board directly from the non- US nursing program. If the transcript is not in English, a copy of a translated transcript certified by a qualified translator must be sent directly to the New Mexico board.

(4) RN applicants educated in non-U.S. nursing programs may submit a copy, certified by a notary, of the commission of graduates of foreign nursing school's (CGFNS) examination certificate in lieu of an evaluation of their educational credentials. Puerto Rico applicants who are graduates of NLNAC accredited registered nurse programs are eligible to sit the NCLEX-RN.

(5) Canadian educated RN and LPN applicants who took the canadian licensing exam (CNATS) in English subsequent to 1970 are eligible for endorsement.

(6) Non-Canadian educated applicants who took the Canadian licensing exam (CNATS) in English must submit an official transcript sent directly from their nursing program or the Canadian board to determine if they met requirements of the New Mexico board. If the transcript is not in English, a copy of a translated transcript certified by a qualified translator must be sent directly to the New Mexico board.

~~[(4)]~~ (7) Complete and submit the required application for licensure by endorsement in accordance with all instructions, including the required fee ~~[and passport photograph.]~~

~~[(5)]~~ (8) Complete and submit two full sets of fingerprints, Finger Print Certificate Form, the authorization for criminal background check, and the fee in accordance with all instructions found in Subsection B of 16.12.1.10 NMAC.

L. Qualifications for licensure as a RN or PN are pursuant to the nursing practice act.

(1) LPN applicants initially licensed after July 1, 1969 must meet the educational requirements.

(2) Military personnel, licensed as LPNs by successful writing of the national licensing examination prior to July 1, 1977, may be licensed in New Mexico by endorsement providing their DD-214 shows the related civilian occupation to be "LPN."

~~[(3)]~~ [Applicants for endorsement into NM, must meet one of the following requirements: (a) have received initial licensure by successfully writing the national licensing examination within the immediate past two (2) years, or (b) have been engaged in nursing a minimum of 400 hours within the immediate past two (2) years.

~~Applicants who have not met the work requirements MUST complete a board-approved refresher course or its equivalent as determined by the board. (Refer to subsection F of 16.12.2.11 NMAC).]~~

(4) (3) Continuing education is not required for initial licensure by endorsement. CE requirements must be met at the time of the first renewal.

(5) (4) Disciplinary action taken or pending against a nursing license in another jurisdiction, or a conviction of a felony, may result in denial of a license.

M. A permit-to-practice may be issued ~~[, by mail only]~~ to a New Mexico employer(s), for an endorsee who has not declared primary residence in a nurse licensure compact state awaiting results of the national licensing examination or the English equivalent from another country. The following must be submitted to the board:

(1) a completed endorsement application and fee;

(2) two full sets of fingerprints,

~~fingerprint certification form, the authorization for criminal background check and fee;~~

~~[(4)](3) written verification must be received DIRECTLY from the licensing authority: (a) that the applicant applied for the licensing examination within twelve (12) weeks of graduation and is eligible for licensure, or (b) that the first licensing examination after completion of nursing education has been applied for or taken;~~

~~[(2)](4) assure prospective New Mexico employer(s) submits a letter of intent to employ, on agency letterhead, indicating the name of the specific New Mexico employing institution and name and nursing license number of the RN who is responsible for assuring direct supervision by a registered nurse;~~

~~[(3)](5) meeting all other endorsement requirements;~~

~~[(4)](6) a permit-to-practice shall be valid from date of issuance until the applicant's examination results and licensure status have been verified by the other state or country, but shall not exceed twenty-four (24) weeks from the date of graduation.~~

N. A temporary license may be issued to an endorsee upon submission of: ~~[notary certified copy of a current, valid nursing license, or an affidavit of current licensure, or the license verified on the other board's website which meets the following criteria: (a) verification of current licensure with an expiration date of not less than thirty one (31) days and no stipulations or restrictions, (b) name of issuing jurisdiction, and (c) category of licensure and license number.]~~

~~(1) a completed endorsement application and required fee;~~

~~(2) two full sets of fingerprints, fingerprint certificate form, the authorization for criminal background check and fee;~~

~~[O:] [A letter, on agency letterhead verifying intent to employ, must be received from each NM employer verifying intent to employ.]~~

~~[(1)] Verbal verification of intent to employ, must be followed by a written verification.]~~

~~[(2)] The name of employing institution shall be indicated on the temporary verification.]~~

~~(3) the board will [mail] issue the temporary license to the [employing agency] applicant;~~

~~(4) a temporary license is valid for a period not to exceed six (6) months from the date of application, is non renewable and becomes null and void upon issuance of a current license, expiration, or withdrawal by board action;~~

~~[(5)] [A temporary license is not renewable and becomes null and void upon issuance of a current license, expiration, or~~

~~withdrawal by board action.]~~

~~[(6)](5) applicant is responsible for assuring that all requirements have been met and all documents have been received prior to the expiration date of the temporary license;~~

~~[(7)](6) the discovery of inaccurate or false information, on the licensure application, may be subject to recall of the temporary license by the board and denial of licensure.~~

~~[P:]O. An initial license shall be valid for two (2) years.~~

~~[Q:]P. If the licensure process is not completed, the application becomes null and void one (1) year after date of last noted activity.~~

~~[R:]O. In case of a medical emergency (as defined in these rules), nurses currently licensed to practice as a RN or LPN in a jurisdiction of the United States may practice in New Mexico without making application for a New Mexico license for a period not to exceed thirty (30) days.~~

~~[S:]R. Requirements for relicensure. Applicants for relicensure must meet CE [and work] requirements as stated in these rules, pursuant to the nursing practice act [Section 61-3-24 NMSA 1978].~~

~~(1) Licensed nurses shall be required to complete the renewal process by the end of their renewal month every two (2) years. [Nurses whose renewal month is their birth month shall continue to renew during their birth month unless the renewal process is completed after the last day of their birth month.]~~

~~(2) A renewal application form shall be mailed to the licensee at least six (6) weeks prior to the end of the renewal month.~~

~~(a) The renewal application form may be accepted no more than sixty (60) days prior to the expiration date of the license.~~

~~(b) Failure to receive the application for renewal shall not relieve the licensee of the responsibility of renewing the license by the expiration date.~~

~~(c) If the license is not renewed by the end of the renewal month, licensee does not hold a valid license and shall not practice nursing in New Mexico until the lapsed licensed has been reactivated.~~

~~(d) Exception: if renewing nurses who are mobilized for active duty are not required to renew their license while on active duty, other than training, during a military action. A copy of the mobilization orders must be submitted to the board office prior to expiration of the license. The license extension shall end one month after deployment is concluded. No reactivation fee will be charged when the license is renewed.~~

~~(3) Thirty (30) hours of approved~~

CE must be accrued within the 24 months immediately preceding expiration of license.

(a) Certified nurse practitioners must complete a total of 50 hours of approved CE each renewal.

(b) Certified RN anesthetists must submit a copy of the recertification card issued by AANA council on recertification for renewal of the CRNA license.

(c) Clinical nurse specialist must complete a total of 50 hours of approved continuing education each renewal.

(d) Exception: if renewing, nurses mobilized for military action are not required to meet the CE requirements while on active duty, ~~[in a combat zone] other than training~~, during a military action. A copy of the mobilization order must be submitted along with the renewal application.

~~[(4)] [In order to meet the work requirements for relicensure of a RN or LPN license, the applicant must:]~~

~~[(a)] [have been engaged in nursing a minimum of 400 hours during the immediate past two (2) years preceding relicensure, or]~~

~~[(b)] [have received initial licensure by successfully taking the national licensing examination within the immediate past two (2) years, or]~~

~~[(c)] [have completed a board-approved refresher course or equivalent, which will meet: (1) the continuing education requirements for the renewal period in which it was completed, and (2) the work requirement for up to two (2) years from the date of completion.]~~

~~[(5)](4) Individuals who reside out-of-state who do not hold primary residence in a nurse licensure compact state, but wish to maintain a current, valid New Mexico license, must meet the same requirements for licensure as licensees residing within the state who have declared New Mexico as their primary residence.~~

~~[(6)](5) Penalty: Failure of licensee to meet the CE [or work] requirement[s] for licensure shall result in the license not being renewed, reinstated, or reactivated. When the CE [and work or refresher course] requirement[s] have been met, an application for licensure may be submitted for consideration.~~

~~[(7)](6) Licenses are issued by mail only.~~

~~[F:]S. Requirements for reporting lost-stolen licenses/name-address change, and requesting duplicate license.~~

~~(1) Lost/stolen license: Licensee is required to give immediate, notification to the board office of lost or stolen license.~~

~~(2) Address change: Immediate notification of address change must be made, to the board office.~~

~~(3) Name change: Nurse must~~

use name as it appears on current license;

(a) duplicate may be requested upon change of name, or;

(b) name may be changed when license is renewed.

(4) Procedure for obtaining a duplicate license.

(a) Submit a written request for a duplicate license including the following information: Licensee's name, date of birth, nursing license number, social security number and address[; and mother's maiden name].

(b) Submit a copy of the legal document required for name change (ONLY recorded marriage certificate, divorce decree or court order accepted).

(c) Remit the required fee.

(d) Duplicate license may be reissued, within a given renewal period, ONLY upon return of the previously issued duplicate.

(e) Duplicate licenses are issued by mail only.

~~[U.]T. Reactivation/reinstatement of a lapsed license must meet the requirements for relicensure pursuant to the nursing practice act and these rules. A reactivated or reinstated license shall be valid for two (2) years.~~

~~[(1)] Applicant for reactivation or reinstatement of a lapsed license must meet the requirements for relicensure pursuant to the nursing practice act and these rules. A reactivated or reinstated license shall be valid for two (2) years.]~~

~~[(2)] Licensees who have not actually been engaged in nursing a minimum of 400 hours in the immediate past two (2) years, must successfully complete a board approved refresher course or its equivalent as determined by the NM board to reactivate the nursing license. (Refer to subsection F of 16.12.2.11 NMAC)~~

U. Inactive Status. Licensee may request her/his license be placed on inactive status during the renewal cycle only; however, the licensee may not function in a nursing capacity as a New Mexico licensed nurse until the license is reactivated.

(1) In order to place a license on inactive status, the licensee must, prior to the expiration date of the current license submit a completed renewal form and submit the inactive status fee.

(2) The license may remain in an inactive status indefinitely.

(3) The inactive fee is charged each time inactive status is requested following reactivation of the license.

[1-1-98; 16.12.2.10 NMAC – Rn & A, 16 NMAC 12.2.10, 7-30-01; A, 12-31-01; A, 04-01-02; A, 1-2-04]

CATION

A. Introduction.

(1) Pursuant to the provision of the nursing practice act, the board of nursing prescribes the following regulations establishing requirements for CE to be met by the licensee to protect the health and well being of the citizens of New Mexico and to promote current nursing knowledge and practice.

(2) Philosophy of CE: The members of the New Mexico board believe that CE is one of the most important responsibilities of the nurse and is a lifelong process. The primary responsibility for CE rests with the individual nurse. A diversity of nursing-related learning activities is recommended to enhance the scope of professional development.

B. Requirements and rules.

(1) Records.

(a) All licensees must indicate compliance with the CE required by these rules on the renewal application. All information must be completed as requested.

(b) Licensees are responsible for maintaining their own CE records and for keeping the certificates of verification of attendance of CE activities for at least one (1) year after the license is renewed. Photocopies of certificates must be submitted to the board office only if audited and/or requested.

(2) CE Audit.

(a) Continuing education records are subject to audit by the board.

(b) Licensee may be subject to disciplinary action by the board if noncompliant within sixty (60) days of the first notification of audit.

C. Approved continuing education. To be acceptable in New Mexico, the CE activity must have been approved by a recognized approval body and must enhance the licensee's scope of professional development as related to his/her activities in nursing. The participant must receive a certificate of attendance which validates the number of approved CE hours awarded, name of the participant, sponsoring agency, approval body and date attended. Correspondence courses and home-study programs are acceptable, if approved.

(1) Recognized approval bodies for CE for nurses.

(a) National or state recognized nursing organizations.

(b) Other state boards of nursing.

(c) New Mexico board-approved local monitoring systems.

(2) Other CE which may be accepted as approved CE for nurses:

(a) academic credit, computation: one (1) academic credit equals 15 contact

hours;

(b) CE units (CEUs) or contact hours awarded by CE divisions within educational institutions of higher learning;

(c) educational offerings approved through other generally recognized health care or professional organizations as related to licensee's nursing practice.

D. Monitoring system. CE hours accrued through educational offerings approved by a local monitoring system shall be accepted as meeting the CE requirements for licensure in New Mexico but may not be accepted by other state boards of nursing as approved CE.

(1) Local monitoring systems must be approved initially and annually by the board of nursing. A guideline for the establishment and operation of a local monitoring system is available in the Board office.

(2) The approval of educational offerings shall be determined on the approval criteria developed by the board.

E. Certification and/or recertification in the nursing specialty. Certification and/or recertification granted by a national professional organization which uses criteria designed to recognize competence in a specialized area of nursing practice may be used as approved CE. Verification of certification and/or recertification within the current renewal period is accepted in lieu of the thirty (30) hours of CE required for licensure.

~~[(F)] [Refresher course. Pursuant to the provisions of the nursing practice act, applicants for licensure who have not been actually engaged in nursing a minimum of four hundred (400) hours within the two (2) year period immediately preceding relicensure, shall furnish the board such evidence of having successfully completed such refresher courses of CE as required by regulations adopted by the board.]~~

~~[(1)] [A refresher course may be institution sponsored, or a reentry program.]~~

~~[(a)] [Refresher courses must be approved, initially and annually, by the board.]~~

~~[(b)] [Refresher courses must contain both a theoretical and a clinical component. Guidelines for the development of an institution sponsored refresher course, and the reentry program are available in the board office.]~~

~~[(c)] [The refresher course must be completed within six (6) months and a limited license will be issued for the duration of the course.]~~

~~[(2)] [The successful completion of the refresher course shall meet the work requirement for up to two (2) years from the~~

date of completion.]

~~[(3)] [Examination in lieu of a refresher course. In the event that a refresher course is not available, the applicant may take the national licensing examination in lieu of a refresher course as permitted by contract with the National Council of State Boards of Nursing, Inc. Applicants for licensure/relicensure as a RN or PN must pass the national licensing examination for RNs or PNs.]~~

~~[(4)] [Enrollment as a full-time nursing student. The board of nursing may accept evidence that an individual is enrolled full time in a program of nursing education to meet the requirements for a refresher course when individual has not actively practiced nursing within the two (2) years immediately preceding relicensure.]~~

~~[(a)] [Board of nursing staff is delegated the responsibility of review and approval of course material.]~~

~~[(b)] [Nursing courses, equivalent to a refresher course, must be completed during the two (2) year period immediately preceding relicensure.]~~

[1-1-98; 16.12.2.11 NMAC – Rn & A, 16 NMAC 12.2.11, 7-30-01; A, 12-31-01; A, 1-2-04]

16.12.2.12 STANDARDS OF NURSING PRACTICE

A. The nurse shall maintain individual competence in nursing practice, recognizing and accepting responsibility for individual actions and judgments.

(1) Competent nursing practice requires that the nurse have the knowledge and skills to practice nursing safely and properly in accordance with his/her licensure status and to perform specific functions and/or procedures required in his/her particular area of practice. Competent nursing practice also requires that the nurse have the knowledge to recognize and respond to any complication(s) which may result from the function and/or procedure the nurse performs.

(2) To maintain the requisite knowledge and skills, the nurse shall engage in CE specific to his/her particular area of practice.

(3) The nurse shall use individual competence as a criterion in accepting assigned responsibilities.

(4) The nurse contributes to the formulation, interpretation, implementation and evaluation of the objectives and policies to nursing practice within his/her employing setting.

B. The nurse shall assign/delegate to licensed and unlicensed persons only those nursing actions which that person is prepared, qualified or licensed to perform.

(1) The nurse is accountable for

assessing the situation and is responsible for the decision to delegate or make the assignment.

(2) The delegating nurse is accountable for each activity delegated, for supervising the delegated function and/or activity, and for assessing the outcome of the delegated function and/or activity.

(3) The nurse may delegate nursing activities other than the specific functions of medication administration, assessment, evaluation and nursing judgment to non-licensed persons. Except for the administration of medication as provided for in the board's rules for certified medication aides and certified hemodialysis technicians.

C. The nurse shall have knowledge of the laws and rules governing nursing and function within the legal boundaries of nursing practice.

(1) The nurse must report incompetent and/or unprofessional conduct to the appropriate authorities.

(2) The nurse must report violations of the nursing practice act and/or administrative rules of the board of nursing to the board of nursing.

D. The nurse acts to safeguard the patient/client when his care and safety are affected by incompetent, unethical, or illegal conduct of any person by reporting the conduct to the appropriate authorities.

E. The nurse shall recognize the dignity and rights of others regardless of social or economic status and personal attributes, shall conduct practice with respect for human dignity, unrestricted by considerations of age, race, religion, sex, sexual preference, national origin, disability or nature of the patient/client's health problems.

F. The nurse safeguards the individual's right to privacy by judiciously protecting information of a confidential nature, sharing only that information relevant to his care.

G. The nurse shall identify herself/himself by name and licensure category and shall permit inspection of their license when requested.

H. Standards for professional registered nursing practice. Registered nurses practice in accordance with the definition of professional registered nursing in the NPA. [61-3-3, J. NMSA 1978].

(1) RNs may assume specific functions and/or perform specific procedures which are beyond basic nursing preparation for professional registered nursing [61-3-3, J. NMSA 1978] provided the knowledge and skills required to perform the function and/or procedure emanates from a recognized body of knowledge

and/or practice of nursing, and the function or procedure is not prohibited by any law or statute.

(2) When assuming specific functions and/or performing specific procedures, which are beyond the nurse's basic educational preparation, the RN is responsible for obtaining the appropriate knowledge, skills and supervision to assure he/she can perform the function/procedure safely and competently.

I. Standards for licensed practical nursing practice. Licensed practical nurses practice in accordance with the definition of licensed practical nursing in the NPA [61-3-3, G. NMSA 1978].

(1) LPNs may assume specific functions and/or perform specific procedures which are beyond basic preparation for licensed practical nursing [61-3-3, G. NMSA 1978] provided the knowledge and skills required to perform the function and/or procedure emanates from the recognized body of knowledge and/or practice of nursing, and the functions or procedure is not prohibited by any law or statute. LPNs who perform procedures which are beyond basic preparation for practical nursing must only perform these procedures under the supervision/direction of a RN.

(2) LPNs may perform intravenous therapy, including initiation of IV therapy, administration of intravenous fluids and medications, and may administer medications via the intraperitoneal route provided the LPN has the knowledge and skills to perform IV therapy safely and properly.

(3) When assuming specific functions and/or performing specific procedures which are beyond the LPN's basic educational preparation, the LPN is responsible for obtaining the appropriate knowledge, skills and supervision to assure he/she can perform the function/procedure safely and competently.

J. Educational program criteria. Educational programs preparing either RNs or LPNs to perform specific functions and/or procedures that are beyond basic educational preparations should:

(1) prepare the nurse to safely and properly perform the function and/or procedures;

(2) prepare the nurse to recognize and respond to any complication(s) which may result from the procedure, and;

(3) verify the nurse's knowledge and the ability to perform the specific functions and/or procedures.

K. Nursing practice advisory committee. Board of nursing may appoint a minimum of a 7-member advisory committee to assist the board in regulating the practice of nursing. The committee shall assist and advise the board in the

review of issues related to the practice of nursing.

[1-1-98; 16.12.2.12 NMAC – Rn & A, 16 NMAC 12.2.12, 7-30-01; A, 1-2-04]

16.12.2.13 CERTIFIED NURSE PRACTITIONER (CNP)

A. Requirements for licensure of nurse practitioners.

(1) Hold a current, valid ~~[NM]~~ RN license.

(2) Successfully complete a formal program designed for the education and preparation of nurse practitioners as providers of primary, and/or acute, and/or chronic, and/or long-term, and/or end of life health care.

(a) The program must be offered through an accredited institution of higher education or through the armed services.

(b) The program must be one full academic year of full-time study with approximately 1/3 of the program devoted to didactic and 2/3 to a preceptorship with a physician and/or certified (licensed) nurse practitioner. Didactic hours must include twenty-four (24) contact hours of pharmacology. NOTE: One academic hour equals fifteen (15) contact hours.

(c) If the applicant is initially licensed by any board of nursing including the New Mexico board of nursing after January 1, 2001 the program must be at the master's level or higher. Applicants who do not hold a master's level or higher degree from a nurse practitioner program and were initially licensed by any board before January 1, 2001, must provide verification of NP licensure.

(3) Provide evidence of successful accomplishment of national certification as a nurse practitioner.

(4) It is the responsibility of the applicant to provide documented evidence of his/her qualifications for licensure.

(5) Applicants who meet the minimum didactic and pharmacology requirements, but lack the required preceptorship, may be considered for licensure in New Mexico if the applicant provides satisfactory evidence of two (2) years nurse practitioner experience in another jurisdiction.

(6) Nurse practitioners who will be requesting prescriptive authority must also comply with the requirements for prescriptive authority as outlined in these rules.

B. Procedure for licensure as a graduate nurse practitioner. The applicant seeking licensure as a nurse practitioner shall be responsible for providing proof of meeting the requirements for licensure.

(1) The applicant shall complete the New Mexico nurse practitioner licensure application and submit it along with all required documents.

(2) Upon acceptance of the com-

pleted application and receipt of all required supporting documents, the file is reviewed for qualifications and compliance with the requirements.

(3) Applicants who do not meet the requirements for licensure may request or be requested to meet with the board or its designee.

(4) Nurse practitioners are not eligible to practice in New Mexico as a certified nurse practitioner until so licensed in accordance with the licensure procedures.

(5) The board may appoint nurse practitioners to the advanced practice committee. These nurse practitioners will provide advice regarding licensure and practice of nurse practitioners.

C. Graduate nurse practitioners permit-to-practice may be issued, upon written request, provided all requirements have been met except national nursing certification.

(1) GNPs must practice under the direct supervision of a physician or New Mexico CNP or CNS in the specialty.

(2) GNPs may prescribe medications only under the direct supervision of a licensed CNP, CNS or a physician, in compliance with these rules. GNPs must fulfill the requirements in this section to prescribe controlled substances.

(3) GNP permits will be issued ~~[by mail only]~~ to the employer.

(4) A letter of verification of intent to employ, on official letterhead including the name of the practice supervisor and the name of the prescription supervisor, is required from each employer. Upon change in employment, the new employer must send the board a letter of intent to employ. The board will then issue a permit to practice at the new place of employment. The permit will be ~~[mailed]~~ issued directly to the new employing agency.

(5) The name of the employment institution and the name(s) of the supervisor(s) shall be indicated on the GNP permit.

(6) GNP permits cannot be transferred, renewed or a duplicate issued.

(7) GNP permits expire on the date specified on the permit.

(a) Permits shall be valid not to exceed 6 months after the date of the national certifying examination. Those who fail the national certifying examination are rendered ineligible to practice as a GNP. It is the responsibility of the GNP to request that the national certifying organization notify the board of the results of the examination.

(b) The permits for new graduates may be valid for a period not to exceed two (2) years.

D. A license to practice as a CNP shall be issued only after receipt by the board of proof of national certification. Such proof must be submitted to the board

prior to the expiration of the permit.

E. Exclusion: Nurse practitioners with lapsed national certification are not eligible for a permit to practice.

F. Prerequisites for licensure of CNP by endorsement.

(1) Verification DIRECTLY from the licensing authority, which shall include graduation from a nurse practitioner program.

(2) In lieu of verification of advanced practice licensure for the licensing authority the board will accept:

(a) documentation directly from that licensing authority that the state does not issued advanced practice licensure ~~[and]~~;

(b) a sworn affidavit from applicant that they practice as an advance practice nurse with year practice began, and;

(c) if applicant was licensed by another board after January 1, 2001, submit a transcript from the program directly to the board documenting completion of a nurse practitioner program on the Master's or higher level.

(3) Verification from applicant of national certification as a nurse practitioner.

(4) Nurse practitioners who are requesting prescriptive authority must comply with the requirements for prescriptive authority as outlined in these rules.

(5) Complete and submit the required application from licensure by endorsement in accordance with all instructions including the required fee.

G. Qualifications for licensure as CNP are pursuant to the nursing practice act.

(1) Refer to Subsection A of 16.12.2.13 NMAC for licensure requirements.

~~[(2)] [Applicants for endorsement into NM, must meet one of the following requirements:]~~

~~[(a)] [Have received initial licensure as a nurse practitioner within the immediate past two (2) years or]~~

~~[(b)] [Have been engaged in nursing as a nurse practitioner a minimum of 400 hours within the immediate past two years. Applicants who have not met the work requirements MUST complete a board approved refresher course or its equivalent as determined by the board. Refer to subsection N, 16.12.2.13 NMAC.]~~

~~[(3)](2) Continuing education is not required for initial CNP licensure by endorsement. CE requirements must be met at the time of the first renewal.~~

~~[(4)](3) Disciplinary action taken or pending against a nursing license in another jurisdiction, or a conviction of a felony, may result in denial of a license.~~

H. A CNP permit-to-practice may be issued ~~[by mail only]~~ to a New

Mexico employer(s) for an endorsee awaiting results on successful completion of national certification. Refer to subsection B and C of 16.12.2.13 NMAC for procedure and requirements.

I. A temporary nurse practitioner license may be issued to an endorsee who:

~~[(1)] [Submit a notary certified copy of a current, valid nurse practitioner license, or an affidavit of current nurse practitioner licensure, which meets the following criteria:]~~

~~[(a)] [Verification of current licensure with an expiration date of not less than thirty one (31) days and no stipulations or restrictions;]~~

~~[(b)] [Name of issuing jurisdiction, and]~~

~~[(c)] [Category of licensure and license number.]~~

(1) submits a completed endorsement application and fee;

(2) submits a copy of current national certification as a nurse practitioner; the following exceptions can be made;

(a) nurse practitioners who were licensed by any jurisdiction before December 2, 1985 are not required to hold national certification; or

(b) when the state of former advanced practice licensure does not require national certification; proof of national certification as a nurse practitioner must be submitted to the board before a license will be issued;

~~[(j)] [A letter of intent to employ on official letterhead must be received from each NM employer.]~~

~~[(1)](3) the board will [mail] issue the temporary license to the [employing agency] applicant;~~

~~[(2) The name of the agency will be included on the TL.]~~

~~[(3)](4) a temporary license is valid for a period not to exceed six (6) months from the date of application, is non renewable and becomes null and void upon issuance of a current license, expiration, or withdrawal by board action;~~

~~[(4)] A temporary license is not renewable and becomes null and void upon issuance of a current license, expiration, or withdrawal by board action.]~~

(5) applicant is responsible for assuring that all requirements have been met and all documents have been received prior to the expiration date of the temporary license;

(6) the discovery of inaccurate or false information, on the licensure application, may be subject to recall of the temporary license by the board and denial of licensure.

[(k)]J. An initial nurse practitioner license shall be valid for two (2)

years. A letter of authorization will be issued to NPs who have RN multi-state licensure privileges from other nurse licensure compact state.

~~[(h)] K.~~ If the licensure process is not completed, the application becomes null and void one (1) year after date of last noted activity.

~~[(m)]L.~~ Authorization to expand scope of practice or who need recertification.

(1) A letter of authorization will be issued for the CNPs who through additional formal education have expanded their practice into another area of NP practice or who need practice hours to recertify provided all requirements have been met except national certification.

(2) A letter of verification of intent to provide a preceptorship, on official letterhead including the name of the practice preceptor and the name of the prescription preceptor must be submitted to the board of nursing.

(3) Practice must be under the direct supervision of a physician or licensed New Mexico CNP or CNS in the specialty.

(4) Prescribing may be done only under the direct supervision of a licensed CNP or CNS or a physician in compliance with these rules.

(5) A letter of authorization will be issued [by mail only] to the preceptor.

(6) A letter of authorization cannot be transferred, renewed or a duplicate issued.

(7) A letter of authorization will expire on the date specified.

(a) A letter of authorization shall be valid not to exceed 6 months after the date of the national certifying examination. Those who fail the national certifying examination are rendered ineligible to practice in that area. It is the responsibility of the CNP to request that the national certifying organization notify the board of the results of the examination. A letter of authorization may be valid for a period not to exceed two (2) years.

(b) A letter of authorization shall be valid for 6 months for those applicants recertifying.

~~[(b)](c)~~ A letter of authorization shall be issued for the prescriptive authority preceptorship. This letter will only be valid for the duration of the preceptorship expansion of scope of practice or recertification required hours of practice.

~~[(n)]M.~~ Maintaining licensure as a nurse practitioner.

(1) National certification: NPs must maintain national certification. A copy of the specialty certification/recertification card shall be presented at the time of each subsequent renewal. Nurse practitioners licensed by the New Mexico board, after

December 2, 1985 are required to be nationally certified.

(2) Continuing education.

(a) The CNP shall accrue a total of fifty (50) contact hours of approved CE each renewal period. National certification or recertification as a NP may not be used to fulfill any portion of the CE requirement.

(i) Thirty (30) contact hours shall meet the requirements for licensure as a RN, and

(ii) An additional twenty (20) contact hours, 15 of which must be pharmacology, shall meet the requirements for licensure as a nurse practitioner.

(b) The CE shall be in accordance with the requirements as set forth in these rules.

~~[(3)] [Work requirement. The CNP must practice a minimum of four hundred (400) hours in his/her area of specialty each renewal period and indicate such at the time of license renewal.]~~

~~[(o)] N.~~ Reactivation. To reactivate or reinstate licensure as a nurse practitioner, the nurse must provide evidence of meeting the CE requirements ~~[and completing 400 hours of practice under direct supervision in the appropriate specialty area. The supervised practice must be completed within six (6) months and a limited license will be issued for the duration of the supervised practice].~~ NPs licensed by the board after December 2, 1985 must also provide evidences of current national certification.

~~[(p)] O.~~ Nurse practitioner practice.

(1) The CNP makes independent decisions regarding the health care needs of the client and also makes independent decisions in carrying out health care regimens.

(2) The CNP provides primary and/or acute, and/or chronic, and/or long-term, and/or end of life health care to meet the health care needs of individuals, families and communities in any health care setting.

(3) The CNP may assume specific functions and/or perform specific procedures which are beyond the advanced educational preparation and certification for the CNP provided the knowledge and skills required to perform the function and/or procedure emanates from a recognized body of knowledge and/or advanced practice of nursing and the function or procedure is not prohibited by any law or statute. When assuming specific functions and/or performing specific procedures, which are beyond the CNP's advanced educational preparation and certification, the CNP is responsible for obtaining the appropriate knowledge, skills and supervision to ensure he/she can perform the function/procedure safely and competently and recognize and respond to any complications that may

arise.

(4) The CNP collaborates as necessary with other healthcare providers. Collaboration includes discussion of diagnosis and cooperation in managing and delivering healthcare.

(5) CNPs who have fulfilled requirements for prescriptive authority may prescribe and distribute dangerous drugs including controlled substances contained in Schedules II through V of the Controlled Substances Act within their clinical specialty and practice setting.

(a) Requirements for prescriptive authority: In accordance with applicable state and federal laws, the CNP who fulfills the following requirements may prescribe and distribute dangerous drugs including controlled substances included in Schedules II through V of the Controlled Substance Act.

(i) Verifies 400 hours of work experience in which prescribing dangerous drugs has occurred within the two (2) years immediately preceding the date of the application. Individuals who have not fulfilled this requirement must provide documentation of successful completion of 400 hours of prescribing dangerous drugs in a preceptorship with a licensed CNP, CNS or physician. The preceptorship must be completed within six (6) months and a letter of authorization will be issued for the duration of the preceptorship.

(ii) In order to prescribe controlled substances, the CNP must provide the board of nursing with verification of current state controlled substances registration and current DEA number. CNPs may not possess, prescribe or distribute controlled substances until they have both a current state controlled substances registration and a current DEA registration.

(iii) Once prescriptive authority requirements are met, the board will notify the board of pharmacy of completion of prescriptive authority requirements.

(b) Formulary. It is the CNP's responsibility to maintain a formulary of dangerous drugs and controlled substances that may be prescribed. The only drugs to be included in the formulary are those relevant to the CNP's specialty and practice setting.

(i) All CNPs must maintain a current formulary with the board of nursing.

(ii) The board of nursing reserves the right to audit the formulary of the CNP. Licensees may be subject to disciplinary action by the board of nursing if non compliant with the audit.

(c) Prescription pads. The CNP's name, address, and telephone number must be imprinted on the prescription pad. In the event that a CNP is using a prescription pad

printed with the names of more than one CNP, the name of the CNP for the individual prescription shall be indicated.

(d) Distributing: CNPs, who have fulfilled requirements for prescriptive authority as stated in these rules, may distribute to their patients dangerous drugs including controlled substances contained in Schedules II through V of the Controlled Substances Act, which have been prepared, packaged, or fabricated by the registered pharmacist or doses which have been pre-packaged by a pharmaceutical manufacturer in accordance with the Pharmacy Act [61-11-22] and the Drug, Device and Cosmetic Act for the benefit of the public good.

(e) Labeling: CNPs may label only those drugs which the CNP prescribes and distributes to patients under the CNP's care. The medication shall be properly labeled with the patient's name, date of issue, drug name and strength, instructions for use, drug expiration date, number dispensed and name, address and telephone number of the CNP. Labeling may be handwritten or a pre-printed fill-in label may be used. All information shall be properly documented in the patient record.

(f) CNPs who do not plan to prescribe controlled substances but do plan to prescribe dangerous drugs must meet the requirements relative to prescriptive authority except those specifically required for controlled substances.

(6) Graduate nurse practitioner (GNP) practice.

(a) GNPs may not distribute medications.

(b) GNPs may practice and/or prescribe medications only under the direct supervision of a licensed CNP, CNS or physician in the specialty.

(7) To insure competency and safe practice in specific regard to prescription writing practices in the state of New Mexico:

(a) a list of current CNPs and their status with regard to prescription writing shall be distributed at least annually and upon request to the board of pharmacy;

(b) violation of these rules and/or disciplinary action taken by the board of nursing with regard to controlled substances shall be reported to the board of pharmacy;

(c) the board of nursing shall annually appoint qualified CNPs in each specialty to serve on the board of pharmacy disciplinary panel.

[1-1-98; 16.12.2.13 NMAC – Rn & A, 16 NMAC 12.2.13, 7-30-01; A, 12-31-01; A, 04-01-02; A, 1-2-04]

16.12.2.14 CERTIFIED REGISTERED NURSE ANESTHETIST (CRNA)

A. Requirements for licensure

as a CRNA.

(1) Hold a current, valid ~~[or NM]~~ RN license.

(2) Successfully complete a formal program designed for the education and preparation of certified registered nurse anesthetist. The AANA *council on accreditation of nurse anesthetist educational programs/schools* must accredit the program.

(3) If the applicant is initially licensed by any board of nursing including the New Mexico board of nursing after January 1, 2001, the program must be at the master's level or higher. Applicants who do not hold a master's or higher degree from a nurse anesthetist program and were initially licensed by any board before January 2, 2001, must provide verification of CRNA licensure.

(4) Provide evidence of successful completion of a national qualifying examination as described by the AANA *council on certification of nurse anesthetists*.

(5) It is the responsibility of the applicant to provide documented evidence of his/her qualification for licensure.

(6) Applicants who will be requesting prescriptive authority must also comply with the requirements for prescriptive authority as outlined in these rules.

B. Procedure for licensure as a graduate. The applicant seeking licensure as a certified registered nurse anesthetist shall be responsible for providing proof of meeting the requirements for licensure.

(1) The applicant shall complete the New Mexico certified registered nurse anesthetist licensure application and submit it along with all required documents.

(2) Upon acceptance of the completed application and receipt of all required supporting documents, the file is reviewed for qualifications and compliance with the requirements.

(3) Applicants who do not meet the requirements for licensure may request or be requested to meet with the board or its designee.

(4) Certified registered nurse anesthetists are not eligible to practice in New Mexico as certified registered nurse anesthetist until so licensed in accordance with the licensure procedures.

(5) The board may appoint certified registered nurse anesthetists to the advanced practice committee. These nurse anesthetists will provide advice regarding licensure and practice of certified registered nurse anesthetists.

C. Graduate registered nurse anesthetist permit-to-practice may be issued, upon written request, provided all requirements have been met except national AANA certification.

(1) A permit may be issued following graduation from an approved school of nurse anesthesia to afford the applicant the opportunity for employment pending dissemination of the national qualifying examination results by the AANA Council on Certification of Nurse Anesthetists.

(2) GRNAs must function in an interdependent role as a member of a health care team and practice at the direction of and in collaboration with a physician, osteopathic physician, dentist or podiatrist.

(3) GRNAs may prescribe and administer medications only in collaboration with a physician, osteopathic physician, dentist or podiatrist in compliance with these rules.

(4) GRNAs permits will be issued ~~[by mail only]~~ to the employer(s).

(5) A letter of verification of intent to employ, on official letterhead including the name of the practice supervisor(s) and name of prescription supervisor(s), is required from each employer. Upon change in employment, the new employer must send the board a letter of intent to employ. The board will then issue a permit to practice for the new place of employment. The permit will be ~~[mailed]~~ issued directly to the new employing agency.

(6) The name of the employment institution and the name(s) of the supervisor(s) shall be indicated on the GRNA permit.

(7) GRNA permits cannot be transferred, renewed or a duplicate be issued.

(8) GRNA permits expire on the date specified on the permit.

(a) Permits shall be valid for approximately 12 months subsequent to the date of graduation from the nurse anesthesia program.

(b) Written proof of application to write the national qualifying exam must be received in the board office within 12 weeks of graduation from the nurse anesthesia program.

(c) Verification that applicant wrote the national qualifying examination, must be received in the board office within 3 weeks subsequent to the date of the examination.

(d) Failure of applicant to write the scheduled qualifying examination or if the exam is failed, will render the applicant ineligible to practice anesthesia in New Mexico and the employer must immediately return the permit-to-permit to the board office. It is the responsibility of the GRNA to request that the national certifying organization notify the board of the results of the examination.

D. A license to practice as a CRNA shall be issued only after receipt by

the board of proof of AANA certification. Such proof must be submitted to the board prior to the expiration of the permit.

E. Exclusion: Certified registered nurse anesthetists with lapsed AANA certification are not eligible for a permit-to-practice.

F. Prerequisites for licensure of CRNA by endorsement.

(1) Verification DIRECTLY from the licensing authority, which shall include graduation from an AANA council on accreditation of nurse anesthetist educational program/school.

(2) In lieu of verification of advanced practice licensure from the licensing authority, the board will accept documentation directly from that licensing authority that the state does not issue advanced practice licensure and a sworn affidavit from applicant that they practice as an advance practice nurse with year practice began.

(3) Verification by applicant of AANA certification/recertification.

(4) Certified registered nurse anesthetists must comply with the requirements for prescriptive authority as outlined in these rules.

(5) Complete and submit the required application for licensure by endorsement in accordance with all instructions including the required fee.

G. Qualifications for licensure as CRNA are pursuant to the nursing practice act.

(1) Refer to subsection A, 16.12.2.14 NMAC for licensure requirements.

~~[(2) Recertification by AANA Council on Recertification of Nurse Anesthetists is accepted for endorsement into NM for meeting mandatory practice requirements. Applicants who have not met the practice requirements MUST complete a board approved refresher course or its equivalent as determined by the board. Refer to subsection M, 16.12.2.14 NMAC.]~~

~~[(3)]~~(2) Continuing education is not required for initial CRNA licensure by endorsement. CE requirements must be met at the time of first renewal. Recertification by AANA council on recertification of nurse anesthetists will meet the mandatory CE requirements for CRNA licensure.

~~[(4)]~~(3) Disciplinary action taken or pending against a nursing license in another jurisdiction, or a conviction of a felony, may result in denial of a license.

H. A GRNA permit-to-practice may be issued, ~~[by mail only]~~ to a New Mexico employer(s) for an endorsee awaiting results on successful completion of AANA national certification. Refer to subsection B and C, 16.12.2.14 NMAC for procedure and requirements.

I. A temporary certified registered nurse anesthetist license may be issued to an endorsee who:

~~[(1) Submits a notary certified copy of a current, valid certified registered nurse anesthetist license, or an affidavit of current nurse practitioner licensure.]~~

~~[(a)] [Verification of current licensure with an expiration date of not less than thirty one (31) days and no stipulations or restrictions.]~~

~~[(b)] [Name of issuing jurisdiction, and]~~

~~[(c)] [Category of licensure and license number.]~~

~~[(d)] A letter of intent to employ on official letterhead must be received from each NM employer.]~~

~~[(1) The name of the employing institution shall be indicated on the temporary license.]~~

(1) submits a completed endorsement application and fee;

(2) submits a copy of current AANA council of recertification of nurse anesthetist;

~~[(2)]~~(3) the board will mail the temporary license to the employing agency;

~~[(3)]~~(4) a temporary license is valid for a period not to exceed six (6) months from the date of application;

~~[(4)]~~(5) a temporary license is not renewable and becomes null and void upon issuance of a current license, expiration, or withdrawal by board action;

~~[(5)]~~(6) applicant is responsible for assuring that all requirements have been met and all documents have been received prior to the expiration date of the temporary license;

~~[(6)]~~(7) the discovery of inaccurate or false information, on the licensure application, may be subject to recall of the temporary license by the board and denial of licensure.

~~[(K)]~~J. An initial certified registered nurse anesthetist license shall be valid for two (2) years. A letter of authorization will be issued to CRNAs who have RN multi-state licensure privileges from another nurse licensure compact states.

~~[(L)]~~K. If the licensure process is not completed, the application becomes null and void one (1) year after date of last noted activity.

~~[(M)]~~L. Maintaining licensure as a certified registered nurse anesthetist.

(1) National Certification: CRNAs must maintain AANA council on recertification of nurse anesthetist. A copy of the recertification card must be presented at the time of each subsequent renewal.

(2) Continuing education ~~[Work Requirement]~~: Recertification by AANA council on recertification of nurse anesthetist is accepted for meeting mandatory

CE [~~and practice~~] requirement[s].

[N+M.] Reactivation: To reactivate or reinstate licensure as a certified registered nurse anesthetist, the nurse must provide evidence of current recertification by the AANA council on recertification of nurse anesthetists. [~~Individuals who have not met the work requirements for recertification must complete a preceptorship under the direct supervision of a CRNA or physician. A limited license will be issued for the duration of the supervised preceptorship.~~]

[O+N.] Certified registered nurse anesthetist practice.

(1) The CRNA provides pre-operative, intra-operative and post-operative anesthesia care and related services, including ordering of diagnostic tests, in accordance with the current *american association of nurse anesthetists'* guidelines for nurse anesthesia practice.

(2) The CRNA functions in an interdependent role as a member of a health care team in which the medical care of the patient is directed by a licensed physician, osteopathic physician, dentist or podiatrist licensed in New Mexico.

(3) The CRNA may assume specific functions and/or perform specific procedures which are beyond the advanced educational preparation and certification for the CRNA provided the knowledge and skills required to perform the function and/or procedure emanates from a recognized body of knowledge and/or advanced practice of nursing and the function or procedure is not prohibited by any law or statute. When assuming specific functions and/or performing specific procedures, which are beyond the CRNA's advanced educational preparation and certification, the CRNA is responsible for obtaining the appropriate knowledge, skills and supervision to ensure he/she can perform the function/procedure safely and competently and recognize and respond to any complications that may arise.

(4) The CRNA collaborates as necessary with the licensed physician, osteopathic physician, dentist or podiatrist concerning the anesthesia care of the patient. Collaboration means the process in which each health care provider contributes his/her respective expertise. Collaboration includes systematic formal planning and evaluation between the health care professionals involved in the collaborative practice arrangement.

(5) CRNAs who have fulfilled requirements for prescriptive authority may prescribe and administer therapeutic measures, including dangerous drugs and controlled substances included in Schedules II through V of the Controlled Substances Act within the specialty of anesthesia and practice setting.

(a) Requirements for prescriptive authority: In accordance with applicable state and federal laws, the CRNA who fulfills the following requirements may prescribe and administer dangerous drugs including controlled substances included in Schedules II through V of the Controlled Substance Act.

(i) Verifies 400 hours of work experience in which prescribing and administering dangerous drugs has occurred within the two (2) years immediately preceding the date of the application. Individuals who have not fulfilled this requirement must provide documentation of successful completion of 400 hours of prescribing dangerous drugs in a preceptorship with a CRNA or physician. The preceptorship must be completed within six (6) months and a letter of authorization will be issued for the duration of the preceptorship.

(ii) In order to prescribe controlled substances, the CRNA must provide the board of nursing with verification of current state controlled substances registration and current DEA number. CRNAs may not possess or prescribe controlled substances until they have both a current state controlled substances registration and a current DEA registration.

(iii) Once prescriptive authority requirements are met, the board will notify the board of pharmacy of completion of prescriptive authority requirements.

(b) Formulary: The formulary will include agents related to the administration of anesthesia and ACLS protocol agents.

(i) All CRNAs must maintain a current formulary with the board of nursing.

(ii) The initial formulary or a formulary with changes will be submitted to the board of medical examiners for a review.

(c) Prescription pads: The CRNA's name, address, and telephone number must be imprinted on the prescription pad. In the event that a CRNA is using a prescription pad printed with the names of more than one CRNA, the name of the CRNA for the individual prescription shall be indicated.

(d) Prescribing and administering: CRNAs who have fulfilled requirements for prescriptive authority as stated in these rules may prescribe and administer to their patients dangerous drugs including controlled substances contained in Schedules II through V of the Controlled Substances Act, which have been prepared, packaged or fabricated by a registered pharmacist or doses or drugs that have been prepackaged by a pharmaceutical manufacturer in accordance with the Pharmacy Act

[61-11-22] and the New Mexico Drug, Device and Cosmetic Act for the benefit of the public good.

(e) Distributing: CRNAs who have fulfilled requirements for prescriptive authority as stated in these rules may NOT distribute to their patients dangerous drugs including controlled substances contained in Schedules II through V of the Controlled Substances Act.

(f) CRNAs who do not plan to prescribe controlled substances but do plan to prescribe dangerous drugs must meet the requirements relative to prescriptive authority except those specifically required for controlled substances.

(6) Graduate registered nurse anesthetist practice.

(a) GRNAs may NOT distribute medications.

(b) GRNAs may practice and/or prescribe/administer medications only in collaboration with a physician, osteopathic physician, dentist or podiatrist.

(7) To insure competency and safe practice in specific regard to prescription writing practices in the state of New Mexico.

(a) A list of current CRNAs and their status with regard to prescription writing shall be distributed at least annually and upon request to the board of pharmacy.

(b) Violation of these rules and/or disciplinary action taken by the board of nursing with regard to controlled substances shall be reported to the board of pharmacy.

(c) The board of nursing shall annually appoint qualified CRNAs to serve on the board of pharmacy disciplinary panel.

[1-1-98; 16.12.2.14 NMAC – Rn & A, 16 NMAC 12.2.13, 7-30-01; A, 12-31-01; A, 04-01-02; A, 1-2-04]

16.12.2.15 CLINICAL NURSE SPECIALIST (CNS)

A. Requirements for licensure as a CNS:

(1) hold a current, valid ~~NM~~ RN license;

(2) successfully complete a clinical nurse specialist program at the master's or doctoral level in a defined clinical nursing specialty through an accredited institution of higher education; and

(3) provide evidence of successful accomplishment of certification by a national nursing organization, consistent with the defined clinical nursing specialty, which meets criteria as listed below:

(a) successfully complete a national certifying examination in the applicant's area of specialty;

(b) is certified by a national nursing organization;

(4) it is the responsibility of the

applicant to provide documented evidence of his/her qualifications for licensure;

(5) any CNS requesting prescriptive authority must also comply with the regulations for prescriptive authority as outlined in these rules.

B. Procedure for licensure as a graduate CNS: Applicant seeking licensure as a CNS shall be responsible for providing proof of meeting the requirements for licensure.

(1) The applicant shall complete the New Mexico CNS application and submit it along with all requested documents.

(2) Upon acceptance of the completed application and receipt of all required supporting documents, the file is reviewed for qualifications and compliance with the requirements.

(3) Applicants who do not meet the requirements for licensure may request or be requested to meet with the board or their designee.

(4) CNSs are not eligible to practice in New Mexico as an CNS until so licensed by the New Mexico board in accordance with licensure procedures.

(5) The board may appoint CNSs to the advanced practice committee. These CNSs will provide advice regarding the licensure and practice of the CNS.

C. Graduate clinical nurse specialist (GCNS) permit to practice.

(1) GCNS permits may be issued upon written request, provided all requirements have been met except certification by a national nursing organization.

(a) GCNSs practice under the direct supervision of another CNS, CNP or physician in the specialty.

(b) GCNSs may prescribe medications only under the direct supervision of a licensed CNS, CNP or physician in compliance with these rules.

(c) GCNS permits will be issued ~~by mail only~~ to the employer.

(d) A letter of verification of intent to employ, on official letterhead including the name of the practice supervisor and the name of the prescription supervisor is required from each employer. Upon change in employment, the new employer must send the board a letter of intent to employ. The board will then issue a permit to practice at the new place of employment. The permit will be ~~mailed~~ issued directly to the new employing agency.

(e) The name of the employment institution and the name(s) of the supervisor(s) shall be indicated on the GCNS permit.

(f) GCNS permits cannot be transferred, renewed or a duplicate issued.

(g) GCNS permits expire on the date specified on the permit.

(i) Permits shall be

valid not to exceed 6 months after the date of the national certifying examination. Those who fail the national certifying examination are rendered ineligible to practice as a GCNS. It is the responsibility of the GCNS to request that the national certifying organization notify the board of the results of the examination.

(ii) The permit for new graduates may be valid for a period not to exceed two 2 years.

(2) Exclusion: CNS with lapsed national certification are not eligible for a permit to practice.

(3) A license to practice as a CNS shall be issued only after receipt by the board of proof of certification by a national nursing organization. Such proof must be submitted to the board prior to the expiration of the permit.

D. Prerequisites for licensure of CNS by endorsement.

(1) Verification DIRECTLY from the licensing authority which shall include graduation from a clinical nurse specialist program in a defined clinical nursing specialty.

(2) In lieu of verification of advanced practice licensure from the licensing authority, the board will accept:

(a) documentation directly from the licensing authority that the state does not issue advanced practice licensure; and

(b) a sworn affidavit from applicant that they practice as an advance practice nurse with year practice began.

(3) Verification by applicant of national certification in a clinical specialty area.

(4) Clinical nurse specialist must comply with requirements for prescriptive authority as outlined in these rules.

(5) Complete and submit the required application for licensure by endorsement in accordance with all instructions including the required fee.

E. Qualifications for licensure as a CNS are pursuant to the nursing practice act.

(1) Refer to Subsection A of 16.12.15 NMAC for licensure requirements.

~~(2) Applicants for endorsement into NM must meet one of the following requirements:~~

~~(a) Have received initial licensure as a clinical nurse specialist within the immediate past two (2) years or~~

~~(b) Have been engaged in nursing as a clinical nurse specialist a minimum of 400 hours within the immediate past two (2) years. Applicants who have not met the work requirements MUST complete a board approved refresher course or its equivalent as determined by the board. Refer to subsection L, 16.12.2.15 NMAC.]~~

~~(c)(2) Continuing education is not required for initial CNS licensure by endorsement. CE requirements must be met at the time of the first renewal.~~

~~(d)(3) Disciplinary action taken or pending against a nursing license in another jurisdiction, or a conviction of a felony, may result in denial of a license.~~

F. A GCNS permit-to-practice may be issued ~~by mail only~~ to a New Mexico employer(s) for an endorsee awaiting results on successful completion of national certification. Refer to Subsections B and C of 16.12.2.15 NMAC for procedure and requirements.

G. A temporary clinical nurse specialist license may be issued to an endorsee who:

~~(1) [Submits a notary certified copy of a current, valid clinical nurse specialist license, or an affidavit of current clinical nurse specialist licensure which means the following criteria:]~~

~~(a) [Verification of current licensure with an expiration date of not less than thirty-one (31) days and no stipulations or restrictions.]~~

~~(1) submits a completed endorsement application and fee;~~

~~(b)(a) name of issuing jurisdiction; and~~

~~(c)(b) category of licensure and license number;~~

(2) submits a copy of current national certification in a nursing specialty; when the state of former advanced practice licensure does not require national certification a TL can be issued. Proof of national certification in a nursing specialty must be submitted to the board before a license will be issued;

(3) has not completed, within five years immediately prior to the date of application to the board, a three credit hour pharmacology course at the advanced level or forty-five (45) contact hours advanced level pharmacology continuing education course; completion of the course is required for licensure;

~~(H) [A letter of intent to employ on official letterhead must be received from each NM employer.]~~

~~(I) [The name of the employing institution shall be indicated on the temporary license.]~~

~~(2)(4) the board will mail the temporary license to the [employing agency] applicant;~~

~~(3)(5) a temporary license is valid for a period not to exceed six (6) months from the date of application, is non renewable and becomes null and void upon issuance of a current license, expiration, or withdrawal by board action;~~

~~(4) A temporary license is not renewable and becomes null and void upon~~

~~issuance of a current license, expiration, or withdrawal by board action.]~~

~~(5)(6)~~ applicant is responsible for assuring that all requirements have been met and all documents have been received prior to the expiration date of the temporary license;

~~(6)(7)~~ the discovery of inaccurate or false information, on the licensure application, may be subject to recall of the temporary license by the board and denial of licensure.

~~(H)(H.)~~ An initial clinical nurse specialist license shall be valid for two (2) years. A letter of authorization will be issued to CNSs who have RN multi-state licensure privilege from the nurse licensure compact states.

~~(I)(L)~~ If the licensure process is not completed, the application becomes null and void one (1) year after date of last noted activity.

~~(K)(J.)~~ Authorization to expand scope of practice or who need recertification.

(1) A letter of authorization will be issued for the CNSs who through additional formal education have expanded their practice into another area of CNS practice or who need practice hours to recertify provided all requirements have been met except national certification.

(2) A letter of verification of intent to provide a preceptorship, on official letterhead including the name of the practice preceptor and the name of the prescription preceptor must be submitted to the board of nursing.

(3) Practice must be under the direct supervision of a physician or New Mexico CNP or CNS in the specialty.

(4) Prescribing may be done only under the direct supervision of a licensed CNP or CNS or a physician in compliance with these rules.

(5) A letter of authorization will be issued ~~[by mail only]~~ to the preceptor.

(6) A letter of authorization cannot be transferred, renewed or a duplicate issued.

(7) A letter of authorization will expire on the date specified.

(a) A letter of authorization shall be valid not to exceed 6 months after the date of the national certifying examination. Those who fail the national certifying examination are rendered ineligible to practice in that area. It is the responsibility of the CNS to request that the national certifying organization notify the board of the results of the examination. A letter of authorization may be valid for a period not to exceed two (2) years.

(b) A letter of authorization will be valid for 6 months for those applicants recertifying.

~~(b)(c)~~ A letter of authorization shall be issued for the prescriptive authority preceptorship. This letter will only be valid for the duration of the preceptorship for expansion of scope of practice or recertification required hours of practice.

~~(K.)~~ Maintaining licensure as a clinical nurse specialist.

(1) The CNS shall be nationally certified in the specialty by a nursing organization and maintain national certification. A copy of the specialty certification/recertification card shall be presented at the time of each subsequent renewal.

(2) Continuing education.

(a) The CNS shall accrue a total of fifty (50) contact hours of approved CE each renewal period. National certification or recertification as a CNS may not be used to fulfill any portion of the CE requirement.

(b) Thirty (30) contact hours, shall meet the requirements for licensure as an RN and

(c) An additional twenty (20) contact hours, 15 of which must be pharmacology, shall meet the requirements for licensure as a CNS.

(d) The CE shall be in accordance with the requirements as set forth in these rules.

~~(3) Work requirement: The CNS must practice a minimum of 400 hours in the specialty each renewal period and indicate such at the time of their license renewal.]~~

~~(4)(3) Reactivation. To reactivate or reinstate licensure as a CNS, the nurse must provide evidence of meeting the CE requirements; [and completing 400 hours of practice under the direct supervision in the appropriate specialty area. The supervised practice must be completed within six months and a limited license will be issued for the duration of the supervised practice]~~ evidence of current national certification must also be provided.

~~(M)(L)~~ Clinical nurse specialist practice.

(1) The CNS is a nurse who through graduate level preparation has become an expert in a defined area of knowledge and practice in a selected clinical area of nursing. (Taken from the ANA Social Policy Statement)

(2) The CNS practices in accordance with the standards as established by the ANA.

(3) The CNS makes independent decisions in a specialized area of nursing practice, using knowledge about the health care needs of the individual, family and community. The CNS collaborates as necessary with other members of the health care team, when the needs are beyond the scope of practice of the CNS.

(4) The CNS may assume specif-

ic functions and/or perform specific procedures which are beyond the advanced educational preparation and certification for the CNS provided the knowledge and skills required to perform the function and/or procedure emanates from a recognized body of knowledge and/or advanced practice of nursing and the function or procedure is not prohibited by any law or statute. When assuming specific functions and/or performing specific procedures, which are beyond the CNS's advanced educational preparation and certification, the CNS is responsible for obtaining the appropriate knowledge, skills and supervision to assure he/she can perform the function/procedure safely and competently and recognize and respond to any complications that may arise.

(5) Carries out therapeutic regimens in the area of the specialty.

(6) The CNS who has fulfilled the requirements for prescriptive authority in the specialty area may prescribe and distribute therapeutic measures including dangerous drugs and controlled substances contained in Schedules II through V of the Controlled Substance Act within the scope of the specialty practice and setting.

(a) Requirements for prescriptive authority: In accordance with applicable state and federal laws, the CNS who fulfills the following requirements may prescribe and distribute dangerous drugs including controlled substances included in Schedules II through V [of the Controlled Substance Act.

(i) Verifies 400 hours of work experience in which prescribing dangerous drugs has occurred within the two (2) years immediately preceding the date of application and provide a copy of a transcript documenting successful completion of the a three credit hour pharmacology course, a three credit hour assessment course and a three credit hour pathophysiology course included as part of a graduate level advanced practice nursing education program. Forty-five (45) contact hours of advanced level pharmacology continuing education course may be substituted for the academic pharmacology. A certificate of completion must be provided that verifies continuing education or

(ii) If 400 hours of work experience in which prescribing dangerous drugs cannot be verified, provide a copy of a transcript documenting successful completion of a three credit hour pharmacology course that is included as part of a graduate level advanced practice nursing education program within five years immediately prior to the date of application to the board. Forty-five (45) contact hours of advanced level pharmacology continuing education course may be substituted for the

academic pharmacology. A certificate of completion must be provided that verifies continuing education. The course must be related to the specialty and contain content in pharmacokinetics, pharmacodynamics, pharmacology of current/commonly used medications and application of drug therapy to the treatment of disease and/or the promotion of health and

(iii) Provide a copy of a transcript documenting successful completion of a three credit hour assessment course that is included as part of a graduate level advanced practice nursing education program. The course must be related to the specialty and include content supported by related clinical experience such that students gain knowledge and skills needed to perform comprehensive assessments to acquire data, make diagnoses of health status and formulate effective clinical management plans and

(iv) Provide a copy of a transcript documenting successful completion of a three credit hour pathophysiology course that is included as part of a graduate level advanced practice nursing education program. The course must be related to the specialty and include content in physiology and pathophysiology.

(v) Provide a copy of a transcript documenting successful completion of a 400 hour university/college associated preceptor experience in the prescription of dangerous drugs within the two years immediately prior to the date of application to the board or,

(vi) After fulfilling ii, iii, and iv above, upon application to the board, a letter of authorization for a prescriptive authority preceptorship will be issued to complete a preceptorship, which must be completed within six (6) months.

(vii) In order to prescribe controlled substances, the CNS must provide the board of nursing with verification of current state controlled substances registration and current DEA number. CNSs may not possess, prescribe or distribute controlled substances until they have both a current state controlled substances registration and a current DEA registration.

(viii) Once prescriptive authority requirements are met, the board will notify the board of pharmacy of completion of prescriptive authority requirements.

(b) Formulary. It is the CNS's responsibility to maintain a formulary of dangerous drugs and controlled substances that may be prescribed. The only drugs to be included in the formulary are those relevant to the CNS's area of specialty practice, scope of practice and clinical setting.

(i) All CNSs must maintain a current formulary with the board

of nursing.

(ii) The board of nursing reserves the right to audit the formulary. Licensees may be subject to disciplinary action by the board of nursing if noncompliant with the audit.

(c) Prescription pads. The CNS's name, address, and telephone number must be imprinted on the prescription pad. In the event that a CNS is using a prescription pad printed with the names of more than one CNS, the name of the CNS for the individual prescription shall be indicated.

(d) Distributing: CNSs who have fulfilled requirements for prescriptive authority as stated in these rules, may distribute to their patients dangerous drugs including controlled substances contained in Schedules II through V of the Controlled Substance Act, which have been prepared, packaged, or fabricated by the registered pharmacist or doses which have been pre-packaged by a pharmaceutical manufacturer in accordance with the Pharmacy Act [61-11-22] and the Drug, Device and Cosmetic Act for the benefit of the public good.

(e) Labeling: CNSs may label only those drugs which the CNS prescribes and distributes to patients under the CNS's care. The medication shall be properly labeled with the patient's name, date of issue, drug name and strength, instructions for use, drug expiration date, telephone number of the CNS. Labeling may be handwritten or a pre-printed fill-in label may be used. All information shall be properly documented in the patient record.

(f) CNSs who do not plan to prescribe controlled substances but do plan to prescribe dangerous drugs must meet the requirements relative to prescriptive authority except those specifically required for controlled substances.

(7) Graduate clinical nurse specialist (GCNS) practice.

(a) GCNSs may not distribute medications.

(b) GCNSs may practice and/or prescribe medications only under the direct supervision of a licensed CNS, CNP or physician in the specialty.

(8) To insure competency and safe practice in specific regard to prescription writing practices in the state of New Mexico:

(a) a list of current CNSs and their status with regard to prescription writing shall be distributed at least annually and upon request to the board of pharmacy;

(b) violation of these rules and/or disciplinary action taken by the board of nursing with regard to controlled substances shall be reported to the board of pharmacy;

(c) the board of nursing shall annually appoint qualified CNSs in each specialty to serve on the board of pharmacy

disciplinary panel.

~~NJM~~ Advanced practice committee.

(1) The board may appoint a minimum of a 6-member advisory committee to assist the board in regulating the advanced practice of nursing.

(2) The committee shall assist and advise the board in the review of issues related to the advanced practice of nursing.

(3) The committee shall be composed of a least two representatives from each advanced practice area regulated by the board.

[1-1-98; 16.12.2.15 NMAC – Rn & A, 16 NMAC 12.2.13, 7-30-01; A, 12-31-01; A, 04-01-02; A, 1-2-04]

NEW MEXICO BOARD OF NURSING

This is an amendment to Sections 16.12.3.8 and 16.12.3.12 NMAC, effective 01-02-04. This action amends these Sections by removing unnecessary language and adding new language due to changes in the role in accordance with the current (NMAC) New Mexico Administrative Code Requirements.

16.12.3.8 TYPES OF APPROVAL

A. Initial Approval.

(1) Initial approval shall be granted as outlined in numbers 16.12.3.11 NMAC "requirements for the establishment of new programs or reopening programs" and 16.12.3.12 NMAC "minimum standards for nursing programs" of these rules. Initial approval is valid from the time granted through the graduation of the first nursing class.

(2) The program shall have initial approval prior to recruiting and enrolling students into the nursing program.

(3) Immediately preceding graduation of the first nursing class, a self-evaluation report of compliance with the "minimum standards for nursing programs" shall be submitted to the board and an approval visit shall be made by representatives of the board for consideration of continued approval.

B. Full Approval.

(1) Programs that are not nationally accredited:

(a) full approval status shall be granted after the board verifies through a site visit that the "minimum standards for nursing programs" have been met;

(b) full approval for a continuing period not to exceed eight (8) years, shall be granted to nursing education programs if, in the opinion of the board, the program continues to demonstrate compliance with minimum standards for nursing programs.

(2) Nationally accredited pro-

grams:

(a) programs which have received accreditation from a board-recognized national nursing accreditation agency shall file evidence of initial accreditation with the board, and therefore shall file notice of any change in program accreditation status and report from accrediting agency's board of review; the board shall grant approval based upon evidence of such accreditation;

(b) programs holding approval based upon national accreditation are also responsible for complying with "minimum standards for nursing programs";

(c) full approval for a continuing period not to exceed eight (8) years, shall be granted to nursing programs with full national accreditation.

C. Conditional Approval.

(1) The nursing education program may be placed on conditional approval when there is evidence of substantial non-compliance with the "minimum standards for nursing programs" as specified in these rules.

(a) When on conditional approval status, the board of nursing may direct the program to cease admissions.

(b) A closure plan which includes date of closure, provisions that will be made for students to complete their nursing education, and the location of the permanently stored program records will be submitted to the board six months after the program is placed on a conditional approval.

(2) The following situations are cause for review and/or a site visit by the board to determine if the minimum standards for nursing programs are being met:

(a) complaints relating to violations of the "minimum standards for nursing programs";

(b) denial, withdrawal or change of program accreditation status by a board-recognized national nursing accreditations agency or general academic accreditation agency;

(c) failure to obtain board approval of changes that require approval of the board under "program changes";

(d) providing false or misleading information to students or the public concerning the nursing program;

(e) violation of the rules or policies;

(f) continuous disruptions in retaining a qualified director or faculty, resulting in disorganization and breakdown of supervision and teaching of students;

(g) non-compliance with the program's stated philosophy, objectives, policies, and curriculum resulting in unsatisfactory faculty/student achievement;

(h) failure to provide clinical experiences necessary to meet the objectives of the nursing program;

(i) less than a passing rate of 80% of first time writers of the national licensing examination;

(i) when a program fails to maintain a passing rate of 80% of first time writers for one year, a letter will be sent to the program notifying them that they are not in compliance with the rules and to provide the board with an assessment of possible problem areas within six (6) months;

(ii) when a program fails to maintain a passing rate of 80% of first time writers for two consecutive years, a report addressing areas of concern with a plan for corrective action will be submitted to the Board and an evaluation visit ~~will~~ may be required;

(iii) when a program fails to maintain a passing rate of 80% of first time writers for one year and then achieves the passing rate the second year and then fails to maintain the passing rate the third year, an assessment of possible problem areas will be done within 6 months and an evaluation visit ~~will~~ may be conducted;

(iv) when a program fails to maintain a passing rate of 80% of first time writers for three consecutive years, the program ~~will~~ may be placed on conditional approval and an evaluation visit ~~will~~ may be required.

(3) Conditional approval is not renewable. Failure to correct deficiencies within the designated time period will result in withdrawal of approval and involuntary closure of the program by the board.

(4) The board may deny approval or withdraw approval of a nursing education program that does not meet the "minimum standards for nursing programs."

[1-1-98; 16.12.3.8 NMAC - Rn & A, 16 NMAC 12.3.8, 7-30-01; A, 1-2-04]

16.12.3.12 MINIMUM STANDARDS FOR NURSING PROGRAMS:

A. Administration and organization.

(1) The nursing education program shall be an integral part of a regionally accredited institution authorized by this state to confer credentials in nursing.

(2) The nursing programs shall have status comparable with other academic units. There shall be an organizational chart which identifies the relationships, within and between the program and other administrative areas of the parent institution.

(3) The administration of the parent institution shall provide adequate financial support for the nursing program.

(4) The parent institution shall designate a qualified, nursing director who is licensed to practice as a registered nurse

in New Mexico. The nursing program director shall have responsibility and authority comparable with the administrative position including but not limited to development, implementation, evaluation, administration and organization of the nursing program.

(5) Faculty, administration and students shall have the opportunity to participate in the governance of the nursing program and the parent institution.

B. Curriculum.

(1) The mission of the nursing unit shall be consistent with that of the parent institution.

(2) The curriculum shall be developed, implemented, controlled and evaluated by the faculty within the framework of the mission, goals and outcomes of the nursing program.

(3) The curriculum shall extend over a period of time sufficient to provide essential, sequenced learning experiences which enable a student to develop nursing competence and shall evidence an organized pattern of instruction consistent with principles of learning and educational practice.

(4) Clinical experience shall provide opportunities for application of theory and for achievement of the stated objectives in a client care setting, and shall include clinical learning experience to develop nursing skills required for safe practice. Student/faculty ratio in the clinical setting shall be based upon the level of students, the acuity level of the clients, the characteristics of the practice setting and shall not exceed 8:1. Clinical evaluation tools for evaluation of students progress, performance and learning experiences shall be stated in measurable terms directly related to course objectives.

(5) The curriculum shall provide instruction in the discipline of nursing, appropriate to the RN or PN level, across the lifespan and include content relevant to national and local health care needs. Support courses shall be an integral part of the nursing curriculum.

(6) A plan for curriculum and program evaluation shall be in place.

C. Students: There shall be written policy statements consistent with those of the parent institutions which shall be made available to the student. Students shall be provided with opportunities to participate in the development and revisions of policies and procedures related to students including but not limited to philosophy, objectives, clinical sites, learning experiences, and evaluation of the program.

D. Faculty ~~qualifications and~~ requirements.

(1) The director of the nursing program and all nursing program faculty shall hold current licenses to practice as reg-

istered nurses in New Mexico or in a compact state.

(2) Faculty shall meet the educational requirements of the parent institution and those requirements shall be at least comparable to other faculty members of like status.

(3) Beginning on January 1, 2002, all new nursing program directors and nursing faculty must meet the following requirements:

(a) the director shall hold a graduate degree in nursing;

(b) nursing faculty shall hold a graduate degree in nursing; faculty without a graduate degree may be employed for one year and then are required to complete a graduate degree within the next five years;

(c) nursing faculty who teach part time shall hold a minimum of a bachelors degree in nursing.

~~[(4) Faculty shall be qualified and adequate in number to meet the needs of the nursing program.]~~

~~[(5)](4)~~ Personnel policies for nursing faculty shall be the same as those in effect for other faculty with the exception of:

(a) at least 80% of the director's assignment should be administrative; additional administrative time should be given when preparing for accreditation, curriculum revision and other such activities;

(b) nursing faculty workload shall be calculated by teaching clock/contact hour.

E. Resources: The parent institution shall provide sufficient resources, services and facilities to operate the nursing program.

[1-1-98; 16.12.3.12 NMAC - Rn & A, 16 NMAC 12.3.12, 7-30-01; A, 12-31-01; A, 1-2-04]

NEW MEXICO STATE PERSONNEL BOARD

This is an amendment to Subsection B of 1.7.9.9 NMAC and 1.7.9.10 NMAC, effective 12/01/03. This amendment is the result of action taken by the State Personnel Board in relation to their authority under Emergency Rules, 1.7.13.11 NMAC (07/07/01). This amendment expires 120 calendar days after filing.

1.7.9.9 PERFORMANCE APPRAISAL:

A. Managers and supervisors must successfully complete a director-approved course of study on employee performance appraisal within 45 days of appointment as a supervisor.

B. The performance and development of a career employee shall be reviewed semi-annually and appraised by

the immediate supervisor each year [during the agency's focal point appraisal period] in accordance with director issued guidelines.

C. The performance and development of a probationary employee shall be reviewed quarterly and appraised by the immediate supervisor before the end of the one-year probationary period. Performance and development of newly-appointed managers and first line supervisors and newly-promoted employees shall be reviewed semi-annually for the first year of appointment, and may be performed whenever an immediate supervisor wishes to make an employee's performance a matter of record.

D. The appraisal of employee performance shall include the immediate supervisor and self and additional evaluation(s) (peer, customer, subordinate, etc.) when deemed appropriate.

E. Managers and immediate supervisors who fail to comply with the provisions of 1.7.9 NMAC shall be subject to disciplinary action including dismissal. [1.7.9.9 NMAC - Rp, 1 NMAC 7.9.9, 07/07/01; A, 11/14/02; A, 7/30/03; A, 12/01/03]

[This amendment is the result of action taken by the state personnel board in relation to their authority under Emergency Rules, 1.7.13.11 NMAC (07/07/01). This amendment expires 120 calendar days after filing.]

1.7.9.10 [FOCAL POINT APPRAISAL:]

~~[A. Each agency shall develop an agency plan, which outlines how it will conduct employee performance appraisals in accordance with these rules and the quality assurance review guidelines established pursuant to Paragraph (1) of Subsection A of 1.7.1.8 NMAC. The plan and its guidelines shall support equity and fairness in its administration of performance appraisals and shall ensure that distribution of rating is based solely on employee's contribution relative to the requirements of their positions. The plan and its guidelines shall be approved by the Director prior to the agency awarding a pay increase, pursuant to Subsection B of 1.7.4.13 NMAC, and will be reviewed by the Board annually.~~

~~B. Agencies shall select a specific point period of time, not to exceed 60 consecutive days between July and November, inclusive, to conduct appraisals and rate all employees on their performance using a form approved by the Director.~~

~~C. Agencies shall have a five tier appraisal rating system. Unless otherwise specified by agency policy, the ratings will be named: Greatly Exceeds Expectations; Exceeds Expectations; Meets~~

~~Expectations; Needs Improvement; Unacceptable. If agency policy substitutes alternative names, the agency name for the top tier rating shall use the Office definition for Greatly Exceeds Expectations; the agency name for the second tier rating shall use the Office definition for Exceeds Expectations; the agency name for the third tier rating shall use the Office definition for Meets Expectations; the agency name for the fourth tier rating shall use the Office definition for Needs Improvement; the agency name for the fifth tier rating shall use the Office definition for Unacceptable.]~~

[RESERVED]

[1.7.9.10 NMAC - N, 07/01/02; A, 11/14/02; A, 7/30/03; A, 12/01/03]

[This amendment is the result of action taken by the state personnel board in relation to their authority under Emergency Rules, 1.7.13.11 NMAC (07/07/01). This amendment expires 120 calendar days after filing.]

NEW MEXICO REAL ESTATE COMMISSION

16.61.19 NMAC, Brokerage Relationships and Disclosures (filed 11-30-2001) is repealed effective 1-1-2004. The Part name, was changed from Brokerage Relationships and Disclosures to Basic Licensee Duties, Disclosure, Brokerage Relationships and Dual Agency Relationships.

NEW MEXICO REAL ESTATE COMMISSION

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 61 REAL ESTATE BROKERS AND SALESPERSONS
PART 19 BASIC LICENSEE DUTIES, DISCLOSURE, BROKERAGE RELATIONSHIPS AND DUAL AGENCY RELATIONSHIPS

16.61.19.1 ISSUING AGENCY: New Mexico Real Estate Commission. [16.61.19.1 NMAC - Rp 16.61.19.1 NMAC, 1-1-2004]

16.61.19.2 SCOPE: The provisions in Part 19 of Chapter 61 apply to all licensed salespersons and brokers in New Mexico. [16.61.19.2 NMAC - Rp 16.61.19.2 NMAC, 1-1-2004]

16.61.19.3 STATUTORY AUTHORITY: Part 19 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-4.

[16.61.19.3 NMAC - Rp 16.61.19.3 NMAC, 1-1-2004]

16.61.19.4 DURATION: Permanent.

[16.61.19.4 NMAC - Rp 16.61.19.4, 1-1-2004]

16.61.19.5 EFFECTIVE DATE: 1-1-2004, unless a later date is cited at the end of a section.

[16.61.19.5 NMAC - Rp 16.61.19.5 NMAC, 1-1-2004]

16.61.19.6 OBJECTIVE: The objective of Part 19 of Chapter 61 is to define the duties of real estate licensees, to define the various brokerage relationships available between consumers and licensees, and to define the disclosures licensees are required to make when working with consumers.

[16.61.19.6 NMAC - Rp 16.61.19.6 NMAC, 1-1-2004]

16.61.19.7 DEFINITIONS: Refer to 16.61.1.7 NMAC.

[16.61.19.7 NMAC - Rp 16.61.19.7 NMAC, 1-1-2004]

16.61.19.8 BASIC LICENSEE DUTIES; DISCLOSURE: Prior to the time a licensee generates or presents any written document that has the potential to become an express written agreement, the licensee shall disclose in writing to a prospective, buyer, seller, landlord or tenant, the following list of basic licensee duties that are owed to all customers and clients by all licensees:

A. honesty and reasonable care as set forth in the provisions of this section;

B. compliance with local, state, and federal fair housing and anti-discrimination laws, the New Mexico real estate license law and the real estate commission rules and regulations, and other applicable local, state, and federal laws and regulations;

C. performance of any and all oral or written agreements made with the licensee's customer or client;

D. assistance to the licensee's customer or client in completing the transaction, unless otherwise agreed to in writing by the customer or client, including:

(1) presentation of all offers or counter-offers in a timely manner;

(2) assistance in complying with the terms and conditions of the contract and with the closing of the transaction; if the licensee in the transaction is not providing the service, advice or assistance described in Paragraphs (1) and (2) of Subsection D of

16.61.19.8 NMAC, the customer or client must agree in writing that the licensee is not expected to provide such service, advice or assistance, and the licensee shall disclose such agreement in writing to the other licensees involved in the transaction;

E. acknowledgement by the licensee that there may be matters related to the transaction that are outside the licensee's knowledge or expertise and that the licensee will suggest that the customer or client seek expert advice on these matters;

F. prompt accounting for all monies or property received by the licensee;

G. prior to the time the licensee generates or presents any written document that has the potential to become an express written agreement, written disclosure of:

(1) any written brokerage relationship the licensee has with any other parties to the transaction and/or;

(2) any material interest or relationship of a business, personal, or family nature that the licensee has in the transaction;

H. disclosure of any adverse material facts actually known by the licensee about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction; adverse material facts do not include data from a sex offender registry or the existence or group homes;

I. maintenance of any confidential information learned in the course of any prior agency relationship unless the disclosure is with the former client's consent or is required by law;

J. unless otherwise authorized in writing, a licensee shall not disclose to their customer or client during the transaction that a seller has previously indicated they will accept a sales price less than the asking or listed price of a property; that the buyer has previously indicated they will pay a price greater than the price submitted in a written offer; the motivation of any party for selling or buying property; that a seller or buyer will agree to financing terms other than those offered; or any other information requested in writing by the licensee's customer or client to remain confidential, unless disclosure is required by law.

[16.61.19.8 NMAC - Rp 16.61.19.8 NMAC, 1-1-2004]

16.61.19.9 BROKERAGE RELATIONSHIPS: Brokerages working with consumers either as customers or clients may do so through a variety of brokerage relationships. These relationships include but are not limited to an exclusive

agency relationship, a dual agency relationship, or a transaction broker relationship. For all regulated real estate transactions, a buyer, seller, landlord or tenant may enter into an express written agreement to become a client of a brokerage without creating an agency relationship, and no agency duties will be imposed.

A. Exclusive agency: an express written agreement between a person and a brokerage wherein the brokerage agrees to exclusively represent as an agent the interests of the person in a real estate transaction. Such agreements include buyer agency, seller agency, designated agency, and subagency agreements.

B. Dual agency: an express written agreement that modifies existing exclusive agency agreements to provide that the brokerage agrees to act as a facilitator in a real estate transaction rather than as an exclusive agent for either party to the transaction.

C. Transaction broker: a brokerage that provides real estate services without entering into an agency relationship.

[16.61.19.9 NMAC - Rp 16.61.19.9 NMAC, 1-1-2004]

16.61.19.10 DUAL AGENCY RELATIONSHIP:

A. Dual agency occurs when:

(1) a licensee is agent for both a seller client and a buyer client in the same transaction;

(2) a licensee is agent for either a seller client or a buyer client, and the agent's qualifying broker is agent for the other client in the transaction; and,

(3) in a transaction where a buyer client and a seller client are each served by different licensees in an agency relationship supervised by the same qualifying broker, and the qualifying broker does not choose the designated agency option, both the licensees and the qualifying broker are dual agents in the transaction.

B. In all situations, a dual agent shall act in the capacity of a facilitator rather than as an exclusive agent of either party to the transaction.

C. Prior to writing or presenting offers, a dual agent shall obtain written authority from the buyer client and the seller client in the form of a separate dual agency agreement.

D. Information obtained by a licensee prior to the time that written authority for dual agency was granted shall not be disclosed to the other party unless required by law or regulations or permitted by the client who originally disclosed the confidential information.

[16.61.19.10 NMAC - Rp 16.61.19.11

NMAC, 1-1-2004]

HISTORY OF 16.61.19 NMAC:

Pre-NMAC History:

The material in this Part was derived from that previously filed with the State Records Center & Archives under NMREC Rule 18, Agency: Relationship, Disclosure and Compensation, filed 12-17-91 and Rule 18, Licensee Duties: Brokerage Relationships/Disclosure, filed 4-13-95.

History of Repealed Material:

16 NMAC 61.19, Licensee Duties; Brokerage Relationships/Disclosures, filed with the State Records Center & Archives on 12-17-96, is repealed 1-1-2000. Repromulgated as 16 NMAC 61.19, Brokerage Relationships and Disclosures, effective 1-1-2000.

16.61.19 NMAC, Brokerage Relationships and Disclosures (filed 11-30-2001) is repealed effective 1-1-2004.

Other History:

16 NMAC 61.19, Brokerage Relationships and Disclosures, filed 12-10-99 reformatted, amended and renumbered to 16.61.19 NMAC, Brokerage Relationships and Disclosures, effective 1-1-2002.

16.61.19 NMAC, Brokerage Relationships and Disclosures (filed 11-30-2001) replaced by 16.61.19 NMAC, Basic Licensee Duties, Disclosure, Brokerage Relationships and Dual Agency Relationships, effective 1-1-2004.

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.1 NMAC, General Provisions, Section 7, to be effective 01-01-2004.

16.61.1.7 DEFINITIONS:

A. Agency: the fiduciary relationship created solely by the express written agency agreement between a person and a brokerage, authorizing the brokerage to act as agent for the person according to the scope of authority granted in that express written agreement for real estate services subject to the jurisdiction of the commission.

B. Agent: the brokerage authorized, solely by means of an express written agency agreement, to act as a fiduciary for a person and to provide real estate services subject to the jurisdiction of the commission; in the case of an associate broker or salesperson, the person who has been authorized to act by their qualifying broker or broker in charge.

C. Approved education course: a continuing education course

approved by the real estate commission dealing with selling, leasing, or managing residential, commercial and industrial property, as well as courses in basic real estate law and practice.

D. Approved training course: all other continuing education courses approved by the commission with the exception of approved education courses and the mandatory course.

E. Associate broker: a licensee holding a broker's license who is associated with a qualifying broker, and is deemed to be acting in the capacity of a salesperson.

F. Basic licensee duties: those ~~[minimum]~~ basic duties ~~[required of all Licensees regardless of any contractual or non contractual Brokerage Relationship.]~~ established by the commission that are owed by all licensees to all clients and customers.

G. Broker: any person holding a valid New Mexico real estate broker's license.

H. Brokerage: a licensed qualifying broker, the licensed real estate business represented by the qualifying broker and its affiliated licensees.

I. Brokerage relationship: the legal or contractual relationship between a person and a brokerage in a real estate transaction subject to the jurisdiction of the commission.

J. Broker in charge: a broker designated by the qualifying broker to be temporarily responsible for real estate related activity within the office during the absence of the qualifying broker.

K. Client: ~~[A Consumer either in an Agency or Nonagency relationship who has entered into an express written agreement with a Brokerage for real estate services subject to the jurisdiction of the Commission.]~~ a person who has entered into an express written agreement with a brokerage for real estate services subject to the jurisdiction of the commission.

L. Consumer: prospective sellers and buyers, lessors and lessees, landlords and tenants.

M. Credit hours(s): credits toward continuing education requirements as assigned by the real estate commission for each commission-approved course. May vary from actual classroom hours.

N. Custodial account: an account in the owner's name of which the qualifying broker is a trustee. Established for the purpose of holding monies received by the qualifying broker on behalf of the owner, and may be interest bearing.

O. Customer: a consumer who uses real estate services without entering into an express written agreement with a brokerage subject to the jurisdiction of the

commission.

P. Designated agency: a fiduciary relationship chosen by the qualifying broker, created solely by an express written agency agreement between a person and a brokerage, authorizing the brokerage to act as agent for that person through the designated licensee. The designated agency exists only between the designated agent and the person.

Q. Designated agent: that licensee designated by the qualifying broker, to the exclusion of others in the brokerage, to be the agent of the person who has entered into an express written agency agreement with the brokerage.

R. Dual agency: ~~[A Brokerage Relationship created by a written modification of existing Exclusive Agency agreements providing real estate related services by express written agreement between the Qualifying Broker and both Parties to the Transaction resulting in facilitation.]~~ an express written agreement that modifies existing exclusive agency agreements to provide that the brokerage agrees to act as a facilitator in real estate transaction rather than as an exclusive agent for either party to the transaction.

S. Dual agent: a licensee in a dual agency relationship working as a facilitator for both a buyer client and a seller client in a single transaction.

T. Employee: for the purposes of Section 61-29-2 C (1) of the real estate license law, a person employed by an owner or lessor of real property, or a person employed by the brokerage acting on behalf of the owner or lessor of real property. In determining whether a person is an employee, as opposed to an independent contractor, the commission shall consider the following indicia:

(1) does the employer withhold income tax from the person's wages, salary, or commission;

(2) does the employer pay the person's FICA tax;

(3) is the person covered by workers' compensation insurance;

(4) does the employer make unemployment insurance contributions on behalf of the person;

(5) does the employer consider the person an employee.

[F] U. Errors and omissions insurance: a type of professional liability insurance that provides

insurance coverage to holders of active New Mexico real estate salespersons and brokers licenses for errors and omissions made during the course of real estate transactions, subject to the coverages, limitations, and exclusions of the specific insurance policy or policies in place.

~~[AV] V. Exclusive agency: [An Agency relationship created between a Person and a Brokerage only by express written Agency agreement providing real estate related services, such as Agency for buyer or seller, Designated Agency or Subagency.] an express written agreement between a person and a brokerage wherein the brokerage agrees to exclusively represent as an agent the interests of the person in a real estate transaction. Such agreements include buyer agency, seller agency, designated agency, and subagency agreements.~~

W. Express written agreement: a listing agreement, a written agency or brokerage relationship agreement, an exclusive transaction broker agreement or purchase or lease agreement, or any written agreement signed by all parties to a real estate transaction.

[X] X. Facilitator: the role of a licensee in a dual agency relationship whereby the existing agency relationships with a seller client and a buyer client are modified so that the licensee impartially facilitates the transaction.

[W] Y. Foreign broker: [Any Broker licensed by any jurisdiction other than New Mexico. May also be a third party company, corporation, referral, or relocation company in real estate] a real estate brokerage licensed by a jurisdiction other than New Mexico engaged in real estate-related activities in New Mexico.

[X] Z. Inactive license: a [license that has been placed with the Commission for storage] New Mexico licensed real estate broker or salesperson who has returned their license to the real estate commission because they are not currently affiliated with a real estate brokerage in New Mexico.

[Y] AA. In house transaction: a transaction that occurs under the supervision of one qualifying broker.

[Z] BB. Licensee: any person holding a New Mexico real estate license.

[AA] CC. Land title trust account: a pooled interest-bearing account subject to the land title trust fund act.

[BB] DD. Mandatory course: the eight (8) credit hour course the commission requires licensees, except for those licensees exempted from continuing education requirements pursuant to Section 61-29-4.1 of the real estate license law, to take during each license renewal cycle.

[CC. Nonagent: A Brokerage and its Licensees providing real estate services to either Clients by means of an express written agreement that does not provide for fiduciary duties, or to Customers without an express written agreement.]

[DD] EE. Party to the transaction: a client or customer or any other person who utilizes real estate related services sub-

ject to jurisdiction of the commission, but shall not include any person who acquires an interest as security for an obligation.

[EE] FF. Person: any natural person, corporation, business trust, estate, trust, partnership, association, joint venture, governmental entity or other legal entity.

[FF] GG. Principal: any person who authorizes or employs another to do certain acts on their behalf.

[GG] HH. Property management: includes the showing, renting and leasing of real property, the collection and disbursement of [HH] funds on behalf of other persons, the supervision of employees as specified in the management agreement, the supervision of maintenance and repair work, handling of tenant relations, and/or preparation of financial reports. In the course of listing and marketing properties for sale, repairs and maintenance incident to the sale and authorized by the owner, shall not be considered property management.

[HH] II. Property management trust account: a trust account containing money of others derived from the management of leased or rental properties.

[H] JJ. Property manager: a licensee (with the exception of those mentioned in Section 61-29-2(C), NMSA 1978) who, for a fee, salary, commission or other valuable consideration, is engaged in managing [a specific] property for others.

[H] KK. Qualifying broker: a broker who has qualified an individual proprietorship, corporation, partnership or association to do business as a brokerage in the state of New Mexico.

[KK] LL. Referral: [Any] the communication by one licensee or brokerage to another licensee or brokerage of the identity of a potential buyer/tenant or seller/lessor of [a particular parcel of] real property available for sale, lease, or exchange.

[LL] MM. Responsible person: the qualifying broker, associate broker, or salesperson for whom an unlicensed assistant works. If an unlicensed assistant works for more than one licensee, each licensee for whom the unlicensed assistant works is a responsible person. Each responsible person will be subject to the provisions of Section 61-29-12A(7) NMSA 1978 [61-29-12G NMSA 1978, which provides that a license may be refused, suspended or revoked if the licensee is guilty of compensating, directly or indirectly any person for performing any of the acts regulated by Chapter 61, Article 29, NMSA 1978].

[MM] NN. Salesperson: a licensee holding a salesperson's license who is associated with a qualifying broker.

[NN] OO. Scope of authority: the authority to act on behalf of or in the place of a principal with specific

parameters governing the [Licensee's] brokerage's authority to act.

[OO] PP. Short-term rental: the rental of real property for a period of less than thirty (30) days.

[PP] QQ. Special trust account: a trust account bearing interest payable to a named party to the transaction.

[QQ] RR. Subagent: an agent of the agent, authorized to act for the agent in performing functions undertaken by the agent for his principal.

[RR. Substantive Contact: That point in any communication between a Licensee and a Consumer where information regarding the Consumer's finances or other confidential information is revealed or conveyed.]

SS. Transaction: all brokerage relationships, sales, leases, rentals, options and exchanges subject to the jurisdiction of the commission.

TT. Transaction broker: a brokerage that provides real estate services without entering into an agency relationship.

[TT] UU. Trust account: an account established by the qualifying broker for the purpose of holding money of others received by the qualifying broker in a transaction.

[UU] VV. Unlicensed assistant: a person who:

(1) does not hold a New Mexico real estate license;

(2) works under the supervision of a qualifying broker, associate broker or salesperson;

(3) performs only those routine [real estate] clerical, secretarial, administrative or bookkeeping activities defined in Part 21 of the real estate commission rules and regulations, which do not require a New Mexico real estate license. [under Section 61-29-2 NMSA 1978.

VV. Unlicensed Employee: A regular employee who performs services subject to the will and control of an employer. In determining whether a Person is an employee, the Commission shall consider the following indicia:

(1) Is the employer required to withhold income tax from the Person's wages, salary or commission;

(2) Is FICA tax required to be paid by the employer;

(3) Is the Person covered by Workers' Compensation Insurance;

(4) Is the employer required to make unemployment insurance contributions on the Person; and,

(5) Does a Person's employer consider the Person to be an employee.

(6) If all the indicia mentioned are present, the Commission will presume that the Person is an employee. However, a

~~Person may be an employee even if one or more of the above items are not present~~
[1-1-2000, A, 2-14-2000; 16.61.1.7 NMAC - Rn & A, 16 NMAC 61.1.7, 1-1-2002; A, 01-01-2004]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.2 NMAC, License and Other Fees, Sections 8 and 9, to be effective 01-01-2004.

16.61.2.8 FEES:

A. For each examination, a fee not to exceed ninety-five dollars (\$95.00).

B. For each broker's license issued, and for each renewal thereof, a fee not to exceed ~~[one hundred eighty dollars (\$180.00)]~~ two hundred seventy dollars (\$270.00).

C. For each salesperson's license issued, and for each renewal thereof, a fee not to exceed ~~[one hundred eighty dollars (\$180.00)]~~ two hundred seventy dollars (\$270.00).

D. For each license transferred, a fee not to exceed twenty dollars (\$20.00). If there are eleven or more affected licenses in the brokerage, the total transfer fee paid shall not exceed two hundred dollars (\$200.00).

E. For each duplicate license, where the license is lost or destroyed and affidavit is made thereof, a fee not to exceed twenty dollars (\$20.00).

F. For each license history, a fee not to exceed twenty-five dollars (\$25.00).

G. For copying of documents by the commission a fee not to exceed one dollar (\$1.00) per copy.

H. For each state of New Mexico real estate license law and rules and regulations manual a fee not to exceed ten dollars (\$10.00).

I. For each hard copy or electronic list of licensed real estate brokers and salespersons, a fee not to exceed twenty dollars (\$20.00).

J. For each initial salesperson's and broker's license, and for the renewal thereof, a fee not to exceed ten dollars (\$10.00) shall be credited to the real estate recovery fund pursuant to NMSA 1978 Section 61-29-22 if in the commission's judgment the assessment of such fee is necessary to maintain the fund at its statutory minimum level.

K. For each application to the commission to become an approved sponsor of real estate pre-licensing and continuing education courses, a fee not to exceed five hundred dollars (\$500.00) and

for each renewal thereof a fee not to exceed five hundred dollars (\$500.00).

L. For each application to the commission to become an approved instructor of real estate pre-licensing and continuing education courses, a fee not to exceed seventy dollars (\$70.00) per course.

M. For each application to the commission to renew certification as a commission approved instructor of real estate pre-licensing and continuing education courses, a fee not to exceed one hundred dollars (\$100.00).

[16.61.2.8 NMAC - Rp, 16 NMAC 61.2.8, 1-1-2002; A, 01-01-2004]

16.61.2.9 [REFUNDS] FEES NON-REFUNDABLE: ~~[The Commission shall refund, on a proportionate basis, the license issuance fee or the license renewal fee if the license is terminated with more than one year remaining.]~~ Fees paid to the commission pursuant to 16.61.2.8 NMAC of the commission rules and regulations are non-refundable.

[16.61.2.9 NMAC - Rp, 16 NMAC 61.2.9, 1-1-2002; A, 01-01-2004]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.3 NMAC, Broker's License: Examination and Licensing Application Requirements, Section 8, to be effective 01-01-2004.

16.61.3.8 EXAMINATION AND LICENSING REQUIREMENTS:

Each applicant for a broker's license shall be a legal resident of the United States ~~[have reached the age of majority and except as provided in Section 61-29-14 NMSA 1978, be a resident of New Mexico]~~ and have reached the age of majority. An applicant for a broker's license who holds a real estate license in another jurisdiction that administers a real estate broker's examination may be issued a broker's license if the applicant establishes that they possess credentials and qualifications that are substantively equivalent to the requirements in New Mexico for licensure. A broker's license may be issued under this paragraph only if the jurisdiction from which the applicant holds a real estate license allows the issuance of a real estate broker's license to applicants from the state of New Mexico in substantially the same manner as set forth in this paragraph. An applicant for a qualifying broker's license shall have been actively engaged in the real estate business as an associate broker or salesperson for at least two of the last five years immediately prior to making application for a qualifying broker's license.

A. Individuals wishing to

take the broker's license examination must pre-register for the examination with the commission or its examination services contractor. An applicant failing to apply for a license within sixty (60) days following notice of having passed the examination shall be required to re-examine unless the applicant provides the commission with a written affidavit setting out good cause for failing to meet the deadline.

B. An application for license will not be processed until a ~~[sealed]~~ credit report has been received in the commission office and any discrepancies revealed in that report are explained and/or resolved by proper documentation and/or personal appearance of the applicant before the commission.

C. The commission shall administer at least two (2) broker's examinations annually at locations and on dates determined by the commission and its examination contractor. The examination is in two sections, state and uniform, with a required minimum passing grade of 75 on each section. Both sections must be taken at the original sitting. If either section is failed, it may be retaken individually upon payment of the prescribed fee and completion of an examination application form. Applicants must complete both sections of the examination with a passing score within ninety (90) days of the original sitting or the previous passing score will be invalidated. An applicant who fails to take the examination at the place, time, and date scheduled may reschedule the examination for a later date, but may be required to file a new application and pay the prescribed fee in order to reschedule.

D. Salesperson experience: applicants applying to take the broker's examination under Section 61-29-9B(1) NMSA 1978 shall provide the commission with certification from a qualifying broker(s), on a form prescribed by the commission, attesting to the fact that the salesperson was actively engaged in real estate business for a least twenty-four (24) of the last preceding thirty-six (36) months immediately prior to filing an application for examination, and shall furnish the commission with a certificate attesting to the fact that they have successfully completed at least one thirty (30) credit hour course each in real estate principles and practice, real estate law, and broker basics. The commission may request any information it deems necessary to document the applicant's prior active engagement in real estate activity.

E. No prior experience: applicants attempting to qualify to take the broker's license examination under Section 61-29-9-B(2) NMSA 1978 based on successful completion of one hundred eighty (180) credit hours of real estate courses,

must have completed one thirty (30) credit hour course each in real estate principles and practice, real estate law, and broker basics, and ninety (90) credit hours of other commission approved courses.

F. Equivalent experience: applicants attempting to qualify to take the broker's license examination under Section 61-29-9B(4) (equivalent experience) shall furnish the commission with documentation of their prior activities closely related to or associated with real estate, and shall furnish the commission with a certificate(s) attesting to the fact that they have successfully completed at least one thirty (30) credit hour course each in real estate principles and practice, real estate law, and broker basics. All applicants attempting to qualify under this section shall contact the commission education manager for a determination of acceptable equivalent experience before making application.

[16.61.3.8 NMAC - Rp, 16 NMAC 61.3.8, 1-1-2002; A, 01-01-2004]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.4 NMAC, Salesperson's License: Examination and Licensing Application Requirements, Section 8, to be effective on 01-01-2004.

16.61.4.8 EXAMINATION AND LICENSING APPLICATION REQUIREMENTS:

Each applicant for a salesperson's license shall be a legal resident of the United States, have reached the age of majority and shall furnish the commission a certificate attesting to the fact that they have successfully completed thirty (30) credit hours each in real estate principles and practice and real estate law within three years preceding the application for examination for licensure. An applicant for a salesperson's license who holds a real estate license in another jurisdiction that administers a real estate salesperson's or equivalent examination may be issued a salesperson's license if the applicant establishes that they possess credentials and qualifications that are substantively equivalent to the requirements in New Mexico for licensure. A salesperson's license may be issued under this paragraph only if the jurisdiction from which the applicant holds a real estate license allows the issuance of a real estate salesperson's or equivalent license to applicants from the state of New Mexico in substantially the same manner as set forth in this paragraph.

A. Individuals wishing to take the salesperson's license examination must register for the examination with the commission or its examination services

contractor. An applicant who fails to apply for a license within sixty (60) days following notice of having passed the examination shall be required to reexamine unless the applicant provides the commission with a written affidavit setting out good cause for failing to meet the deadline.

B. An application for license will not be processed until a sealed credit report has been received in the commission office and any discrepancies revealed in that report are explained and/or resolved by proper documentation and/or personal appearance of the applicant before the commission.

C. The commission shall administer at least six (6) salesperson's examinations annually at locations and on dates determined by the commission and its examination contractor. The examination is in two sections, state and uniform, with a required minimum passing grade of 75 on each section. Both sections must be taken at the original sitting. If either section is failed, it may be retaken individually upon payment of the prescribed fee and completion of an examination application form. Applicants must pass both sections of the examination with a passing score within ninety (90) days of the original sitting or the previous passing score will be invalidated. An applicant who fails to take the examination at the place, time, and date scheduled may reschedule the examination for a later date, but may be required to file a new application and pay the prescribed fee in order to reschedule.

[16.61.4.8 NMAC - Rp, 16 NMAC 61.4.8, 1-1-2002; A, 01-01-2004]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.11NMAC, License Renewal, Section 8, to be effective on 01-01-2004.

16.61.11.8 REQUIREMENTS:

Every license shall expire every three years on the last day of the month following the licensee's birth month, and shall be renewed on or before that date. Renewal of a license is the sole responsibility of the licensee. A licensee whose license has expired may reinstate their license without reexamination up to one year after expiration by paying a reinstatement fee three times the regular license renewal fee. In addition to paying a reinstatement fee, the licensee will be required as a condition of reinstatement to provide documentation of the completion of 30 hours of commission-approved continuing education courses. Application for renewal shall be on the renewal form prescribed by the commission. Renewal forms

will be mailed to licensees at the last mailing address on file at the commission. The commission assumes no responsibility for renewal applications not received by the licensee for any reason. It shall be the licensee's responsibility to make a request for a renewal form in the event the form has not been received by the licensee thirty (30) days prior to the renewal deadline. The license(s) of any active broker or salesperson who fails to obtain errors and omissions insurance coverage as provided by commission rule or to provide proof of continuous coverage, either through the group carrier or in the case of equivalent coverage directly to the commission, shall not be eligible to renew their license and the license will be placed on inactive status until documentation of such insurance coverage is received in the commission office.

[8-15-97; R 1-1-2000; 16.61.11.8 NMAC - Rn & A, 16 NMAC 61.11.8, 1-1-2002; A, 01-01-2004]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.15, Continuing Education: Approval of Sponsors, Courses, and Instructors, Sections 8 and 11, to be effective on 01-01-2004.

16.61.15.8 EDUCATION STEERING COMMITTEE:

The commission shall appoint an education steering committee. The committee shall meet monthly or as required for the purpose of certification reviews of sponsors, courses, and instructors and shall make recommendations to the commission as to findings. Applications for sponsor, instructor, and course approvals shall be accompanied by the fee(s), if imposed by the commission, specified in 16.61.2.8 NMAC of the commission rules and regulations.

[1-1-2000; 16.61.15.8 NMAC - Rn, 16 NMAC 61.15.8, 1-1-2002; A, 01-01-2004]

16.61.15.11 APPROVAL OF INSTRUCTORS:

A. All instructors shall be approved by the commission.

B. All instructor candidates must complete an application for commission review.

C. Instructor candidates seeking approval to teach real estate law and real estate principles and practices must have passed the New Mexico brokers examination within six (6) months of having made application to the commission. Candidates must pass with a minimum score of eighty-four (84) on each portion of the exam.

D. Instructor candidates must be prepared to make a minimum fifteen (15) minute presentation to the education steering committee. Candidates seeking approval to instruct the mandatory course must be prepared to make a presentation to the committee of up to one (1) hour.

E. An approved instructor shall comply with the following requirements:

(1) conduct all classes in accordance with commission rules and regulations and education policies;

(2) insure that all instruction is free from misrepresentation;

(3) instruct in accordance with commission approved course content requirements;

(4) allow access to any class to any duly appointed representative of the commission;

(5) renew approval annually as prescribed by the commission. Instructor approval expires on December 31 of each year;

(6) certify to the sponsor a true and correct record of student attendance.

F. Approval of mandatory ~~[Continuing Education]~~ course instructors. An individual seeking commission approval as a mandatory course instructor must be a current approved instructor in real estate law and real estate principles and practice or be ~~[approved to instruct]~~ a commission-approved instructor in three (3) or more ~~[Approved Education Courses]~~ commission-approved courses in the education category and attend a ~~[presentation]~~ regularly-scheduled offering of the mandatory course by a commission-approved mandatory course instructor ~~[of the Mandatory Course]~~.

G. Failure to comply with this Part may result in the loss of instructor approval.

[1-1-2000; 16.61.15.11 NMAC - Rn, 16 NMAC 61.15.11, 1-1-2002; A, 01-01-2004]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.16 NMAC, Qualifying Broker: Affiliation and Responsibilities, Section 9, to be effective on 01-01-2004.

16.61.16.9 RESPONSIBILITIES: The qualifying broker shall, in addition to all other requirements imposed by law, comply with the following:

A. ~~[Maintain, if a resident Broker, a place of business within New Mexico]~~ conduct their real estate brokerage business under the trade name and from the brokerage address registered with the commission;

B. prominently display their own license and the licenses of all other licensees affiliated with that qualifying broker in the office at the address as registered with the commission;

C. have in the place of business and available to all licensees a current copy of the state of the New Mexico real estate license law and rules and regulations manual;

D. supervise all real estate related activities conducted on behalf of others by associate brokers and salespersons, and maintain current written employment or independent contractor agreements with them;

E. maintain full and complete records wherein the qualifying broker, associate broker(s), or salesperson(s) are engaged on behalf of others, or on their own behalf, in real estate related matters processed through the brokerage;

(1) such records shall include but are not limited to purchases, offers to purchase, counter offers, sales, lead-based paint disclosures and other disclosures required by law, seller's disclosure statements if provided by the seller, options, leases, rentals, letters of intent, brokerage relationship agreements and disclosures, and current, expired, and cancelled listings;

(2) the names of all principals or parties to the transaction;

(3) clear and correct dates;

(4) the names of persons to whom compensation was paid;

(5) the required records shall be available to the commission or any duly authorized representative thereof at the place of business of the qualifying broker or at the real estate commission office; all such records shall be retained for a period not less than three (3) years.

F. deposit all money received on behalf of others in the proper trust account as soon after receipt as practicably possible after securing signatures of all parties to the transaction;

G. receive and disburse all commissions, referral fees, and/or other considerations to all licensees associated with the qualifying broker or any other entity entitled by law to receive same, including to partnerships, corporations, or limited liability companies (llc's) wholly owned by salespersons or associate brokers and their spouse, or authorize and direct the disbursement thereof, and maintain complete records thereof; such partnerships, corporations, or llc's are not required to have a qualifying broker for purposes of this sub-part;

H. not permit the use of their qualifying broker's license to enable an affiliated licensee to establish and carry on transactions outside the supervision of the qualifying broker;

I. in the event actual supervision by the qualifying broker is not possible for a time exceeding seven (7) days, designate a broker in charge and inform the commission in writing of the designation; the broker in charge shall assume the responsibilities of the qualifying broker;

J. upon termination or discharge of an associate broker or salesperson, within forty eight (48) hours mail or deliver the license to the commission; although the license may be delivered to the commission by an associate broker or salesperson, the responsibility for the delivery of the license to the commission remains that of the qualifying broker;

K. if employed as qualifying broker for others, have a written agreement of such employment.

[16.61.16.9 NMAC - Rp, 16 NMAC 61.16.9, 1-1-2002; A, 01-01-2004]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment 16.61.24 NMAC, Property Management, Section 12, to be effective 01-01-2004.

16.61.24.12 REPORTS TO OWNERS:

A. The qualifying broker shall provide the owner with a report of receipts and disbursements monthly or as required by the management agreement, showing the following:

(1) previous balance;

(2) funds deposited by category, i.e., rent, deposits, late payment fee, etc.;

(3) funds disbursed by category, i.e., mortgage payments, utilities, maintenance, management fees, etc.

B. Other additional reports will be provided per agreement between the owner and the brokerage.

C. Upon written notice of termination of any property management agreement, a final accounting of that property management trust account shall be delivered or mailed to the property owner within forty-five (45) days of the effective date of termination.

[8-15-97, A, 2-14-2000; 16.61.24.12 NMAC - Rn & A, 16 NMAC 61.24.12, 1-1-2002; A, 01-01-2004]

NEW MEXICO SOIL AND WATER CONSERVATION COMMISSION

NOTICE OF REPEAL

21 NMAC 9.3, Conducting a Referendum, is hereby repealed and replaced by 21.9.3

NMAC, effective December 15, 2003.

NEW MEXICO SOIL AND WATER CONSERVATION COMMISSION

TITLE 21 AGRICULTURE AND RANCHING CHAPTER 9 SOIL AND WATER CONSERVATION DISTRICTS PART 3 CONDUCTING A REFERENDUM

21.9.3.1 ISSUING AGENCY:
New Mexico Soil and Water Conservation Commission
[21.9.3.1 NMAC - Rp 21 NMAC 9.3.1, 12-15-2003]

21.9.3.2 SCOPE: This Part applies to soil and water conservation districts seeking voter approval for authority to levy taxes and the soil and water conservation commission when in the process of establishing new districts or modifying the boundaries of existing districts.
[21.9.3.2 NMAC - Rp 21 NMAC 9.3.2, 12-15-2003]

21.9.3.3 STATUTORY AUTHORITY: This Part is adopted pursuant to the Soil and Water Conservation District Act, Sections 73-20-25, et. seq. NMSA 1978.
[21.9.3.3 NMAC - Rp 21 NMAC 9.3.3, 12-15-2003]

21.9.3.4 DURATION:
Permanent.
[21.9.3.4 NMAC - Rp 21 NMAC 9.3.4, 12-15-2003]

21.9.3.5 EFFECTIVE DATE:
December 15, 2003 unless a different date is cited at the end of a section.
[21.9.3.5 NMAC - Rp 21 NMAC 9.3.5, 12-15-2003]

21.9.3.6 OBJECTIVE: The objective of Part 3 of Chapter 9 is to provide for referenda to be conducted in accordance with law.
[21.9.3.6 NMAC - Rp 21 NMAC 9.3.6, 12-15-2003]

21.9.3.7 DEFINITIONS:
Terms defined in Section 73-20-27 NMSA 1978 have the same definition in this Part. Terms not defined in Section 73-20-27 NMSA 1978 are defined below:

A. "ELIGIBLE VOTER" shall mean a person who is registered to vote in New Mexico pursuant to the provisions of the Election Code, and resides within the area affected by the referendum.

B. "REFERENDUM BOARD" shall mean persons appointed by the supervisors of a district or by the commission to conduct the referendum.

C. "REFERENDUM" shall mean an election to decide a question, which may be held at one or more designated polling places which will be open a minimum of eight hours, or conducted solely by mailed ballots as provided in these rules. Due notice must be given. Absentee voting as provided in these rules is permitted.

D. "CANVASSING BOARD" shall mean the persons appointed by the commission to certify and publish the election results, and give the commission notice of their canvass.
[21.9.3.7 NMAC - Rp 21 NMAC 9.3.7, 12-15-2003]

21.9.3.8 SCHEDULING A REFERENDUM: A referendum shall not be held within 42 days prior to a statewide election. A referendum may be held in conjunction with election of supervisors.
[21.9.3.8 NMAC - Rp 21 NMAC 9.3.8, 12-15-2003]

21.9.3.9 DUTIES OF BOARD OF SUPERVISORS OR COMMISSION:

A. Provide for "due notice" of the referendum. There must be two notices: the first between 40 and 60 days before the referendum and the second between 10 and 30 days before the referendum. The notice shall include but is not limited to:

- (1) geographical area affected;
- (2) location of polling place(s), if any;
- (3) date and time when ballots may be cast, or date by which mailed ballots must be received;
- (4) the resolution of the board of supervisors or commission to hold the referendum;
- (5) a statement that the commission has approved the referendum (only for mill levy referendum of a district);
- (6) instructions for absentee balloting, including the hours and days of the week that absentee ballot applications will be available.

B. At least 60 days prior to the referendum appoint a referendum board consisting of at least three polling officials for each polling location and one referendum superintendent. Each member of the referendum board must take the following oath of office before performing the required duties: "I, (name of person) do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the state of New Mexico, and I will faithfully discharge the

duties of the office of (referendum superintendent or polling officer) for the (name of district) soil and water conservation district.

C. Assure that all polling places are staffed with at least three polling officials during the entire voting period. Arrange for substitutes if necessary. Substitutes must take the oath of office (as stated above) before assuming duties.

D. Maintain a file of all records pertaining to the referendum as follows:

- (1) for a mill levy referendum - until the authority of referendum vote has expired;
- (2) for a referendum to create new district - three years;
- (3) for a referendum to modify boundaries of an existing district - three years.

[21.9.3.9 NMAC - Rp 21 NMAC 9.3.9, 12-15-2003]

21.9.3.10 REFERENDUM BOARD ACTIONS:

A. Assure that all absentee ballots requested by eligible voters in writing were sent as indicated in the referendum notice. All applications will be compared with the absentee ballot register.

B. Conduct the voting during the period stated in the "due notice."

C. Prepare a list of eligible voters prior to the referendum. The eligible voter list must be available for inspection at least thirty days before the referendum.

D. Determine eligibility of voters. Persons who are not on the eligible voter list and cannot show proof of eligibility must complete a challenge ballot.

E. Maintain a complete list of all persons voting, and those applying for a ballot and determined ineligible to vote, before voting.

[21.9.3.10 NMAC - Rp 21 NMAC 9.3.10, 12-15-2003]

21.9.3.11 ABSENTEE BALLOTING: Eligible voters wishing to vote absentee must fill out an absentee ballot application. Applications for absentee ballots must be requested by mail, by phone, and in person only, beginning 30 days before the election until 20 days before the election. Only one absentee ballot application may be issued per eligible voter.

A. Upon receipt of the completed application and determination of the voters' eligibility an absentee ballot will be furnished.

B. The district must mail out requested absentee ballots at least 15 days before the election.

C. Absentee ballots must be distributed by the district with two envelopes, with a serial number and voter

certification information on the outside of the larger envelope. Districts shall maintain an absentee ballot register by serial number.

D. Absentee ballots returned by mail and received by the district on election day or before will be counted. Absentee ballots received after election day will not be opened or counted, but will be kept with the election records.

E. All unused absentee ballots shall be destroyed immediately following the close of the absentee balloting period. The destruction shall be certified by the election superintendent and one polling official.
[21.9.3.11 NMAC - Rp 21 NMAC 9.3.9, 12-15-2003]

21.9.3.12 CHALLENGE BALLOTS: Persons who are not on the eligible voter list and cannot show proof of eligibility must complete a challenge ballot.

A. A challenge ballot shall consist of a paper ballot, a plain envelope, and a voter certification form printed on a larger envelope.

B. Marked ballots must be sealed in the plain envelope. The plain envelope must be sealed in the larger envelope. Voters are determined to be eligible or ineligible using the voter certification information on the larger envelope, and supporting documentation provided by the voter.

C. The larger envelopes shall be opened only after all ineligible voters are given an opportunity to prove eligibility. The larger envelope of ineligible voters shall not be opened. All of the larger envelopes of eligible voters shall be opened and the plain envelopes placed in the ballot box. The plain envelopes are then removed from the ballot box and ballots are counted. The plain envelopes may be destroyed after the vote is counted, but the larger envelopes and the ballots must be maintained with the election records.

D. Persons who are determined to be ineligible to vote by polling officials must be notified by the polling officials using the most expedient means of communication. When contacted, ineligible voters must be informed of their right to challenge. Challenges must be in writing and be delivered to the contact person shown on the election notice no later than four days following the election.
[21.9.3.12 NMAC - Rp 21 NMAC 9.3.10, 12-15-2003]

21.9.3.13 VOTER CERTIFICATION:
I am a registered voter of Precinct No. _____ of the county of _____, state of New Mexico. I reside at _____,

within the boundaries of the _____ soil and water conservation district;

I make the foregoing affidavit under oath, knowing that any false statement herein constitutes a felony punishable under the criminal laws of New Mexico.

(Voter) Printed name and signature

(Mailing address)

(Residence address)

Telephone number (if voter wishes to be notified of ineligibility to vote)

NOTE: print the above information on a business size envelope. Use separate envelope for each voter. Use smaller envelopes for ballots, only one ballot per envelope.
[21.9.3.13 NMAC - Rp, 21 NMAC 9.3.11, 12-15-2003]

21.9.3.14 C A N V A S S I N G BOARD:

A. The canvassing board shall be composed of a minimum of two members:

(1) an owner of land within the district who is not a supervisor or employee of the district or members of their immediate family; and

(2) A member of the governing body of the district.

B. The canvassing board will:

(1) establish appropriate procedures for securing, transporting, storing and opening ballot boxes;

(2) resolve any challenges of voter eligibility or conduct of election;

(3) certify election results and report results to soil and water conservation commission in Las Cruces within seven calendar days following completion of their canvass. A canvass is considered complete when all challenges have been resolved to the satisfaction of the canvassing board. For each question, the highest number of votes shall decide the question without a runoff vote. A tie vote will be broken by lot.
[21.9.3.14 NMAC - N, 12-15-2003]

21.9.3.15 MAIL BALLOT REFERENDUM:

Upon the adoption of a resolution by the commission or board of supervisors to conduct an election by an all-mailed ballot, each registered voter who would be eligible to vote in a polling place referendum shall be mailed an absentee ballot along with a statement that there will be no polling place for the referendum. The voter shall not be required to file an application for the absentee ballot. The ballot shall be mailed to each voter no earlier than

the thirty-fifth day prior to the election, and the mailing shall be completed by the fifth day before the election.

A. The referendum superintendent may include in the mailing a printed notice to the voters informing the voters that they shall return the voted ballot by mail.

B. The referendum board shall prepare a checklist of registered voters in the county. The checklist of registered voters shall be marked indicating that the voter has returned his all mail ballot immediately upon receipt.

C. A referendum conducted solely by mailed ballot shall not include names of candidates to be nominated for or elected to office.
[21.9.3.15 NMAC - N, 12-15-2003]

HISTORY OF 21.9.3 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives: SWCD 84-1, Procedures for Conducting a Referendum for Soil and Water Conservation Districts, filed 7/26/84. SWCC Rule 90-II, Rule for Conducting a Referendum by the Soil and Water Conservation Districts or by the Soil and Water Conservation Commission, filed 7/2/90.

History of Repealed Material:

SWCD 84-1, Procedures for Conducting a Referendum for Soil and Water Conservation Districts, filed 7/26/84 - Repealed 12/20/89. 21 NMAC 9.3, Conducting a Referendum, filed 12/17/96 - Repealed effective 12/15/2003.

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2003

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