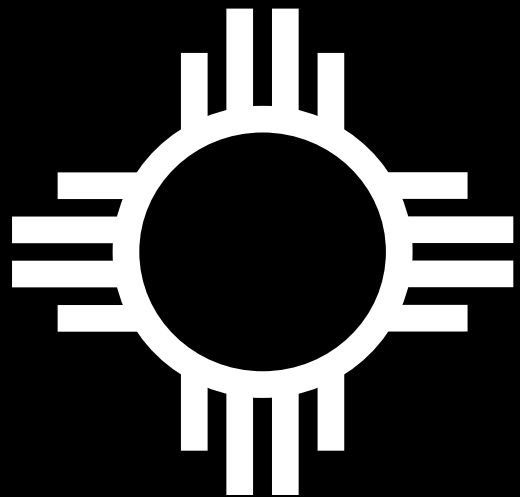


**NEW  
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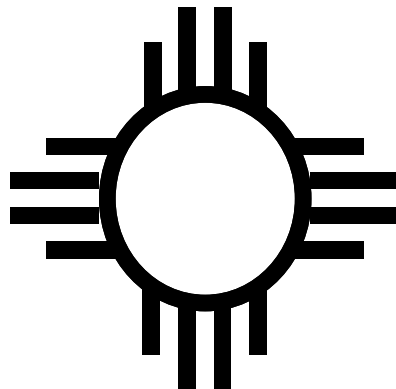


**Volume XIX  
Issue Number 6  
March 31, 2008**



# **New Mexico Register**

**Volume XIX, Issue Number 6  
March 31, 2008**



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

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Administrative Law Division  
Santa Fe, New Mexico  
2008

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# New Mexico Register

Volume XIX, Number 6

March 31, 2008

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

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## Notices of Rulemaking and Proposed Rules

### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

#### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF RULEMAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on June 2, 2008 at 10:00 a.m. in Room 317 at the State Capital in Santa Fe, New Mexico to consider the matter of EIB 07-16 (R), the proposed repeal and replacement of Air Quality Control Regulation 20.2.7 NMAC - Excess Emissions During Malfunction, Startup, Shutdown, or Scheduled Maintenance and EIB 08-07(R), proposed revisions to 20.2.70 NMAC - Operating Permits. The proponent of these proposed regulatory actions is the New Mexico Environment Department ("NMED").

The purpose of the public hearing is to consider and take possible action on NMED's petition proposing to repeal and replace 20.2.7 NMAC and revise 20.2.70 NMAC. These proposed regulatory actions respond to the number and magnitude of excess emission events in New Mexico, and to guidance issued by the U.S. Environmental Protection Agency regarding the affirmative defenses that states may provide for excess emission events during malfunction, startup, and shutdown. NMED is also proposing to correct a typographical error in 20.2.70 NMAC to comply with state statutes.

The proposed repeal and replacement of 20.2.7 NMAC and revisions to 20.2.70 NMAC may be reviewed during regular business hours at the NMED Air Quality Bureau office, 1301 Siler Road, Building B, Santa Fe, New Mexico. Full texts of NMED's proposed repeal and replacement of 20.2.7 NMAC and proposed revisions to 20.2.70 NMAC are available on NMED's web site at [www.nmenv.state.nm.us](http://www.nmenv.state.nm.us), or by contacting Gail Cooke at (505) 476-4319 or [gail.cooke@state.nm.us](mailto:gail.cooke@state.nm.us).

The hearing will be conducted in accordance with 20.1.1 NMAC - Rulemaking Procedures - Environmental Improvement Board, the Environmental Improvement Act, Section 74-1-9 NMSA 1978, the Air Quality Control Act Section, 74-2-6 NMSA 1978, and other procedures specified by the Board or the Board's hearing officer.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and argu-

ments, orally or in writing, to introduce exhibits, and to examine witnesses. Persons wishing to present technical testimony must file with the Board a written notice of intent containing the following information:

- (1) identify the person for whom the witness(es) will testify;
- (2) identify each witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;
- (3) include the direct testimony of each witness;
- (4) attach the exhibits to be offered by each witness;
- (5) estimate the duration of the testimony of each witness;
- (6) attach the text of any recommended modification to the proposed regulation.

Notices of intent to present technical testimony must be received in the Board's office no later than 5:00 pm on May 2, 2008, and should reference the docket number and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Joyce Medina, Board Administrator  
Office of the Environmental Improvement Board  
Harold Runnels Building  
1190 St. Francis Dr., Room N-2150 / 2153  
Santa Fe, NM 87502  
Phone: (505) 827-2425, Fax (505) 827-2836

Any member of the general public may present non-technical testimony at the hearing. No prior notification is required to present non-technical testimony. Any such member may offer exhibits in connection with his testimony.

Any member of the general public who wishes to submit a written statement containing non-technical testimony, in lieu of providing oral non-technical testimony at the hearing, shall file the written statement no later than the close of the hearing.

Persons having a disability and needing help to participate in the hearing should contact NMED by May 19, 2008. NMED may be contacted at Judy Bentley, Personnel Services Bureau, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-9872. TDY users please access Ms. Bentley's telephone number via the New Mexico Relay Network at 1-800-659-8331.

The Board may either make a decision on

the proposed repeal and replacement of 20.2.7 NMAC at the conclusion of the hearing, or convene a meeting after the hearing to consider such action.

### NEW MEXICO BOARD OF LANDSCAPE ARCHITECTS

#### LEGAL NOTICE

#### Public Rule Hearing and Regular Board Meeting

The New Mexico Landscape Architects Board will hold a Rule Hearing on May 7, 2008. Following the Rule Hearing the Board will convene a regular meeting to adopt the rules and take care of regular business. The Rule Hearing will begin at 10:00 a.m. and the Regular Meeting will convene following the rule hearing. The hearing and the Board meeting will be held at the Regulation and Licensing Department, Hearing Room # 1 in the Toney Anaya Building, 2550 Cerrillos Road Santa Fe, New Mexico 87505.

The purpose of the rule hearing is to hear public testimony and comments regarding the proposed amendments to the Board's rules and regulations: 16.44 NMAC: Part 1 General Provisions, Part 2 Educational and Examination Requirements for Licensure, Part 3 Registration for Licensure, Part 4 License Expiration and Renewal, Part 5 Continuing Professional Education Requirements, Part 6 Inactive Status and Reinstatement, Part 7 Code of Professional Conduct, Part 8 Fees, and Part 9 Complaints.

Persons desiring to present their views on the proposed amendments to the rules may write to request draft copies of the rules from the Board office at 2550 Cerrillos Road Santa Fe, New Mexico 87505, call (505) 476-4930 or download them from [www.rld.state.nm.us/landscape](http://www.rld.state.nm.us/landscape). In order for the Board members to review the comments in their meeting packets prior to the hearing, persons wishing to submit written comments regarding the proposed rules should submit them to the Board office in writing no later than April 23, 2008. Persons wishing to present written comments at the hearing are asked to provide (8) copies of any comments or proposed changes for distribution to the Board and staff. In addition, persons may present their comments orally at the hearing.

If you have questions, or if you are an individual with a disability who wishes to

attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4930 at least two weeks prior to the hearing or as soon as possible.

Jackie Holmes, Board Administrator  
 PO Box 25101- Santa Fe, New Mexico 87504

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT**

The Public Education Department (“Department”) hereby gives notice that the Department will conduct a public hearing at 10:00 A.M. to noon on May 5, 2008 at the office of the Educator Quality Division at 444 Galisteo, Suite A. in Santa Fe, New Mexico 87001.

The purpose of the public hearing will be to obtain input on the following rules:

Rule Number	Chapter Name	Rule Part Name	Proposed Action
<u>6.69.3 NMAC</u>	SCHOOL PERSONNEL - PERFORMANCE	PERFORMANCE EVALUATION REQUIREMENTS FOR ADMINISTRATORS	REPEAL AND REPLACE
<u>6.69.6 NMAC</u>	SCHOOL PERSONNEL - PERFORMANCE	PERFORMANCE EVALUATION REQUIREMENTS FOR SCHOOL COUNSELORS	NEW RULE
<u>6.69.7 NMAC</u>	SCHOOL PERSONNEL - PERFORMANCE	PERFORMANCE EVALUATION REQUIREMENTS FOR PRINCIPALS AND ASSISTANT PRINCIPALS	NEW RULE
<u>6.63.2 NMAC</u>	SCHOOL PERSONNEL LICENSURE REQUIREMENTS FOR ANCILLARY AND SUPPORT PERSONNEL	LICENSURE FOR SCHOOL NURSES, GRADES PRE K -12	AMENDMENT
<u>6.63.16 NMAC</u>	SCHOOL PERSONNEL LICENSURE REQUIREMENTS FOR ANCILLARY AND SUPPORT PERSONNEL	LICENSURE FOR SCHOOL LICENSED PRACTICAL NURSES, GRADES PRE K -12	AMENDMENT

Interested individuals may testify at the public hearing or submit written comments to Ms. Flo Martinez, Executive Administrative Assistant, Licensure Bureau, Educator Quality Bureau, Public Education Department, 444 Galisteo, Suite A, Santa Fe, NM 87501. ([florence.martinez@state.nm.us](mailto:florence.martinez@state.nm.us)) fax: 505-827-4148. Written comments must be received no later than 5:00 P.M. on May 5, 2008. However, the submission of written comments as soon as possible is encouraged. Written comments shall suggest specific reasons for any suggested amendments or comments and include any proposed amendatory language.

Copies of the proposed rules may be accessed on the Department’s website ([www.ped.state.nm.us](http://www.ped.state.nm.us)) or obtained from Ms. Martinez as indicated in the preceding paragraph by sending a self addressed stamped envelope to Professional Licensure Bureau at 300 Don Gaspar Ave., Room 101 in Santa Fe, NM 87501. The proposed rules will be made available at least thirty days prior to the hearings.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in the meeting are asked to contact Ms. Martinez by 5:00 PM on April 25, 2008. The Department requests at least ten (10) days advance notice to provide special accommodations. If accommodation is not requested in advance we cannot guarantee the availability of accommodation on-site.

**NEW MEXICO  
 COMMISSION OF PUBLIC  
 RECORDS**

**NOTICE OF REGULAR MEETING**

The State Commission of Public Records has scheduled a regular meeting for Tuesday, April 8, 2008, at 9:00 A.M. The meeting will be held at the NM State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe NM. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or serv-

ice to attend or participate in the hearing, please contact Antoinette L. Solano at 476-7902 by March 31, 2008. Public documents, including the agenda and minutes, can be provided in various accessible formats. A final copy of the agenda will be available 24 hours before the hearing.

**NOTICE OF RULEMAKING**

The Commission of Public Records may consider the following items of rulemaking at the meeting:

**Amendment**

1.18.446 NMAC E R R D S ,  
 Board of Medical Examiners

1.18.665 NMAC E R R D S ,  
 Department of Health  
 1.19.3 NMAC L G R R D S ,  
 Office of the County Clerk

**Repeal**

1.18.770 NMAC E R R D S ,  
 Corrections Department  
 1.18.969 NMAC E R R D S ,  
 University of New Mexico Hospital

**New-Replacement**

1.18.770 NMAC E R R D S ,  
 Corrections Department



**NEW MEXICO PUBLIC REGULATION COMMISSION**

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

<b>IN THE MATTER OF THE PROPOSED</b>	)	
<b>ADOPTION OF A RULE COMBINING</b>	)	
<b>TRANSPORTATION AND UTILITY</b>	)	
<b>DIVISION PROCEDURES,</b>	)	<b>Case No. 08-00029-TRP</b>
<b>ESTABLISHMENT OF A SEPARATE</b>	)	
<b>RULE FOR UTILITY APPLICATIONS,</b>	)	<b>Case No. 08-00030-UT</b>
<b>AND ADOPTION OF LIMITED</b>	)	
<b>AMENDMENTS TO THE MOTOR</b>	)	
<b>CARRIER, FIRE MARSHAL AND EX</b>	)	
<b>PARTE COMMUNICATIONS RULES</b>	)	

**NOTICE OF PROPOSED RULEMAKING**

**NOTICE IS HEREBY GIVEN** that the New Mexico Public Regulation Commission (“Commission”) proposes to promulgate a unified procedural rule to govern utility division, transportation division, fire marshal division, and corporations bureau proceedings. The Commission proposes to repeal the Utility Division Procedures, 17.1.2 NMAC, the Public Regulation Commission (“PRC”) Rules of Procedure, and the Transportation Division Procedures, 18.1.2 NMAC, and to replace them with one unified rule. The new rule would be codified at Title 1, General Government Administration, Chapter 2, Administrative Procedures, Part 2, Public Regulation Commission Rules of Procedure, of the New Mexico Administrative Code (“NMAC”). The Commission also proposes to amend certain provisions of the motor carrier rules that allow a single commissioner to approve tariff changes, permits, certificates, endorsements, leases, transfers or cancellations of certificates and permits, and equipment leases, and to make minor amendments to 10.25.1 NMAC, State Fire Marshal, General Provisions. The Commission further proposes to separate the procedures for utility applications, which are currently a part of the Utility Division Procedures, and establish a new rule to be codified at Title 17, Public Utilities and Utility Services, Chapter 1, Utilities General Provisions, Part 2 Utility Applications. In addition, the Commission proposes to amend 1.2.3 NMAC, Ex Parte Communications, to make the restrictions of the rule inapplicable to communications that take place during the Commission’s processing of a notice of inquiry regarding issues of general applicability that do not concern any particular dispute between parties or any particular regulated entity. This matter comes before the Commission on its own motion. Being fully advised,

**THE COMMISSION FINDS AND CONCLUDES:**

1. The Public Regulation Commission Act authorizes the Commission to “adopt such reasonable regulatory and procedural rules as may be necessary or appropriate to carry out its powers and duties.” NMSA 1978, Section 8-8-4B(10). NMSA 1978, Section 8-8-4.C(3) directs the Commission to

adopt rules to streamline the resolution of cases before it when appropriate by: (a) the use of hearing examiners; (b) the taking of evidence with the least delay practicable; (c) limiting repetitious testimony; and (d) adopting procedures for resolving cases in ways other than by trial-type hearings when appropriate, including consent calendars, conferences, settlements, mediation, arbitration and other alternative dispute resolution methods and the use of staff decisions . . . .

2. In addition, statutes applicable to the substantive areas that the Commission regulates provide additional authority to promulgate procedural rules. *See, eg.*, Section 8-8-16 NMSA 1978 (allowing the Commission to establish fees for copies of Commission proceedings); Section 53-18-1 (conferring on the Commission “the power and authority reasonably necessary to enable it to administer the Business Corporation Act . . . efficiently and to perform the duties therein imposed upon it); Section 53-19-66 (the power and authority reasonably necessary to enable it to administer the Limited Liability Company Act efficiently and to perform the duties therein imposed upon it); Section 59A-52-15 (authority to adopt public occupancy regulations); Section 59A-52-16 (authority to adopt rules for the safe vehicular transportation, storage, handling and use of flammable and combustible liquids); Section 62-8-3 NMSA 1978 (authorizing the Commission to adopt rules governing the filing of public utility rate schedules); Section 62-13-2(C) NMSA 1978

(authorizing the Commission to establish by rule the fee for copies of papers, testimony, and records); Section 62-14-10 NMSA 1978 (providing authority for the commission to promulgate rules to implement the provisions of Chapter 62, Article 14 NMSA 1978); Section 63-7-23 NMSA 1978 (requiring the Commission to promulgate procedural rules to implement provisions on administrative fines against telecommunications entities); Sections 63-9-11(E), 63-9A-11, 63-9B-5, 63-9H-10 NMSA 1978, (providing that the Commission’s rules of procedure shall govern proceedings involving complaints); Section 63-9A-5.1 NMSA 1978 (authorizing the Commission to adopt rules governing the regulation of mid-size telecommunications companies); Section 65-2A-4 NMSA 1978 (directing the Commission to adopt procedures to implement the provisions of the Motor Carrier Act); Section 65-2A-36(A)(18) (authorizing the Commission to establish fees for copying various Commission records, including electronic media); Section 65-6-4 NMSA 1978 (conferring authority on the Commission to adopt regulations applicable to ambulances); Section 70-3-14 NMSA 1978 (fee for copy of transcript of pipeline proceedings to be fixed by Commission regulation); Section 70-3-13 NMSA 1978 (directing the Commission to adopt pipeline safety regulations).

3. The Commission is initiating this rulemaking proceeding as part of its ongoing effort to streamline and unify the agency’s operations. The Commission has been operating under two different sets of general procedural rules since the State Corporation Commission (SCC) and the Public Utilities Commission merged on January 1, 1999, to form the Public Regulation Commission. The Utility Division Procedures, 17.1.2 NMAC, are applicable to proceedings involving public utilities and telecommunications carriers. The Public Regulation Commission (“PRC”) Rules of Procedure (not codified in the NMAC) and the Transportation Division Procedures, 18.1.2 NMAC, are applicable to proceedings involving motor carriers. The Commission proposes to repeal the Utility Division Procedures, the PRC Rules of Procedure, and the Transportation Division Procedures, and replace them with a unified procedural rule that would be codified at 1.2.2 NMAC, and a separate rule governing only utility applications that would be codified at 17.1.2 NMAC.

4. The Commission has used the Utility Division Procedures as a template for the new unified procedural rule, and has amended it, as appropriate, to

incorporate the Transportation Division procedures. To the extent that the PRC Rules of Procedure and the Transportation Division Procedures contain provisions that supplement the procedures in the Utility Division Procedures or are specifically tailored to the operations of the Transportation Division, we have attempted to incorporate those into the new rule. The unified procedural rule is attached to the original of this Notice as Exhibit A. Exhibit A is presented in legislative format so as to show the proposed changes from the Utility Division Procedures, 17.1.2 NMAC.

5. In addition to stylistic changes, clarifications, and modifications necessary to incorporate the Transportation Division procedural rules into the Utility Division Procedures, the Commission proposes to change the procedures in Subsection C of 17.1.2.12 NMAC, Motions, and 17.1.2.39 NMAC, Commission Decisions, Orders, Exceptions, Rehearings, of the Utility Division Procedures on motions for rehearing to take into account the thirty (30) day statutory time frame for filing appeals in non-utility cases. This change is necessary because the current rehearing procedures in the Utility Division Procedures are based on the time frames in Sections 62-10-16 and 62-11-1 NMSA 1978 for filing rehearing motions and appeals in utility cases. These statutory time frames allow thirty days for filing a motion for rehearing, another twenty days for decision, and another thirty days for filing an appeal of a denial of a rehearing. In contrast, appeal statutes applicable to other entities regulated by the Commission allow thirty (30) days for appeal of a Commission order without incorporating a time frame for parties to file a motion for rehearing with the Commission. See Sections 63-9-16, 63-9A-14, 63-9B-8, 63-9H-12, 70-3-15, 65-2A-35 NMSA 1978. Accordingly, the proposed amendments to Sections 12 and 37 of the draft rule require parties in non-utility proceedings to file a motion for rehearing within ten (10) days of a final Commission order, and any responses to motions for rehearing within five (5) days. The rule further provides that the Commission shall grant or deny the motion within twenty (20) days of the final order or the motion will be deemed denied.

6. Additional substantive changes to the existing Utility Division Procedures, which are for the most part self-explanatory and shown on Exhibit A, include but are not limited to: (1) amended and new provisions in a new subsection in 1.2.2.10 NMAC to permit electronic mail service of pleadings, documents, orders, and notices (the Commission encourages parties to view the NOPR and proposed rule

in our electronic filing rulemaking, Case Nos. 08-00068-TRP and 08-00069-UT, which contains related electronic service provisions); (2) amendment of Subsection C of 17.1.2.8 NMAC to change the copy fees, and to include proposed fees for document searches and preparation, and copies made on electronic storage media; (3) amendment of Subsection H of 17.1.2.11 NMAC and related provisions to reduce the number of copies required to be filed in Commission proceedings; (4) modification of the complaint provisions in 17.1.2.16 through 17.1.2.18 NMAC (Sections 13 through 15 in the draft rule), including but not limited to the elimination of the requirement that a probable cause and jurisdiction determination be made before an answer is required; (5) addition of a new section, proposed 1.2.2.30 NMAC, replacing Paragraph (2) of Subsection B of 17.1.2.32 NMAC, clarifying the procedural authority of a single commissioner; and (6) addition of a general variance procedure at Section 40 of the draft rule which would be applicable Commission rules and orders.

7. The Commission notes that Paragraph (2) of Subsection B of 17.1.2.32 NMAC, the existing Utility Division Procedures, under certain circumstances allows a single Commissioner to suspend the operation of a rate increase requested by a utility pursuant to Section 62-8-7 NMSA 1978 or by a telecommunications company pursuant to Section 63-9A-8.1 NMSA 1978. The Commission has included a modified version of that paragraph in the proposed procedural rule at Paragraph (4) of Subsection B of 1.2.2.30 NMAC. The Commission requests that interested persons, including Staff, address in their comments whether the proposed provision is consistent with the Commission's authority, and the appropriateness of including the proposed provision in the final rule.

8. The Commission also proposes to promulgate a new rule to address utility applications. 17.1.2.51 through 17.1.2.53 NMAC, Utility Division Procedures, contain procedures for filing public utility applications for approval of securities, certificates of public convenience and necessity, and new rates. Since these sections apply only to public utilities, the Commission proposes to remove them from the unified procedural rule and create a separate rule for public utility applications. In addition to minor stylistic changes, the Commission has modified the procedures in 17.1.2.51 NMAC addressing applications for securities. The proposed changes are necessary to be consistent with Subsection E of Section 62-6-6 NMSA 1978, which exempts public utilities whose

securities are subject to the oversight and approval by the federal government pursuant to the Rural Electrification Act of 1936 from the requirement of Commission approval. The proposed new rule is attached to this notice as Exhibit B.

9. We further propose to amend certain provisions of the motor carrier rules that require the approval of only a single commissioner for many types of applications. Pursuant to 18.3.6.14 NMAC, 18.3.2.22 NMAC, 18.3.8.9 NMAC, 18.3.8.10 NMAC, 18.3.8.11 NMAC, 18.3.8.16 NMAC, and 18.3.9 NMAC, respectively, the signature of only one commissioner is required to approve proposed tariff changes, operating permits and certificates, endorsements to permits and certificates, leases, transfers or cancellations of certificates or permits, and equipment leases. The Commission proposes to make limited amendments to these rules to delete the language that requires the approval of only one commissioner for these actions. The proposed changes to the motor carrier rules are attached as Exhibit C.

10. The Commission additionally proposes to amend its ex parte communications rule, 1.2.3 NMAC, to add a definition of the term, "non-adjudicatory notice of inquiry," referring to a type of non-adjudicatory proceeding and to exempt communications that occur during the course of such a proceeding from the restrictions of the rule. Specifically, the new term would be defined as, "a proceeding commenced by the Commission's issuance of a notice of inquiry for the purpose of inquiring into issues of broad applicability to consumers or regulated entities, or to a class or type of consumers or regulated entities, with a view toward possible future rulemaking or other procedures where the proceeding does not directly concern a dispute between particular parties or company-specific regulatory issues." Current Subsection E of 1.2.3.7 NMAC would be amended to exempt "non-adjudicatory notices of inquiry" from the definition of "pending adjudication" with the result that under 1.2.3.8 NMAC the restrictions on communications applicable to adjudicatory proceedings would not apply to communications in the course of non-adjudicatory notice of inquiry proceedings. The proposed amendments to the ex parte rule are shown on the attached Exhibit D.

11. The Commission also proposes to make minor amendments to 10.25.1 NMAC, State Fire Marshal, General Provisions, to make the copy fees consistent with those proposed in Subsection C of 1.2.2.8 NMAC, and to correct a statutory cite to the Inspection of

Public Records Act. The proposed amendments are attached to this notice as Exhibit E. The Commission notes that the proposed amendments contained in Exhibits C, D, and E, other than repealing 18.1.2 NMAC, are the only changes we are considering to those rules, and that we will not consider comments on unrelated provisions or issues in this rulemaking.

12. The Commission will accept written comments on the rules and amendments proposed in this Notice of Proposed Rulemaking from any interested person. Interested persons shall file their written comments by no later than April 30, 2008. Interested persons may file comments in response to the initial round of comments by no later than May 15, 2008. Comments suggesting changes to the proposed rules and amendments should state and discuss the particular reasons for the suggested changes and should include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the proposed rules and amendments should be in legislative format. A copy of the proposed rules and amendments in electronic format may be obtained from the Commission to facilitate doing so. Any proposed changes to Exhibits A, B, C, D, or E shall be submitted in hard copy. The Commission strongly encourages all persons proposing such changes to file an additional copy in electronic format (compact disc in Microsoft Word format). The label on the compact disc shall clearly designate the name of the person submitting the proposed changes and the case numbers of this proceeding. All comments and suggested changes to the proposed rules and amendments shall bear the caption and case numbers contained at the top of this Notice.

13. Comments on the proposed new rules and amendments shall be sent to:

New Mexico Public Regulation  
Commission  
Records Manager  
Case Nos. 08-00029-TRP and 08-  
00030-UT  
P.O. Box 1269  
224 E. Palace Avenue  
Santa Fe, NM 87505  
505-827-6968

14. Copies of the proposed rules and amendments may be downloaded from the Commission's website, [www.nmprc.state.nm.us](http://www.nmprc.state.nm.us), under "Public Notices, Proposed Rule Making."

15. The Commission will review all timely submitted written com-

ments and will hold a public hearing on May 22, 2008, at 2:00 p.m., PERA Building, 4th floor hearing room, 1120 Paseo de Peralta, Santa Fe, New Mexico, to take oral comment regarding the proposed rules.

16. Interested persons should contact the Commission to confirm the date, time, and place of any public hearing because hearings are occasionally rescheduled.

17. Any person with a disability requiring special assistance in order to participate in a hearing should contact Cecilia Rios at (505) 827-4501 at least 48 hours prior to the commencement of the hearing.

18. Copies of this Notice excluding exhibits should be sent to all persons on the attached Certificate of Service and published in at least two newspapers of general circulation in the state and in the New Mexico Register.

**IT IS THEREFORE ORDERED:**

A. The integrated procedural rule, attached to the original of this Notice of Proposed Rulemaking as Exhibit A, the rule addressing public utility applications, attached as Exhibit B, and the limited amendments to the motor carrier, ex parte, and fire marshal rules, attached as Exhibits C, D, and E, respectively, are proposed for adoption as permanent rules and amendments as provided by this Notice.

B. Interested persons shall file their written comments on the proposed rules and amendments by no later than April 30, 2008.

C. Interested persons shall file any response comments to the initial written comments by no later than May 15, 2008.

D. A public hearing shall be held on May 22, 2008, at 2:00 P.M. as further provided in this Notice.

E. A copy of this Notice, excluding Exhibits A, B, C, D, and E, shall be mailed to all persons listed on the attached Certificate of Service, and shall be published in two newspapers of general circulation in the state and in the New Mexico Register. The Commission shall provide the Notice by e-mail or facsimile transmission to any persons who so requests, and shall post a copy of the proposed rules on the Commission's website.

F. This Notice is effective immediately.

**ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 6<sup>th</sup> day of March, 2008.**

**NEW MEXICO PUBLIC REGULATION COMMISSION**

**JASON A. MARKS, CHAIRMAN**

**SANDY JONES, VICE-CHAIRMAN**

**DAVID W. KING, COMMISSIONER**

**BEN R. LUJAN, COMMISSIONER**

**CAROL K. SLOAN, COMMISSIONER**

**NEW MEXICO PUBLIC REGULATION COMMISSION**

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

<b>IN THE MATTER OF THE PROPOSED</b>	)	<b>Case No. 08-00068-TRP</b>
<b>ADOPTION OF A RULE GOVERNING</b>	)	
<b>ELECTRONIC FILING AND SERVICE</b>	)	<b>Case No. 08-00069-UT</b>

**NOTICE OF PROPOSED RULEMAKING**

**NOTICE IS HEREBY GIVEN** that the New Mexico Public Regulation Commission (“Commission”) proposes to promulgate a new rule establishing procedures for electronically filing documents in formal Commission proceedings. The rule would also establish procedures for the Commission, presiding officers, and staff to serve their orders, notices, and pleadings by electronic mail (“e-mail”) in both formal and informal proceedings. This matter comes before the Commission on its own motion. Being fully advised,

**THE COMMISSION FINDS AND CONCLUDES:**

1. The Public Regulation Commission Act authorizes the Commission to “adopt such reasonable regulatory and procedural rules as may be necessary or appropriate to carry out its powers and duties.” NMSA 1978, Section 8-8-4(B)(10).

2. In addition, the statutes applicable to motor carriers and corporations specifically authorize the commission in pertinent part to “adopt rules permitting the electronic filing of documents . . . .” See Sections 65-2A-37(A), 53-2-11 NMSA 1978.

3. The Commission is initiating this rulemaking proceeding to establish procedures for electronically filing documents with the Commission. The proposed electronic filing provisions would apply to all formal proceedings before the Commission involving the insurance division, corporations bureau, fire marshal division, utility division, and transportation division.

4. The proposed rule authorizes persons to electronically file documents in either of two ways: by facsimile transmission or by using the Commission’s website. To electronically file a document by using the Commission’s website, the proposed rule requires persons to access the Commission’s website, click the “e-filing” link, and provide the information required on the web page. The electronic filing must be converted to PDF/A format or any other format specified on the Commission’s website, and must be the exact electronic image of the paper document being replicated. Upon electronic transmission of the document, an acknowledgement of receipt will be generated confirming the date and time of receipt of the document.

5. Upon receipt of a document by electronic transmission through the Commission’s website, the proposed rule requires the chief clerk or the chief clerk’s designee to review it for compliance with applicable rules, and upon a finding of compliance, to place an electronic file stamp on the document, and a case number if it is a new proceeding. The proposed rule requires the chief clerk or the chief clerk’s designee to send an e-mail to the submitter confirming that the document was accepted for electronic filing, or stating the reasons for rejection.

6. A pleading or document submitted by facsimile transmission may be no more than ten pages, and shall be the exact electronic image of the paper original being replicated. The cover page of the facsimile transmission must contain the contact information required by the rule, and the submitter must verify receipt of the facsimile transmission with the Commission. Upon receipt of the facsimile filing, the rule directs the chief clerk or the chief clerk’s designee to manually place a file stamp on the pleading or document. Once the original document is received, the rule directs the chief clerk or the chief clerk’s designee to back stamp the original to match the date the facsimile transmission was accepted for electronic filing.

7. The proposed rule requires the submitter to file a paper original and five copies within five business days of the electronic filing in accordance with the requirements for paper filings in the unified procedural rule being proposed in Case Nos. 08-00029-TRP and 08-00030-UT. For both facsimile and web-based filings, the official filing date would be the date the electronic filing is received, provided that the electronic filing is not rejected for failure to comply with Commission rules. The proposed rule provides that the paper

original is the official copy and governs over any inconsistencies between the paper original and the electronic filing.

8. The proposed rule would also establish procedures for the Commission, presiding officers, and staff to electronically serve their pleadings, orders, notices, and other documents in both formal and informal proceedings. Under the proposed rule, a person may file a blanket request to receive electronic service of Commission documents instead of paper service in all Commission cases to which he or she is a party or is included on the certificate of service. The rule would provide the Commission and staff with the additional flexibility of serving any person by e-mail who has provided an e-mail address for receipt of orders in any proceeding, or making the document available to those persons at a particular web address. The Commission encourages persons to review the Notice of Proposed Rulemaking and proposed procedural rule in Case Nos. 08-00029-TRP and 08-00030-UT, which contains related electronic service provisions. The proposed rule would allow a person to opt out of e-mail service in any proceeding.

9. The proposed rule is a preliminary step in making the Commission’s operations more efficient and user-friendly, with the possibility of moving to paperless filing or at least a reduced number of paper copies in the future. While the rule still requires a paper original and copies to be filed, the rule would nonetheless offer the advantage of allowing persons to file pleadings expeditiously without having to factor in time for mailing or sending a courier to the Commission’s offices to meet procedural deadlines. The Commission expects that once adopted, the rule will be implemented only for a trial period of time, with the aim of improving our electronic filing procedures and capabilities in the future based on our experience with the rule. In addition, the electronic mail service provisions should conserve significant resources by providing a means for the Commission and staff to more efficiently and cost-effectively serve documents, especially in cases with a large number of parties on the certificate of service.

10. The Commission will accept written comments on the rule proposed in this Notice of Proposed Rulemaking from any interested person. Interested persons shall file their written comments by no later than April 30, 2008. Interested persons may file comments in response to the initial round of comments by no later than May 15, 2008. Comments suggesting changes to the proposed rule should state and discuss the particular rea-

sons for the suggested changes and should include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the proposed rule should be in legislative format. A copy of the proposed rule in electronic format may be obtained from the Commission to facilitate doing so. Any proposed changes to Exhibit A shall be submitted in hard copy. The Commission strongly encourages all persons proposing such changes to file an additional copy in electronic format (compact disc in Microsoft Word format). The label on the compact disc shall clearly designate the name of the person submitting the proposed changes and the case number of this proceeding. All comments and suggested changes to the proposed rule shall bear the caption and case number contained at the top of this Notice.

11. Comments on the proposed new rule shall be sent to:

New Mexico Public Regulation  
Commission  
Records Manager  
Case Nos. 08-00068-TRP and 08-00069-UT  
P.O. Box 1269  
224 E. Palace Avenue  
Santa Fe, NM 87505  
505-827-6968

12. Copies of the proposed rule may be downloaded from the Commission's website, [www.nmprc.state.nm.us](http://www.nmprc.state.nm.us), under "Public Notices, Proposed Rule Making."

13. The Commission will review all timely submitted written comments and will hold a public hearing on May 22, at 2:00 p.m., PERA Building, 4th floor hearing room, 1120 Paseo de Peralta, Santa Fe, New Mexico, to take oral comment regarding the proposed rule.

14. Interested persons should contact the Commission to confirm the date, time, and place of any public hearing because hearings are occasionally rescheduled.

15. Any person with a disability requiring special assistance in order to participate in a hearing should contact Cecilia Rios at (505) 827-4501 at least 48 hours prior to the commencement of the hearing.

16. Copies of this Notice excluding the exhibit should be sent to all persons on the attached Certificate of Service and published in at least two newspapers of general circulation in the state and

in the New Mexico Register.

**IT IS THEREFORE ORDERED:**

A. The electronic filing and service rule, attached to the original of this Notice of Proposed Rulemaking as Exhibit A, is proposed for adoption as a permanent rule as provided by this Notice.

B. Interested persons shall file their written comments on the proposed rule by no later than April 30, 2008.

C. Interested persons shall file any response comments to the initial written comments by no later than May 15, 2008.

D. A public hearing shall be held on May 22, 2008, at 2:00 P.M., as further provided in this Notice.

E. A copy of this Notice, excluding Exhibit A, shall be mailed to all persons listed on the attached Certificate of Service, and shall be published in two newspapers of general circulation in the state and in the New Mexico Register. The Commission shall provide the Notice by e-mail or facsimile transmission to any person who so requests, and shall post a copy of the proposed rule on the Commission's website.

F. This Notice is effective immediately.

**ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 6<sup>th</sup> day of March, 2008.**

**NEW MEXICO PUBLIC REGULATION COMMISSION**

**JASON A. MARKS, CHAIRMAN**

**SANDY JONES, VICE-CHAIRMAN**

**DAVID W. KING, COMMISSIONER**

**BEN R. LUJAN, COMMISSIONER**

**CAROL K. SLOAN, COMMISSIONER**

**NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION**

**NOTICE OF RULEMAKING AND REQUEST FOR PUBLIC COMMENT**

Notice is hereby given that the Workers' Compensation Administration (WCA) will amend Part 12 of the WCA Rules to incorporate the Uninsured Employers' Fund eligibility determination into the mediation process governed by NMSA 1978, Section 52-5-5. A public hearing will not be held. The proposed rule change will be available on March 17, 2008. Written comments will be accepted until the close of business on March 27, 2008. The rule will be filed on an emergency basis and will take effect upon filing. Please submit written comments to: Director Glenn R. Smith, Workers' Compensation Administration, c/o General Counsel Office, 2410 Centre Avenue S.E., Albuquerque, New Mexico 87106.

For further information call (505) 841-6000. Please inquire at the WCA Clerk's Office, 2410 Centre Avenue S.E., Albuquerque, NM, 87106, for copies of the proposed rules or obtain a copy online at the WCA website at: [www.workerscomp.state.nm.us](http://www.workerscomp.state.nm.us). If you intend to request a copy by mail, please inquire at the WCA about the postage cost and envelope size needed to accommodate your request. Please plan to include a post-paid, self-addressed envelope with your request.

**End of Notices and Proposed Rules Section**

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## Adopted Rules

### ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

**TITLE 20 ENVIRONMENTAL  
PROTECTION  
CHAPTER 11 ALBUQUERQUE -  
BERNALILLO COUNTY AIR QUALITY CONTROL BOARD  
PART 47 EMISSIONS INVENTORY REQUIREMENTS**

**20.11.47.1 ISSUING AGENCY:** Albuquerque-Bernalillo County Air Quality Control Board, c/o Environmental Health Department, P.O. Box 1293, Albuquerque, New Mexico 87103. Telephone: (505) 768-2601.

[20.11.47.1 NMAC - N, 5/1/08]

**20.11.47.2 SCOPE:** 20.11.47 NMAC applies to each person who owns or operates a source or who intends to construct or modify a source within Bernalillo county, but does not apply to sources in Bernalillo county that are located on Indian lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction.

[20.11.47.2 NMAC - N, 5/1/08]

**20.11.47.3 STATUTORY AUTHORITY:** 20.11.47 NMAC 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 4; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque ROA 1994 Section 9-5-1-4.

[20.11.47.3 NMAC - N, 5/1/08]

**20.11.47.4 DURATION:** Permanent.

[20.11.47.4 NMAC - N, 5/1/08]

**20.11.47.5 EFFECTIVE DATE:** May 1, 2008 except where a later date is cited at the end of a section.

[20.11.47.5 NMAC - N, 5/1/08]

**20.11.47.6 OBJECTIVE:** The objective of 20.11.47 NMAC is to establish requirements both for submitting inventories of air contaminants to ensure that the regulations and standards under the Air Quality Control Act and the federal act will not be violated and to require submission of data to quantify greenhouse gas emissions in Bernalillo county.

[20.11.47.6 NMAC - N, 5/1/08]

**20.11.47.7 DEFINITIONS:** In addition to the definitions in 20.11.47 NMAC, the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.47 NMAC shall govern.

**A. "Actual emissions"** means the quantified emissions of a regulated air contaminant from a stationary source for every 12-month period. Valid continuous emission monitoring data or source test data shall be preferentially used to determine actual emissions. In the absence of valid continuous emissions monitoring data or source test data, the basis for determining actual emissions shall be quantified using actual operating hours, production rates, throughputs of process materials, throughputs of materials stored, usage of materials, data provided in manufacturer's product specifications, material volatile organic compound (VOC) content reports, laboratory analyses, or any other technically acceptable data as approved by the department in advance and in writing. All calculations of actual emissions shall use USEPA or department approved methods including emission factors and assumptions.

**B. "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.

**C. "California climate action registry"** means the voluntary registry for greenhouse gas emissions established pursuant to California Health and Safety Code D. 26, Pt. 4, Ch. 6, as amended.

**D. "Carbon dioxide"** means the chemical compound containing one atom of carbon and two atoms of oxygen.

**E. "Commencement" or "commence"** means that an owner or operator has undertaken a continuous program of construction or modification.

**F. "Construction"** means fabrication, erection, installation or relocation of a stationary source, including temporary installations and portable stationary sources.

**G. "Emissions report" or "emissions inventory"** means a listing, by source, of the amount of air contaminants and greenhouse gas emissions discharged into the atmosphere.

**H. "Fuel carbon content"** means the mass of carbon per unit of heat

content of a fuel.

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

**J. "Greenhouse gas"** means any of the following: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons or sulfur hexafluoride.

**K. "Greenhouse gas emissions reporting year"** means the calendar year in which greenhouse gas emissions required to be reported under 20.11.47 NMAC occurred.

**L. "Hydrofluorocarbons"** means gaseous chemical compounds containing only hydrogen, carbon, and fluorine atoms.

**M. "Methane"** means the chemical compound containing one atom of carbon and four atoms of hydrogen.

**N. "Modification"** means any physical change in, or change in the method of operation of, a stationary source that results in an increase in the potential emission rate of any regulated air contaminant emitted by the source or that 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 the 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 a natural gas curtailment or emergency allocation or any other lack of supply of natural gas.

**O. "Nitrous oxide"** means the chemical compound containing two atoms of nitrogen and one atom of oxygen.

**P. "Nonattainment area"** means, for any air pollutant, an area that has been designated as a nonattainment area under Section 107 of the federal act.

**Q. "Operator"** means the person or persons responsible for the overall operation of a facility.

**R. "Owner"** means the person or persons who own a facility or part of a facility.

**S. "Perfluorocarbons"** means gaseous chemical compounds containing only carbon and fluorine atoms.

**T. "Portable stationary source"** means a source that can be relocated to another operating site with limited dismantling and reassembly, including as an example, moveable sand and gravel processing operations and asphalt plants.

**U. "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 a 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.

**V. "Potential to emit"** means the maximum capacity of a stationary source to emit an air contaminant under its physical and operational design, except that a physical or operational limitation on the capacity of a source to emit an 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 design if the limitation is federally enforceable; however, the potential to emit for nitrogen dioxide shall be based on total oxides of nitrogen.

**W. "Regulated air contaminant"** means an air contaminant, the emission or ambient concentration of which is regulated pursuant to the New Mexico Air Quality Control Act or the federal act.

**X. "Responsible person" or "responsible official"** means the person designated in a permit or source registration, who is responsible for complying with the permit, or source registration and 20.11.47 NMAC.

**Y. "Shutdown"** means the cessation of operation of air pollution control equipment, process equipment or process for any purpose, except routine phasing out of batch process units.

**Z. "Stationary source" or "source"** means a structure, building, equipment, facility, installation (including temporary installations), operation or portable stationary source that emits or may emit an air contaminant; a research facility

may group its sources for the purpose of 20.11.47 NMAC with the prior written approval of the director of the department.

**AA. "Sulfur hexafluoride"** means the chemical compound containing one atom of sulfur and six atoms of fluorine.

**BB. "Sulfur oxides"** means compounds containing sulfur and oxygen, including sulfur dioxide (SO<sub>2</sub>).

**CC. "The climate registry"** means the nonprofit corporation entitled "the climate registry" that is incorporated pursuant to the District of Columbia nonprofit corporation act for the purpose of creating and operating a multi-state greenhouse gas emissions registry.

**DD. "Western backstop sulfur dioxide trading program"** means 20.11.46 NMAC, if triggered as a backstop in accordance with the provisions of the *section 309 regional haze state implementation plan element for Albuquerque-Bernalillo county, New Mexico*, to reduce regional sulfur dioxide emissions. [20.11.47.7 NMAC - N, 5/1/08]

**20.11.47.8 VARIANCES:** No person can obtain a variance from the requirements of 20.11.47 NMAC. [20.11.47.8 NMAC - N, 5/1/08]

**20.11.47.9 SEVERABILITY:** If for any reason any section, subsection, sentence, phrase, clause or wording of 20.11.47 NMAC is held to be unconstitutional or otherwise invalid by any court or the United States environmental protection agency, the decision shall not affect the validity of remaining portions of 20.11.47 NMAC. [20.11.47.9 NMAC - N, 5/1/08]

**20.11.47.10 CONSTRUCTION:** 20.11.47 NMAC shall be liberally construed to carry out its purpose. [20.11.47.10 NMAC - N, 5/1/08]

**20.11.47.11 SAVINGS CLAUSE:** The filing of 20.11.47 NMAC, *Emissions Inventory Requirements*, and the filing of any amendment to 20.11.47 NMAC with the state records center and archives shall not affect any action pending for violation of a city or county ordinance, a board regulation, or a permit, and shall not affect a petition filed pursuant to 20.11.47 NMAC. Prosecution for 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. [20.11.47.11 NMAC - N, 5/1/08]

**20.11.47.12 COMPLIANCE WITH OTHER REGULATIONS:** Compliance with 20.11.47 NMAC does not relieve a person from responsibility for

complying with any other applicable federal, state, or local regulations.

[20.11.47.12 NMAC - N, 5/1/08]

**20.11.47.13 DOCUMENTS:** Documents incorporated and cited in 20.11.47 NMAC may be viewed at the Albuquerque environmental health department, Suite 3023, One Civic Plaza, 400 Marquette NW, Albuquerque, NM. [20.11.47.13 NMAC - N, 5/1/08]

**20.11.47.14 EMISSIONS INVENTORY REQUIREMENTS:**

**A. Applicability.** 20.11.47.14 NMAC applies to the owner or operator of every stationary source, located within Bernalillo county that:

(1) has an active permit issued pursuant to 20.11.41 NMAC, *Authority to Construct*, or 20.11.42 NMAC, *Operating Permits*; or

(2) is required to file a source registration pursuant to 20.11.40 NMAC, *Source Registration*.

**B. Reporting requirements.**

(1) A source that meets requirements under Subsection A of 20.11.47.14 NMAC shall submit an emissions report annually. A source is not required to submit an emissions report more frequently than annually.

(2) The department will provide a complete copy of an owner or operator's submitted emissions report when requested in writing by the owner or operator.

(3) The owner or operator shall submit to the department a complete, correct and current emissions report in the format specified by the department; the report shall state accurately the emissions of all air pollutants included in the permit requested for any specified calendar year.

(4) Except as provided in Paragraph (5) of Subsection B of 20.11.47.14 NMAC, if the owner or operator is required to submit an emissions report to the department, the owner or operator shall submit the report by March 15 for the previous calendar year or any other calendar year.

(5) Sources required by a permit to submit an annual emissions report on a specific date shall submit the report on the specified date.

**C. Content of emissions reports.** Emissions report contents for reports required by Subsection B of 20.11.47.14 NMAC shall include:

(1) the air quality stationary source permit number or source registration number;

(2) the name, address, if any, and physical location of the stationary source;

(3) the name and telephone number of the person to contact regarding the



emissions report;

(4) a certification signed by the owner, or operator, or a responsible official or designated representative, 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 by 20.11.42 NMAC;

(5) for each emission point, in the format required by the department:

(a) stack and exhaust gas parameters and location information;

(b) type of control equipment and estimated control efficiency;

(c) schedule of operation;

(d) annual process or fuel combustion rates;

(e) fuel heat, sulfur, and ash content;

(f) estimated actual emissions in pounds per year of total suspended particulate, PM10, PM2.5, ammonia, sulfur oxides, nitrogen oxides, carbon monoxide, volatile organic compounds, and lead, including fugitive emissions and emissions occurring during maintenance, start-ups, shutdowns, upsets, and downtime;

(g) speciated hazardous air pollutants, if requested by the department; and

(h) a description of the methods utilized to make the estimates, including calculations;

(6) for smelters, an annual report of sulfur input stated in tons per year; and

(7) all information required by 40 CFR Part 51, Subpart A, Emissions Inventory Reporting Requirements, as amended.

**D. Additional content for emissions reports from sources in ozone nonattainment areas.** In addition to the contents required by Subsection C of 20.11.47.14 NMAC, emissions reports from sources located in ozone nonattainment areas that emit nitrogen oxides and volatile organic compounds shall also include the following information:

(1) typical daily process rate during the peak ozone season, where the peak ozone season is specified by the department;

(2) estimated actual emissions of nitrogen oxides and volatile organic compounds in pounds per day for a typical day during the peak ozone season for:

(a) each emissions point; and

(b) for each process and fuel type contributing to emissions from each point.

**E. Waiver of reporting requirements for insignificant emissions.** The department may waive the require-

ments of Paragraph (5) of Subsection C of 20.11.47.14 NMAC for emissions that the department determines to be insignificant pursuant to 20.11.42 NMAC, except the following shall not be waived:

(1) for sources in nonattainment areas, reporting of emissions of pollutants for which the area is in nonattainment; and

(2) emissions reporting required by the federal act.

**F. Emission tracking requirements for sulfur dioxide emission inventories.** In addition to complying with the requirements of Subsections A through E of 20.11.47.14 NMAC, an owner may be subject to 20.11.46 NMAC, *Sulfur Dioxide Emissions Inventory Requirements; Western Backstop Sulfur Dioxide Trading Program*. [20.11.47.14 NMAC - N, 5/1/08]

#### **20.11.47.15 GREENHOUSE GAS EMISSIONS INVENTORY REQUIREMENTS:**

**A. Applicability.** 20.11.47.15 NMAC applies to the owner or operator of every stationary source, located within Bernalillo county that emits a greenhouse gas as defined in Subsection J of 20.11.47.7 NMAC and:

(1) has an active permit issued pursuant to 20.11.41 NMAC, *Authority to Construct*, or 20.11.42 NMAC, *Operating Permits*; or

(2) is required to file a source registration pursuant to 20.11.40 NMAC, *Source Registration*.

**B. Reporting requirements.**

(1) **Any stationary source subject to 20.11.47.15 NMAC, if requested by the department, shall:**

(a) submit a greenhouse gas emissions inventory by the deadline and as required by the greenhouse gas emissions reporting procedures established by the department, but not more often than annually; or

(b) report greenhouse gas emissions from the stationary source in accordance with 20.11.48 NMAC; or

(c) provide the department with access to the requested information for the greenhouse gas emissions reporting year registered in either the climate registry or the California climate action registry.

(2) When the department determines the deadlines for submitting greenhouse gas emissions reports and reporting procedures, the department shall provide an opportunity for public comment, and shall consider:

(a) public comments regarding the schedule of the reports and greenhouse gas emissions reporting procedures;

(b) emissions quantification standards and best practices approved or recom-

mended by federal and state agencies, by greenhouse gas emissions registries, and by non-governmental bodies having expertise in greenhouse gas emissions quantification;

(c) whether, considering the amount and chemical composition of the emissions, greenhouse gas emissions from a particular source or source type are expected to be insignificant relative to emissions from other sources or source types; and

(d) whether, considering the amount and chemical composition of the emissions, emissions of a particular greenhouse gas from a source or source type are expected to be insignificant relative to the total greenhouse gas emissions from that source or source type.

**C. Content of greenhouse gas emissions reports.** If a greenhouse gas emissions report is required by Subparagraph (a) of Paragraph (1) of Subsection B of 20.11.47.15 NMAC, then the report shall contain the same information required by Paragraphs (1) through (4) of Subsection C of 20.11.47.14 NMAC as well as the following information: for each emission point, as required by the department under the greenhouse gas emissions reporting procedures or other methodologies and procedures approved by the department in advance and in writing, the estimated actual emissions of greenhouse gases, including fugitive emissions and emissions occurring during maintenance, start-ups, shutdowns, upsets and downtime. [20.11.47.15 NMAC - N, 5/1/08]

**HISTORY OF 20.11.47 NMAC:**

**Pre-NMAC History:** none.

**History of Repealed Material:** [Reserved]

**NMAC History:** [Reserved]

## **NEW MEXICO BOARD OF DENTAL HEALTH CARE**

**This is an amendment to 16.5.17 NMAC Sections 5, 8, 10 and 12, effective 4/16/08.**

**16.5.17.5 EFFECTIVE DATE:** February 14, 2000, unless a different date is cited at the end of a section [or Paragraph]. [2-14-00; 16.5.17.5 NMAC - Rn, 16 NMAC 5.17.5, 12-14-00; A, 4/16/08]

**16.5.17.8 CERTIFICATION FOR THE COLLABORATIVE PRACTICE OF DENTAL HYGIENE:** The board, based on the recommendation of the dental hygienists committee, will certify qualified dental hygienists for collaborative practice.

**A. Prerequisite Requirements for Certification.** Each applicant for certification as a collaborative prac-

tice dental hygienist must possess the following qualifications:

(1) possess a current New Mexico dental hygiene license in good standing; and

(2) have been engaged in the active practice of dental hygiene as defined in 61-5A-4(B) of the act for not less than:

(a) 2400 hours of active practice for the past eighteen months; or

(b) a total of 3,000 hours of active practice and has been engaged in active practice for two of the past three years;

(3) meet the educational criteria for licensure in Section 61-5A-13 (A) of the act;

(4) have 15 hours of continuing education in clinical dental hygiene in the twelve (12) months prior to certification, which includes courses in infection control and medical emergencies.

**B. Documentation Requirements.** Each applicant for certification as a collaborative practice dental hygienist must submit a completed application, the required fees and following documentation:

(1) verification of a current active license;

(2) proof of the active practice of dental hygiene as defined in paragraph (2) Subsection A of 16.5.17.8 NMAC of this part; this proof may be in the form of notarized letters from employers, supervisors of dental clinics of one of the uniformed services of the United States, or faculty administrators of accredited schools; if this documentation cannot be obtained, the applicant may request to provide other proof of the required hours to the committee for consideration;

(3) copy of proof of current basic life support;

(4) proof of 15 hours of continuing education related to the clinical practice of dental hygiene; and

(5) a copy of a signed collaborative practice agreement between a dental hygienist and a consulting dentist.

**C. Renewal Requirements.** Each dental hygienist certified for collaborative practice shall:

(1) submit a completed renewal application for certification for collaborative practice, along with the triennial renewal application for their license, accompanied by the required fees as defined in 16.5.18 NMAC;

(2) complete 60 hours of continuing education every triennial renewal period; if the initial certification period is less than three years, the required continuing education will be prorated at 20 hours per full year of certification; 60 hours to include:

(a) basic life support: proof of current certification accepted by the American heart association or the American

red cross; and

(b) infection control: as further defined in 16.5.1.16 NMAC, a course in infection control techniques and sterilization procedures per renewal period; and

(c) medical emergencies: as for new certification defined in Paragraph (4) of Subsection A of 16.5.17.8 NMAC;

(3) submit a current list of all consulting dentists to the board with each renewal application;

(4) submit a copy of the signed collaborative practice agreement(s) and protocols between a dental hygienist and a consulting dentist per renewal period.

[2-14-00; 16.5.17.8 NMAC - Rn, 16 NMAC 5.17.8, 12-14-00; A, 04-16-08]

**16.5.17.10 RESPONSIBILITIES OF A CONSULTING DENTIST:** The consulting dentist shall:

**A.** in collaboration with the dental hygienist, provide for the patient's additional needed dental care;

**B.** be available to provide consultation to the collaborative practice dental hygienist;

**C.** make provisions for a qualified acting consulting dentist to act in his/her place should he/she be away from his practice for more than two weeks;

**D.** maintain an appropriate level of contact and communication with the collaborative practice dental hygienist;

**E.** in conjunction with the collaborative practice dental hygienist, be responsible and liable for acts and omissions in the collaborative dental hygiene practice; ~~and~~

**F.** assure that each collaborative practice dental hygienist is duly licensed and certified for collaborative practice by the board of dental health care;

**G.** maintain a separate and distinct collaborative practice agreement with each collaborative practice dental hygienist for whom he/she serves as a consulting dentist;

**H.** provide verbal ~~and/or~~ or written prescriptions to the collaborative practice dental hygienist for those procedures requiring a diagnosis;

**I.** provide verbal ~~and/or~~ or written prescriptions to the collaborative practice dental hygienist when the consulting dentist deems it appropriate to provide exception to the standardized protocols;

**J.** provide a written prescription within (7) business days following a verbal prescription or order;

**K.** maintain in the patients record a duplicate of the written prescriptions ~~and/or~~ or orders as described in Subsection H of 16.5.17.10 NMAC through Subsection J of 16.5.17.10 NMAC;

**L.** provide a written diagnosis and treatment recommendations from

the records provided by the collaborative practice dental hygienist to the patient and the hygienist with in thirty days of receipt of such records;

~~[N:]~~ **M.** each collaborative agreement will be kept on file by the collaborative practice dental hygienist and the consulting dentist, the basic format of the agreement will be provided with the application by the board.

[2-14-00; 16.5.17.10 NMAC - Rn & A, 16 NMAC 5.17.10, 12-14-00; A, 04-16-08]

**16.5.17.12 COLLABORATIVE DENTAL HYGIENE PRACTICE AND LIMITATIONS:**

**A.** A collaborative practice dental hygienist may have more than one consulting dentist.

**B.** A dentist shall have a consulting agreement with no more than three collaborative practice dental hygienists. The board may grant exception to this limitation for public health settings on a case-by-case basis.

**C.** The collaborative practice dental hygienist may own ~~and/or~~ and manage a dental hygiene practice, or enter into a contractual arrangement, in any location or setting in New Mexico.

~~[E:]~~ **D.** The committee, through the board, may take any disciplinary action allowed by the Uniform Licensing Act, against a dental hygienist certified in collaborative practice.

~~[F:]~~ **E.** A collaborative practice dental hygienist shall not:

(1) administer local anesthesia except under the indirect supervision of a dentist; and only if certified to do so by the board;

(2) administer a drug or medication, except those directly indicated as dental topical therapeutic or preventive agents; other therapeutic agents may only be dispensed if the collaborative practice dental hygienist holds a class C clinic license; any drugs dispensed as a class C clinic (as designated and defined by the New Mexico board of pharmacy) must be on the specific individual authorization of a dentist:

(a) all non-controlled substance medications requiring a prescription or order from the dentist may only be dispensed for immediate use in the collaborative practice dental hygienist office, and only on the specific order or protocol from the consulting dentist; a log of these dispensing shall be kept and a copy of this log shall be sent to the corresponding consulting dentist every 6 months; collaborative practice dental hygienists may not dispense or administer any controlled substance;

(b) prescription drugs, which are kept in bulk at the collaborative practice dental hygienist's office, to be dispensed or used by the collaborative practice dental

hygienist as in Paragraph (2) of Subsection F 16.5.17.12 NMAC, must be purchased on an order or prescription by a consulting dentist;

(3) diagnose dental disease, but may advise the patient of suspected pathology and periodontal status;

(4) perform oral hygiene procedures on any patient identified as having a significant health risk from the procedures; unless the patients' current health history has been reviewed by the patient's dentist of record or the consulting dentist; or for patients who reside in residential or long term care facilities, the patient's dentist or physician;

(5) perform treatments requiring the diagnosis of a dentist without a prescription/order from the consulting dentist; such treatments include but are not limited to, root planning, sealant application, administration of therapeutic agents and other services defined in Section 61-5A-4(B) as within the scope of dental hygiene practice but which require a dentist's diagnosis;

(6) modify the standard collaborative practice protocol without a prescription or order from the consulting dentist;

(7) take impressions for bleaching trays, deliver bleaching materials or provide systems of home bleaching, or provide instructions to patients on using bleaching materials unless it is authorized on a case by case basis by prescription from a consulting dentist;

(8) provide in office bleaching systems unless under indirect supervision of a consulting dentist.

[2-14-00; 16.5.17.12 NMAC - Rn & A, 16 NMAC 5.17.12, 12-14-00; A, 06-14-01; A, 04-16-08]

**NEW MEXICO BOARD OF DENTAL HEALTH CARE**

This is an amendment to 16.5.18 NMAC Section 8, effective 04/16/08.

**16.5.18.8 FEES:**

A. All fees are non-refundable.

B. Application fee for licensure by examination is \$250, which includes the initial licensing period.

C. Application fee for licensure by credentials is \$300, which includes the initial licensing period.

D. An applicant who does not obtain a passing score on the jurisprudence exam must submit an additional fee of \$50 to re-take the exam.

E. Triennial renewal fee for all dental hygienist licensee is \$225:

(1) impaired fee is \$15 per triennial renewal period plus renewal fee;

(2) late renewal fee of \$100 after July 1 through September 1, plus renewal and impaired fees;

(3) cumulative late fee of \$5 per day from August 1 to the date of the post-mark or hand-delivery to the board office plus renewal, late and impaired fees.

F. Fees for collaborative practice:

(1) application for certification for collaborative practice fee is \$150;

(2) renewal of certification for collaborative practice fee is \$50 at the time of each triennial license renewal; the initial fee will be prorated at \$20 per full year of certification.

G. Fees for temporary licenses and application:

(1) forty-eight hour license, application fee of \$50, license fee of \$50;

(2) six month license, application fee of \$100, license fee of \$100;

(3) twelve month license, application fee of \$100, license fee of \$150.

H. Application for certification in local anesthesia fee:

(1) by examination - \$40;

(2) by credentials - \$100 for application and credential review.

I. Reinstatement fee is \$200.

J. Application for licensure for inactive status is \$50.

K. Administrative fees:

(1) duplicate license fee is \$25;

(2) multiple copies of the statute or rules are \$10 each;

(3) copies cost \$0.50 per page, with a minimum charge of \$5.00;

(4) list of current dental hygiene licensees is [~~\$180~~] \$250; an annual list of current licensees is available to the professional association upon request at no cost; and

(5) mailing labels of current dental hygiene licensees is [~~\$230~~] \$300.

[3-14-73, 4-11-81, 3-7-88, 3-28-91, 5-31-95, 12-15-97, 8-16-99; 16.5.18.8 NMAC - Rn & A, 16 NMAC 5.18.8, 06-14-01; A, 9-30-02; A, 12-30-02; A, 03-06-05; A, 04-17-06; A, 04-16-08]

**NEW MEXICO BOARD OF DENTAL HEALTH CARE**

This is an amendment to 16.5.19 NMAC Sections 9 and 10, effective 04/16/08

**16.5.19.9 DOCUMENTATION REQUIREMENTS:** Each applicant for a dental hygiene license by examination must submit the required fees and following documentation:

A. completed application, signed and notarized with a passport quality

photo taken within [~~6~~] six months affixed to the application; applications are valid for [~~+~~] one year from the date of receipt;

B. official transcripts or an original letter on letterhead with a raised embossed seal verifying successfully passing all required courses from the dental hygiene program, to be sent directly to the board office from the accredited program;

C. copy of WREB or CRDTS certificate or score card;

D. copy of national board examination certificate or score card;

E. proof of having taken a course in infection control technique or graduation from dental hygiene school within the past [~~twelve~~] 12 months;

F. proof of current [~~CPR~~] basic life support certification accepted by the American heart association or the American red cross; and

G. verification of licensure in all states where the applicant holds or has held a license to practice dental hygiene or a related profession; verification must be sent directly to the board office from the other state(s) board, must include a raised seal, and must attest to the status, issue date, license number, and other information contained on the form.

[3-14-73, 3-7-88, 10-4-86, 5-31-95, 9-30-96, 12-15-97; 16.5.19.9 NMAC - Rn & A, 16 NMAC 5.19.9, 12-30-02; A, 04-16-08]

**16.5.19.10 RE-EXAMINATION PROCEDURE:**

An applicant who does not obtain a passing score on the Jurisprudence exam must submit the re-examination fee as defined in [~~Section 8.4 of Part 18~~] Subsection D of 16.5.18.8 NMAC to re-take the exam.

[8-11-89...9-30-96; 16.5.19.10 NMAC - Rn, 16 NMAC 5.19.10, 12-30-02; A, 04-16-08]

**NEW MEXICO BOARD OF DENTAL HEALTH CARE**

This is an amendment to 16.5.20 NMAC Sections 8 and 9, effective 04/16/08.

**16.5.20.8 PREREQUISITE REQUIREMENTS FOR LICENSE:**

Each applicant for licensure as a dental hygienist by credentials must possess the following qualifications:

A. graduated and received a diploma from an accredited dental hygiene program consisting of at least two academic years of dental hygiene curriculum as defined in Section 61-5A-13, NMSA 1978 of the act;

B. completed fifteen hours of continuing education during the past year; these hours must meet the qualifications as defined in 16.5.1.15 NMAC;

C. passed the dental

hygiene national board examination as defined in Section 61-5A-13.A., NMSA 1978;

D. passed the jurisprudence exam with a score of at least 75 percent;

E. holds a valid license obtained through a clinical examination in another state or territory of the United States;

F. the committee requires a level III background status report from ~~[PBIS]~~ a board designated professional background service; application for this service will be included with other application materials; the applicant will apply and pay fees directly to ~~[PBIS]~~ a board designated professional background service to initiate this service;

G. all licenses held by the applicant must have been in good standing for two years prior to application;

H. the committee may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, or these rules. [3-28-91 . . . 5-31-95, 9-30-96, 8-16-99; 16.5.20.8 NMAC - Rn, & A, 16 NMAC 5.20.8, 06-14-01; A, 03-06-05; A, 04-16-08]

**16.5.20.9 DOCUMENTATION REQUIREMENTS:** Each applicant for licensure by credentials must submit the required fees and following documentation:

A. completed application, signed and notarized with a passport quality photo taken within 6 months affixed to the application; applications are valid for 1 year from the date of receipt;

B. official transcripts or an original letter on letterhead with a raised embossed seal verifying successfully passing all required courses from the dental hygiene program, to be sent directly to the board office from the accredited program;

C. copy of national board examination certificate or score card;

D. proof of having taken a course in infection control technique within the past twelve months;

E. proof of current ~~[CPR]~~ basic life support certification accepted by the American heart association or the American red cross;

F. proof of 15 hours of continuing education during the 12 months prior to application;

G. ~~[The]~~ a status report must be received at the board office directly from [PBIS] a board designated professional background service [must be received directly from PBIS]; the results of the ~~[PBIS]~~ board designated professional background service background check must either indicate no negative findings or, if

there are negative findings, those findings will be considered by the committee:

~~[H-]~~(1) the committee may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, or the rules;

(2) supplemental information may be requested by the committee;

~~[I- Repealed]~~

~~[J-]~~H. verification of licensure in all states where the applicant holds or has held a license to practice dental hygiene or a related profession; verification must be sent directly to the board office from the other state(s) board, must include a raised seal, and must attest to the status, issue date, license number, and other information contained on the form.

~~[K- Supplemental information may be requested by the Committee.]~~

[3-28-91, 5-31-95, 9-30-96, 8-16-99; 16.5.20.9 NMAC - Rn & A, 16 NMAC 5.20.9, 06-14-01; A, 04-16-08]

## NEW MEXICO BOARD OF DENTAL HEALTH CARE

**This is an amendment to 16.5.21 NMAC Section 10, effective 04/16/08.**

**16.5.21.10 DOCUMENTATION REQUIREMENTS:** Each applicant for a temporary dental hygiene license must submit the required fees and following documentation:

A. completed application, signed and notarized with a passport quality photo taken within ~~[6]~~six months affixed to the application; applications are valid for ~~[+]~~ one year from the date of receipt;

B. proof of current ~~[CPR]~~ basic life support certification accepted by the American heart association or the American red cross;

C. copies of all valid licenses and a letter from the applicant attesting to the status of each license;

D. an affidavit from the New Mexico licensed dental hygienist or dentist who will sponsor the applicant, attesting to the qualifications of the applicant and the activities the applicant will perform; ~~[and]~~

E. a list of activities to be practiced and the time period for which the temporary license is requested;

F. in addition, applicants requesting temporary licensure in public health must submit the following documentation:

(1) official transcripts or an original letter on letterhead with a raised embossed seal verifying successfully passing all required courses from the dental

hygiene program, to be sent directly to the board office from the accredited program;

(2) copy of national board examination certificate or score card; and

(3) proof of having taken a course in infection control technique within the past ~~[twelve]~~ 12 months.

[3-14-73, 5-31-95, 9-30-96; 16.5.21.10 NMAC - Rn, 16 NMAC 5.21.10, 12-30-02; A, 04-16-08]

## NEW MEXICO BOARD OF DENTAL HEALTH CARE

**This is an amendment to 16.5.23 NMAC Section 9, effective 04/16/08.**

**16.5.23.9 COURSES REQUIRED:** Continuing education coursework must contribute directly to the practice of dental hygiene and must comply with the requirements of 16.5.1.15 NMAC of these rules. The following courses are required for license renewal:

A. ~~[CPR]~~ basic life support: proof of current certification ~~[in basic life support]~~ accepted by the American heart association or the American red cross;

B. infection control: as further defined in 16.5.1.16 NMAC, a course in infection control techniques and sterilization procedures per renewal period. [11/21/75, 4/12/92, 5/21/93, 5/31/95, 9/30/96; 16.5.23.9 NMAC - Rn & A, 16 NMAC 5.23.9, 04/17/06; A, 04/16/08]

## NEW MEXICO BOARD OF DENTAL HEALTH CARE

**This is an amendment to 16.5.25 NMAC Sections 10 and 11, effective 04/16/08.**

**16.5.25.10 REINSTATEMENT FROM RETIREMENT STATUS:** A licensee whose license has been placed in retirement status may request reinstatement of the retired license within three years of the date of retirement as indicated in Section 16.5.25.8 NMAC. Upon receipt of the request for reinstatement, board staff shall send an application for reinstatement of license.

A. Along with the completed application, the request for reinstatement must include the reinstatement fee, the triennial renewal fee, impairment fee, a completed application, and proof of the following continuing education courses.

(1) There will be 10 CE hours/year of retirement, up to 30 hours, required for reinstatement.

(2) The requirements of the infection control hours and the ~~[CPR]~~ basic life support hours taken in the past twelve months may be included toward these required hours:

(a) proof of infection control course within the past twelve months; and

(b) proof of current [CPR] basic life support certification accepted by the American heart association or the American red cross;

(c) 45 hours of continuing education required for the last triennial renewal cycle of active licensure; these hours may include continuing education identified at the time of retirement request as well as any continuing education taken during the retirement period.

(3) Verification of licensure in all states where the applicant holds or has held a license to practice dental hygiene, or other health care profession. Verification must be sent directly to the board office from the other state boards, must include a raised seal, and must attest to the status, issue date, license number, and other information contained on the form.

B. The request for reinstatement from retirement status, including a statement of the applicant's activities during the period of retirement and any existing impairments, shall be reviewed by a subcommittee as designated by the chair. If the subcommittee finds the application in order and is satisfied the applicant has fulfilled all required continuing education and submitted the fees, the subcommittee may approve the license reinstatement and the previous license number reassigned. The license will be read into the committee and board records at the next scheduled meeting. If the subcommittee finds that the application is not in order, the application will go to the entire committee for review. The reinstated license will expire as defined in 16.5.24 NMAC.

C. A dental hygienist with a license in retirement status may not practice dental hygiene in New Mexico until proof of active licensure is received from the board office.

D. If reinstatement of a retired license is requested within three years of retirement and if the licensee does not apply for inactive status, application for a new license must be made by examination or credentials in New Mexico.

[16.5.25.10 NMAC - Rn, 16.5.25.9 NMAC, 03-06-05 & A, 03-06-05; A, 04-16-08]

**16.5.25.11 REINSTATEMENT FROM INACTIVE STATUS:** A licensee whose license has been placed in inactive status may request reinstatement of the inactive license to active license status within nine years of the date of inactive status as indicated in Section 16.5.25.8 NMAC. Upon receipt of the request for reinstatement, board staff shall send an application for reinstatement of license.

A. Along with the completed application, the request for reinstatement must include the reinstatement fee, the triennial renewal fee, impairment fee, and proof of the following continuing education courses:

(1) there will be 10 CE hours for each year of inactive status required for reinstatement; the hours may be accumulated at any time during the year(s) of inactivation; the requirements of the infection control hours and the [CPR] basic life support hours, and medical emergency course taken in the past twelve months may be included toward these required hours;

(2) proof of infection control course within the past twelve months; ~~and~~

(3) proof of current [CPR] basic life support certification accepted by the American heart association or the American red cross;

(4) proof of medical emergency course during the past twelve months;

(5) 45 hours of continuing education required for the last triennial renewal cycle of active licensure; these hours may include continuing education identified at the time of retirement request as well as any continuing education taken during the retirement period; and

(6) verification of licensure in all states where the applicant holds or has held a license to practice dental hygiene, or other health care profession; verification must be sent directly to the board office from the other states boards, must include a raised seal, and must attest to the status, issue date, license number, and other information contained on the form.

B. The request for reinstatement from inactive status, including a statement of the applicant's activities during the period of inactivation and any existing impairment, shall be reviewed by a subcommittee as designated by the chair. If the subcommittee finds the application in order and is satisfied the applicant has fulfilled all required continuing education and submitted the fees, the subcommittee may approve the license reinstatement and the previous license number reassigned. The license will be read into the committee and board records at the next scheduled meeting. If the subcommittee finds that the application is not in order, the application will go to the entire committee for review. The reinstated license will expire as defined in 16.5.24 NMAC.

C. A dental hygienist with a license in inactive status may not practice dental hygiene in New Mexico until proof of active licensure is received from the board office.

D. If reinstatement of an inactive license is not requested within nine years of inactivation, application for a new

license must be made by examination or credentials in order to practice dental hygiene in New Mexico or the license must be permanently retired.

[16.5.25.11 NMAC - N, 03-06-05; A, 04-17-06; A, 04-16-08]

## NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.26 NMAC Section 9, effective 04/16/08.

### 16.5.26.9 REINSTATEMENT OF REVOKED LICENSE:

A. Within one year of the revocation notice, the license may be reinstated by payment of renewal and reinstatement fees, compliance with continuing education for the previous renewal cycle and for the year of the revocation. Applicants for reinstatement after one year of revocation must re-apply as a new applicant and meet all requirements for initial licensure.

B. Applicants for reinstatement must provide for verification of licensure in all states where the applicant holds or has held a license to practice dental hygiene, or other health care profession within the previous year. Verification must be sent directly to the board office from the other state(s) board, must include a raised seal, and must attest to the status, issue date, license number, and other information contained on the form.

C. Upon receipt of a completed reinstatement of revoked license application, including all documentation and fees, a dental hygienists committee member, will review and may approve the application. The committee may formally accept the approval of the application at the next scheduled meeting.

[3/14/73...5/31/95, 1/1/99; 16.5.26.9 NMAC - Rn, 16 NMAC 5.26.9, 04/17/06; A, 04/16/08]

## NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.28 NMAC Sections 9 and 10, effective 04/16/08.

**16.5.28.9 CERTIFICATION BY EXAMINATION:** Applicants for certification in local anesthesia by exam must possess the following qualifications and submit the required fees and documentation, along with a completed application.

A. Qualifications:

(1) a valid license to practice dental hygiene in New Mexico;

(2) successful completion of an approved educational program in local

anesthesia of at least 24 didactic hours and 10 hours of clinical training given in an accredited dental hygiene program; and

(3) successfully pass a written and clinical local anesthesia examination administered by WREB.

B. Documentation:

(1) copy of current [~~CPR~~] basic life support certification accepted by the American heart association or the American red cross;

(2) transcript from an accredited dental hygiene program documenting successful completion of an approved educational program in local anesthesia; and

(3) certificate or score card from WREB indicating successful completion and date of local anesthesia exam.

[3/14/73, 4/10/81, 5/31/95, 12/15/97; 16.5.28.9 NMAC - Rn, 16 NMAC 5.28.9, 04/17/06; A, 04/16/08]

#### 16.5.28.10 CERTIFICATION BY CREDENTIALS:

Applicants for certification in local anesthesia by credentials must possess the following qualifications and submit the required fees and documentation, along with a completed application.

A. Qualifications:

(1) a valid license to practice dental hygiene in New Mexico;

(2) successful completion of educational coursework in local anesthesia; and

(3) administration of local anesthesia in the practice of dental hygiene for at least three of the past five years.

B. Documentation:

(1) copy of current [~~CPR~~] basic life support certification accepted by the American heart association or the American red cross;

(2) proof of successful completion of educational coursework in local anesthesia;

(3) proof of certification by examination to practice local anesthesia in another state;

(4) a letter of verification from each jurisdiction where the applicant holds a certificate for administering local anesthesia, sent directly from the board in each jurisdiction, describing any disciplinary action taken against the applicant; and

(5) proof of administration of local anesthesia while engaged in the practice of dental hygiene in at least three of the past five consecutive years; proof may be by notarized letters from employers, supervisors of dental clinics of the uniformed services of the United States, or faculty administrators of schools of dental hygiene and/or dentistry.

[3/16/94, 5/31/95, 12/15/97; 16.5.28.10 NMAC - Rn, 16 NMAC 5.28.10, 04/17/06; A, 04/16/08]

## NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.29 NMAC Section 10, effective 04/16/08.

**16.5.29.10 PRACTICE SETTINGS:** New Mexico licensed dental hygienists may practice in the following settings:

A. the office of a licensed dentist;

B. a clinic or clinics operated or approved by an executive agency of the state of New Mexico;

C. a hospital with written authorization;

D. a state licensed nursing home or long term care facility with written authorization; [~~or~~]

E. a school regulated by the New Mexico department of education; or

F. a medical office for the application of topical preventative therapeutics.

[5/31/95, 12/15/97; 16.5.29.10 NMAC - Rn, 16 NMAC 5.29.10, 04/17/06; A, 04/16/08]

## NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.30 NMAC Section 11, effective 04/16/08.

**16.5.30.11 INVESTIGATIVE SUBPOENAS:**

The complaint committee of the committee is authorized to issue [~~pre~~] notice of contemplated action investigative subpoenas and to employ experts with regard to pending investigations.

[5-31-95; 16.5.30.11 NMAC - Rn & A, 16 NMAC 5.30.11, 12-14-00; A, 04-16-08]

## NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

The following have been repealed by the Environmental Improvement Board:

20.5.1 NMAC, Petroleum Storage Tanks - General Provisions, (filed 7/16/03), repealed 4/4/08

20.5.2 NMAC, Petroleum Storage Tanks - Registration of Tanks (filed 4/30/02) repealed 4/4/08.

20.5.3 NMAC, Petroleum Storage Tanks, Annual Fee (filed 04/30/02) repealed 4/4/08.

20.5.4 NMAC, Petroleum Storage Tanks, New and Upgraded Tank Systems: Design, Construction and Installation (filed 7/16/03)

repealed 4/4/08.

20.5.5 NMAC, Petroleum Storage Tanks, General Operating Requirements (filed 7/16/03) repealed 4/4/08.

20.5.6 NMAC, Petroleum Storage Tanks - Release Detection (filed 7/16/03) repealed 4/4/08.

20.5.8 NMAC, Petroleum Storage Tanks - Out-Of-Service Systems And Closure (filed 7/16/03) repealed 4/4/08.

20.5.14 NMAC, Petroleum Storage Tanks, Certification of Tank Installers (filed 7/16/03) repealed 4/4/08.

## NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

**TITLE 20 ENVIRONMENTAL PROTECTION**

**CHAPTER 5 P E T R O L E U M STORAGE TANKS**

**PART 1 GENERAL PROVISIONS**

**20.5.1.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.5.1.1 NMAC - Rp, 20.5.1.1 NMAC, 04/04/2008]

**20.5.1.2 SCOPE:**

A. 20.5.1 through 20.5.16 NMAC apply to owners and operators of storage tanks as defined in 20.5.1.7 NMAC except as otherwise provided in Subsections B and C of this section.

B. Any UST system holding hazardous wastes that are listed or identified under Subtitle C of the federal Resource Conservation and Recovery Act, or a mixture of such hazardous waste and other hazardous regulated substances, is excluded from these regulations. This subsection does not apply to any UST system containing petroleum.

C. The following types of storage tank systems are excluded from the requirements of 20.5.2 through 20.5.16 NMAC:

(1) any wastewater treatment tank systems and any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the federal Clean Water Act;

(2) equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks;

(3) any UST system with a capacity of 110 gallons or less or any AST system with a capacity of 1,320 gallons or less, or any AST system with a capacity of 55,000 gallons or more;

(4) any UST system that contains a de minimis concentration of regulated

substances;

(5) any emergency spill or overflow containment UST system that is expeditiously emptied after use;

(6) any storage tank systems containing radioactive material that are regulated under the Atomic Energy Act of 1954;

(7) any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the nuclear regulatory commission under 10 CFR part 50 appendix A;

(8) airport hydrant fuel distribution systems;

(9) UST systems with field-constructed tanks; and

(10) any UST or AST system that stores fuel solely for use by emergency power generators.

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

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

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

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

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

[20.5.1.2 NMAC - Rp, 20.5.1.2 NMAC, 04/04/2008]

**20.5.1.3 STATUTORY AUTHORITY:** Parts 20.5.1 through 20.5.16 NMAC are promulgated pursuant to the provisions of the Hazardous Waste Act, NMSA 1978, Sections 74-4-1 through 74-4-14; the Ground Water Protection Act, NMSA 1978, Sections 74-6B-1 through 74-6B-14; and the general provisions of the Environmental Improvement Act, NMSA 1978, Sections 74-1-1 through 74-1-16.

[20.5.1.3 NMAC - Rp, 20.5.1.3 NMAC, 04/04/2008]

**20.5.1.4 DURATION:** Permanent.

[20.5.1.4 NMAC - Rp, 20.5.1.4 NMAC, 04/04/2008]

**20.5.1.5 EFFECTIVE DATE:** April 4, 2008, unless a later date is indicat-

ed in the bracketed history note at the end of a section.

[20.5.1.5 NMAC - Rp, 20.5.1.5 NMAC, 04/04/2008]

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

[20.5.1.6 NMAC - Rp, 20.5.1.6 NMAC, 04/04/2008]

**20.5.1.7 DEFINITIONS:**

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

B. "Above ground storage tank" or "AST" means a single tank or combination of manifolded tanks, including pipes connected thereto, that is 1,320 gallons or more, and less than 55,000 gallons, is permanently installed, and is used to contain petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure of 60 degrees fahrenheit and fourteen and seven tenths pounds per square inch absolute, and the volume of which is more than ninety percent above the surface of the ground. Tanks in vaults and special enclosures are ASTs. A compartment tank with combined total capacity greater than 1,320 gallons and less than 55,000 gallons is an AST and for purposes of these regulations is considered to be one tank regardless of the number of compartments and the number of regulated substances contained. Above ground storage tank does not include (regardless of size) any:

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

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

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

(4) storm water or wastewater collection system;

(5) flow-through process tank;

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

industry operations;

(7) tank associated with an emergency generator system;

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

(9) multiple tanks at a facility, that are individually less than 1,320 gallons, unless tanks that are siphoned together have a cumulative total capacity greater than 1,320 gallons;

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

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

D. "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps associated with a storage tank.

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

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

G. "Basin sump" means a liquid-tight collection container with no valves, joints or other penetrations.

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

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

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

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

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

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

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

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

O. "Certified installer" refers generally to both AST and UST certified installers.

P. "Certified installer-AST" means an individual who has been certified by the department after August 15, 2003 under 20.5.14 NMAC to install, replace, repair and modify AST systems in this state.

Q. "Certified installer-UST" means an individual who has been certified by the department after August 15, 2003 under 20.5.14 NMAC to install, replace, repair, and modify UST systems in this state.

R. "Change in service" means removing a regulated substance from a storage tank system and placing something in the system that is not a regulated substance.

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

T. "Community water system" means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

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

V. "Connected piping" means all above ground and underground piping including valves, elbows, joints,

flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual storage tank system, the piping which joins the two storage tank systems should be allocated equally between them.

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

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

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

Z. "Containment sump" means a liquid-tight collection container, which may have valves, joints or penetrations, such as piping penetrations.

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

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

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

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

(3) the New Mexico environment department has established or approved site-specific target levels pursuant to the Hazardous Waste Act, the Ground Water Protection Act, or the Environmental Improvement Act.

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

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

AE. "Contracting company" means a corporation, partnership, or duly constituted individual proprietorship which contracts to install or repair storage tank

systems for third parties.

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

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

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

AI. "Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be accredited or certified as being qualified by the national association of corrosion engineers international (NACE). A corrosion expert shall only perform the specific activities required by these rules for which he is qualified, certified, registered or licensed; for example, a NACE licensed cathodic protection tester shall not design a cathodic protection system unless he is also a NACE licensed cathodic protection technologist, specialist or has another equivalent qualification, certification, registration or license.

AJ. "Corrosion prevention plan" means a plan approved in writing by a corrosion expert for a UST or AST or associated piping, or secondary containment, which plan is designed to maintain the integrity of the tank or piping for its useful life.

AK. "Critical junctures" means the steps of an installation, replacement, modification, repair or removal of a tank system or any part of a tank system, which are important to the prevention of releases and which are more specifically described in 20.5.5 and 20.5.8 NMAC.

AL. "Department" means the New Mexico environment department, also known as the New Mexico department of environment.

AM. "Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate storage tank systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of storage tank systems, such as tank from piping.

AN. "Director" means the director of the environmental protection



division of the department.

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

AP. "Effectively mitigating" means that the approach taken to corrective action has contained the release and is achieving reductions in contamination levels such that the standards described in 20.5.12 and 20.5.13 NMAC will be met in a manner protective of public health, safety and welfare and the environment, within the period of time specified in the plan for remediation by monitored natural attenuation or otherwise.

AQ. "EIB" means the environmental improvement board.

AR. "EIB standards" means standards set forth in 20.5.12, 20.5.13 and 20.7.10 NMAC.

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

AT. "Emergency repair" means a repair required by immediate danger of a release, or by an immediate threat to public health, safety and welfare, or to the environment.

AU. "Environmental improvement board" (EIB) means the board created in the Environmental Improvement Act, NMSA 1978, Sections 74-1-1 through 74-1-16.

AV. "Environmental Improvement Act" means the Environmental Improvement Act, NMSA 1978, Sections 74-1-1 through 74-1-16.

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

AX. "Existing AST system" means an AST system which is used to contain an accumulation of regulated substances or for which installation commenced on or before June 14, 2002. Installation will be considered to have commenced if the owner or operator has obtained all federal, state and local approvals or permits necessary to begin physical construction at the site or installation of the tank system, and if either:

(1) a continuous on-site physical construction or installation program has begun, or

(2) the owner or operator has entered into contractual obligations, which cannot be canceled or modified without

substantial loss, for physical construction at the site or installation of the tank system to be completed within a reasonable time.

AY. "Existing UST system" means a UST system which is used to contain an accumulation of regulated substances or for which installation has commenced on or before December 22, 1988. Installation will be considered to have commenced if the owner or operator has obtained all federal, state and local approvals or permits necessary to begin physical construction of the site or installation of the tank system, and if either:

(1) a continuous on-site physical construction or installation program has begun, or

(2) the owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction at the site or installation of the tank system to be completed within a reasonable time.

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

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

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

BC. "Financial reporting year" means the latest consecutive twelve-month period for which any of the following reports used to support a financial test is prepared:

(1) a 10-K report submitted to the SEC;

(2) an annual report of tangible net worth submitted to Dun and Bradstreet; or

(3) annual reports submitted to the energy information administration or the rural electrification administration; "financial reporting year" may thus comprise a fiscal or a calendar year period.

BD. "Flow-through process tank" is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the pro-

duction process or for the storage of finished products or by-products from the production process.

BE. "Functionality test" means a test for automatic line leak detectors which determines whether they are operating correctly.

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

BG. "Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

BH. "Ground Water Protection Act" means the Ground Water Protection Act, NMSA 1978, Sections 74-6B-1 through 74-6B-14.

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

BJ. "Hazardous substance UST system" or "hazardous substance UST" means an underground storage tank system that contains an accumulation of hazardous substances defined in Section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) but not including any substance regulated as a hazardous waste under Subtitle C of the federal Resource Conservation and Recovery Act (RCRA). Hazardous substance UST includes a tank with a mixture of such substances and petroleum, but which is not a petroleum UST system.

BK. "Hazardous Waste Act" means the Hazardous Waste Act, NMSA 1978, Sections 74-4-1 through 74-4-14.

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

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

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

BO. "Install" or "installation" means the work involved in placing a storage tank system or any part thereof in,

on or above the ground and preparing it to be placed in service.

BP. "Integrity test" means an evaluation process that has been independently tested and approved by a nationally recognized association or independent testing laboratory to determine, in the case of a UST, the suitability of the tank for continuous containment of a regulated substance, or, in the case of an AST, both the suitability of the tank for continuous containment of a regulated substance and the necessary hydraulic properties of the tank to contain the outward pressure of the regulated substance.

BQ. "Internal inspection" means a formal inspection of an AST by an inspector authorized by the American petroleum institute or certified by the steel tank institute. The inspection shall determine whether the AST tank bottom or shell is severely corroded and leaking, and shall include an evaluation of the tank bottom and shell thickness to see whether they meet minimum thickness requirements. The inspector shall visually examine all tanks included in the inspection and, if applicable, check for tank bottom settlement.

BR. "Interstitial monitoring" is a leak detection method which surveys the space between a storage tank system's walls and the secondary containment system for a change in steady state conditions.

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

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

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

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

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

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

BV. "Liquid" means any material that has a fluidity greater than that of 300 penetration asphalt when tested in accordance with ASTM D 5, test for penetration for bituminous materials. When not

otherwise identified, the term liquid shall mean both flammable and combustible liquids.

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

BX. "Loading rack" means the area around and including loading arms, pumps, meters, shutoff valves, relief valves, and other equipment used to load and unload fuel cargo tanks, trucks, tank trucks, railroad cars, cars, other distribution containers or other transport vehicles, if the loading rack services or is attached to one or more storage tank(s) regulated in 20.5 NMAC.

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

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

CA. "LST ranking system" means the leaking storage tank ranking system, the ranking or site prioritization system developed for and modified by the department using the analytical hierarchy process to rank sites where a release from a storage tank has occurred based upon public health, safety and welfare and environmental concerns.

CB. "Magnitude of contamination" means the maximum concentrations of contaminants of concern that result from a release.

CC. "Minimum site assessment (MSA)" means the sum total of all of the following activities:

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

(2) determining the on-site extent, magnitude and impact of contamination by conducting investigations and reporting to the department pursuant to 20.5.12.1204 NMAC or 20.5.13.1303 NMAC (initial abatement), 20.5.12.1205 NMAC or 20.5.13.1304 NMAC (report on initial abatement), 20.5.12.1209 NMAC or 20.5.13.1308 NMAC (preliminary investigation), and 20.5.12.1210 NMAC or 20.5.13.1309 NMAC (report on the preliminary investigation).

CD. "Mobile AST" means

an above ground storage tank that is not field-erected, and which is capable of changes in location.

CE. "Modification" means any change to any portion of a storage tank system that is not a repair. For purposes of 20.5.14 NMAC, the term does not include the process of relining a tank through the application of such materials as epoxy resins.

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

CG. "Monthly" means once per month, not to exceed 35 days.

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

CI. "Motor fuel dispenser system" means a motor fuel dispenser and the equipment necessary to connect the dispenser to a storage tank system. The equipment necessary to connect the motor fuel dispenser to the storage tank may include check valves, shear valves, unburied risers of flexible connectors, or other transitional components that are beneath the dispenser and connect the dispenser to the piping.

CJ. "NAPL" means non-aqueous phase liquid as defined in this section.

CK. "New AST system" means an AST system for which installation has commenced after June 14, 2002. Installation will be considered to have commenced if the owner or operator has obtained all federal, state and local approvals or permits necessary to begin physical construction at the site or installation of the tank, and if either (1) a continuous on-site physical construction or installation program has begun, or (2) the owner or operator has entered into contractual obligations which cannot be canceled or modified without substantial loss for physical construction at the site or installation of the tank system to be completed within a reasonable time.

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

CM. "New UST tank system" means an UST system for which installation has commenced after December 22, 1988. Installation will be considered to have commenced if the owner or operator has obtained all federal, state and local approvals, or permits necessary to begin

physical construction at the site or installation of the tank, and if either:

(1) a continuous on-site physical construction or installation program has begun, or

(2) the owner or operator has entered into contractual obligations which cannot be canceled or modified without substantial loss for physical construction at the site or installation of the tank system to be completed within a reasonable time.

CN. "Non-aqueous phase liquid" (NAPL) means an interstitial body of liquid oil, petroleum product or organic solvent or other organic substance, including an emulsion containing such material; in the case of liquid oil or a petroleum product, the term is synonymous with "phase separated hydrocarbon" and "free product."

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

CP. "Non-community water system" means a public water system that is not a community water system.

CQ. "Normal maintenance" means an activity involving work on a storage tank system that is not a repair, replacement, or installation, which may include but is not limited to: painting, replacing fuses, or touchup. Any time an activity involves disconnecting or affecting the integrity of the piping, tank, spill or overfill systems, or work on line or tank leak detection systems, then the activity is not normal maintenance but is instead a repair.

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

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

CT. "Operational life" is the period beginning from the time when the installation of the tank system is commenced until it is properly closed pursuant to 20.5.8 NMAC.

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

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

CW. "Owner" means, in the case of a storage tank in use on November

8, 1984 or brought into use after that date, any person who owns a storage tank used for storage, use, or dispensing of regulated substances; and in the case of a storage tank in use before November 8, 1984 but no longer in use after that date, any person who owned such tank immediately before the discontinuation of its use. For purposes of the registration requirements of 20.5.2 NMAC only, the term "owner" excludes any person who:

(1) had a UST taken out of operation on or before January 1, 1974;

(2) had a UST taken out of operation after January 1, 1974 and removed from the ground prior to November 8, 1984; or

(3) had an AST taken out of operation on or before July 1, 2001.

CX. "Permanently installed AST" means an AST that is on site for more than 365 consecutive days and dispensing or storing a regulated substance for distribution at any time during that period.

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

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

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

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

DC. "Petroleum tank system," "petroleum storage tank" or "petroleum UST" means a storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

DD. "Pipeline facilities, including gathering lines," are new and existing pipe rights-of-way and any equipment, facilities, or buildings regulated under the federal Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. App. 1671, et seq., or the federal Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. App.

2001, et seq., or which is an intrastate pipeline facility regulated under state laws comparable to either act.

DE. "Piping" means the hollow cylinder or the tubular conduit constructed of non-earthen materials that routinely contains and conveys regulated substances within a storage tank system. Such piping includes any elbows, couplings, unions, valves, or other in-line fixtures that contain and convey regulated substances from the storage tank to the dispenser or other end-use equipment.

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

DG. "Potable drinking water well" means any hole (dug, driven, drilled, or bored) that extends into the earth until it meets groundwater which may supply water for a community water system, a non-community public water system, or otherwise may supply water for human consumption (consisting of drinking, bathing, cooking, or other similar uses). Such wells may provide water to entities such as a single-family residence, group of residences, businesses, schools, parks, campgrounds, and other permanent or seasonal communities.

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

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

DJ. "Professional engineer" is an individual licensed in New Mexico to engage in the practice of engineering under the New Mexico Engineering and Surveying Practices Act, NMSA 1978, Sections 61-23-1 through 61-23-32.

DK. "Project drawings" means schematic drawings of tanks, piping, and ancillary equipment, which need not be prepared, stamped or signed by a professional engineer.

DL. "Property damage" shall have the meaning given this term by applicable state law. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage.

However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

DM. "Provider of financial assurance" means an entity that provides financial assurance to an owner or operator of a storage tank system through one of the mechanisms listed in 20.5.9.905 through 20.5.9.916 NMAC, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a state-required mechanism, or a state.

DN. "Public water system" means a system for the provision to the public of piped water for human consumption (consisting of drinking, bathing, cooking, or other similar uses) if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. Such term includes any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public water system is either a "community water system" or a "non-community water system."

DO. "Qualified firm" means a person, as defined in this section, qualified by the department under 20.5.16 NMAC to undertake corrective action.

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

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

DR. "Regulated substance" means:

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

(2) for ASTs and USTs: petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure of 60 degrees fahrenheit and fourteen and seven tenths pounds per square inch absolute; asphalt is not a regulated substance; the term "regulated substance" includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading and finishing, such as motor

fuels (including ethanol-based motor fuels), jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

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

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

DU. "Remediation" is the process of reducing the concentration of contaminants in air, water or soil to a level that poses an acceptable risk to public health, safety and welfare and the environment.

DV. "Repair" means to restore any defective or damaged part of a storage tank system. Repair does not include normal maintenance. For these purposes, normal maintenance shall include but is not limited to: painting, replacing fuses, or touchup. Any time an activity involves disconnecting or affecting the integrity of the piping, tank, spill or overfill systems, or work on line or tank leak detection systems, then the activity is not normal maintenance and is a repair.

DW. "Replace" means:

(1) for a storage tank or dispenser, to remove an existing tank or dispenser and install a new tank or dispenser; and

(2) for piping, to remove and put back in any amount of piping connected to a single tank that is installed after April 4, 2008 or to a single tank that is replaced after April 4, 2008; replacing piping also means removing five or more feet of piping and installing new piping within 30 days.

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

DY. "Return to service" means to bring a storage tank into operation after the tank has been in temporary or permanent closure.

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

EA. "Secondary containment" means a release prevention and release detection system for a storage tank its piping and associated ancillary equipment that is designed to prevent a release from migrating beyond the secondary con-

tainment system outer wall (in the case of a double-walled tank system) or excavation area (in the case of a liner or vault system) before the release can be detected. Such a system may include, but is not limited to, synthetic impervious liners.

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

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

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

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

EF. "Site-specific target level" (SSTL) means an action level or target level for a contaminant of concern determined using more site-specific data than the tier one evaluation in the tier two or tier three evaluations in 20.5.12 NMAC.

EG. "Source water" means water that could be used for domestic purposes, including but not limited to ground water, natural springs, and surface water, even if such water is not current being used for domestic purposes.

EH. "Special enclosure" means an above or below grade AST installation that surrounds an AST or ASTs, including but not limited to pits, cellars, and basements.

EI. "Spill" means:

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

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

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

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

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

EL. "Storage tank fee"

means fees required by NMSA 1978, Section 74-4-4.4 and NMSA 1978, Section 74-6B-9.

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

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

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

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

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

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

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

ET. "Tank" is a stationary device designed to contain an accumulation of regulated substances which is construct-

ed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

EU. "Target concentrations" means any concentration of a contaminant to which a medium is required to be remediated under any provision of 20.5 NMAC protective of human health, safety and welfare, and the environment. For purposes of 20.5.13 NMAC, target concentrations as they apply to soil contamination shall be based on standards prescribed by applicable law or, if there are no applicable standards, the standard set forth in 20.6.3.110 NMAC.

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

EW. "Tightness testing" means a procedure for testing the ability of a tank system to prevent an inadvertent release of any stored substance into the environment (or, in the case of an UST system, intrusion of groundwater into a tank system).

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

EY. "Underground release" means any below ground release.

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

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

(2) septic tank;

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

(4) surface impoundment, pit,

pond or lagoon;

(5) storm water or wastewater collection system;

(6) flow-through process tank;

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

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

(9) tank associated with an emergency generator system;

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

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

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

FB. "USTR" means the version of the environmental improvement board's underground storage tank regulations in effect prior to adoption of the standard format in the New Mexico Administrative Code in 1995.

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

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

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

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

FG. "WQCC standards" means standards set forth in 20.6.4 NMAC, standards for interstate and intrastate streams, and 20.6.2 NMAC, ground and surface water protection.

[20.5.1.7 NMAC - Rp, 20.5.1.7 NMAC, 04/04/2008]

**20.5.1.8 SAVINGS CLAUSE:**  
This rule shall not affect any administrative or judicial enforcement action pending on April 4, 2008 of 20.5.1 through 20.5.16

NMAC.  
[20.5.1.8 NMAC - Rp, 20.5.1.107 NMAC, 04/04/2008]

**20.5.1.9 COMPLIANCE WITH OTHER REGULATIONS:**

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

[20.5.1.9 NMAC - Rp, 20.5.1.108 NMAC, 04/04/2008]

**20.5.1.10 CONSTRUCTION:**

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

[20.5.1.10 NMAC - Rp, 20.5.1.109 NMAC, 04/04/2008]

**20.5.1.11 SEVERABILITY:**

If any part, section or application of 20.5 NMAC is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

[20.5.1.11 NMAC - Rp, 20.5.1.110 NMAC, 04/04/2008]

**NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD**

**TITLE 20 ENVIRONMENTAL PROTECTION  
CHAPTER 5 PETROLEUM STORAGE TANKS  
PART 2 REGISTRATION OF TANKS**

**20.5.2.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.5.2.1 NMAC - Rp, 20.5.2.1 NMAC, 04/04/2008]

**20.5.2.2 SCOPE:**

This part applies to any owner and operator of a storage tank as provided in 20.5.1 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirements of this part, including any notice, reporting and payment requirements; however, both parties are liable in the event of noncompliance.

[20.5.2.2 NMAC - Rp, 20.5.2.2 NMAC, 04/04/2008]

**20.5.2.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the provisions of the Hazardous Waste Act, NMSA 1978, Sections 74-4-1 through 74-4-14; and the general provisions of the Environmental Improvement Act,

NMSA 1978, Sections 74-1-1 through 74-1-16.

[20.5.2.3 NMAC - Rp, 20.5.2.3 NMAC, 04/04/2008]

**20.5.2.4 DURATION:**

Permanent.

[20.5.2.4 NMAC - Rp, 20.5.2.4 NMAC, 04/04/2008]

**20.5.2.5 EFFECTIVE DATE:**

April 4, 2008, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.2.5 NMAC - Rp, 20.5.2.5 NMAC, 04/04/2008]

**20.5.2.6 OBJECTIVE:**

The purpose of this part is to regulate storage tank systems in order to protect the public health, safety and welfare and the environment of the state.

[20.5.2.6 NMAC - Rp, 20.5.2.6 NMAC, 04/04/2008]

**20.5.2.7 DEFINITIONS:**

The definitions in 20.5.1 NMAC apply to this part.

[20.5.2.7 NMAC - Rp, 20.5.2.7 NMAC, 04/04/2008]

**20.5.2.8 EXISTING TANKS:**

A. The owner of any underground storage tank, as those terms are defined in 20.5.1 NMAC, shall register such tank or tanks with the petroleum storage tank bureau of the department within three months after April 14, 1988, the effective date of this part as first adopted, except that any owner who has filed the form of notice entitled "notification for underground storage tanks," prescribed by the United States environmental protection agency and described in 40 CFR Chapter 1, Section 280.3 (EPA form 7530-1), is not required to register a tank for which a notice has been filed, provided that the information as stated therein is still current.

B. The owner of any above ground storage tank, as those terms are defined in 20.5.1 NMAC, shall register such tank or tanks with the petroleum storage tank bureau of the department within three months after June 14, 2002.

C. Registration becomes effective upon receipt of the first year's annual fee described in 20.5.3 NMAC. Registration shall be renewed annually by payment of the annual fee until the permanent closure of the tank pursuant to 20.5.8 NMAC.

[20.5.2.8 NMAC - Rp, 20.5.2.200 NMAC, 04/04/2008]

**20.5.2.9 TRANSFER OF OWNERSHIP:**

A. No purported transfer

of any storage tank system shall be effective to create, alter or extinguish any right or responsibility of any person subject to this part, unless the following transfer requirements are met.

(1) Prior to any transfer of ownership, control or possession, whether by lease, conveyance or otherwise, of a property with a registered storage tank system, the transferor shall notify the department and shall provide the name, address and phone number of the transferee, as well as the date and type of transfer (sale or lease, for example). The transferor shall also notify the transferee, prior to the transfer, of the existence of the storage tank system, of the transferee's registration obligations under this part, and of these rules.

(2) Upon receipt of such notification, the transferee shall re-register the tank with the department within 30 days of transfer of ownership, and shall provide all information required for registration in 20.5.2.14 NMAC. The transferee also shall have the duty to inquire into all of the provisions and requirements of this part.

(3) A transferor shall pay the tank fees for storage tank systems on the transferred property for the fiscal year of the transfer. A transferee shall pay the tank fees for storage tank systems on the transferred property starting the first July 1 after the transfer.

B. Nothing in this section or in this part shall be construed to relieve any person of responsibility or liability for any act or omission which occurred while that person owned, controlled or was in possession of the storage tank system.

[20.5.2.9 NMAC - Rp, 20.5.2.201 NMAC, 04/04/2008]

**20.5.2.10 NEW STORAGE TANK SYSTEMS:**

The owner shall notify the department in writing at least 30 days before any new above ground or underground storage tank system is installed, and shall register any new tank or storage tank system with the department prior to placing it in service.

[20.5.2.10 NMAC - Rp, 20.5.2.202 NMAC, 04/04/2008]

**20.5.2.11 SUBSTANTIALLY MODIFIED STORAGE TANK SYSTEMS:**

Except as provided in 20.5.2.13 NMAC below, when an existing storage tank system is substantially modified or replaced, the owner shall notify the department in writing of such modification or replacement, at least 30 days prior to the modification or replacement. Emergency repairs or replacements made pursuant to 20.5.2.13 NMAC are exempt from the notification requirements of this section.

[20.5.2.11 NMAC - Rp, 20.5.2.203 NMAC, 04/04/2008]

**20.5.2.12 NOTIFICATION OF SPILL OR RELEASE:** Notice of any known or suspected release from a storage tank system, any spill or any other emergency situation shall be given to the department in accordance with 20.5.7 NMAC. [20.5.2.12 NMAC - Rp, 20.5.2.204 NMAC, 04/04/2008]

**20.5.2.13 EMERGENCY REPAIRS AND TANK REPLACEMENT:** The owner or operator may make immediate repairs or replacement of a storage tank system in the event an emergency situation presents a threat to the public health, provided the owner or operator gives notice to the department as set forth in 20.5.2.12 NMAC and complies with the requirements of 20.5.5 NMAC. [20.5.2.13 NMAC - Rp, 20.5.2.205 NMAC, 04/04/2008]

**20.5.2.14 REGISTRATION:**

A. Required information. An owner or operator shall register all storage tanks unless EPA form 7530-1 entitled "notification for underground storage tanks" has been submitted to the department and all information contained thereon is still accurate. The registration shall contain at a minimum the following for each location with tanks:

(1) facility name and address, including county, zip code and telephone number, and whether the tanks are located on Indian lands;

(2) whether the facility is currently listed as a leaking petroleum storage tank site;

(3) tank system owner's name and address, including county, zip code and telephone number;

(4) property owner's name and address, including county, zip code and telephone number;

(5) tank system operator's name and address, including county, zip code and telephone number (if operator is different from owner);

(6) facility contact person, job title and phone number;

(7) type of facility: government (federal, state, county, municipality or other); individual; retail or non-retail (petroleum producer, petroleum refiner, school district, construction company, manufacturer);

(8) whether a suspected or confirmed release as described in 20.5.7 NMAC has been reported at the facility to the bureau;

(9) type of tank (list all that apply): AST, UST, steel double-wall, steel with cathodic protection, horizontal, vertical, compartment, with secondary containment, convault, field erected, shop built,

vaulted, fiberglass, fiberglass double wall;

(10) for each tank, (list all that apply): type of internal protection (cathodic protection, interior lining or other), type of external protection (asphalted, painted, epoxy coated, fiberglass reinforced plastic, cathodically protected or other), and type of corrosion protection (impressed current, sacrificial anode, internal lining or other);

(11) type of piping (list all that apply): bare or galvanized steel, coated steel, fiberglass reinforced plastic, pressurized, suction, cathodically protected or unknown;

(12) products stored (list all that apply): diesel, unleaded or leaded gasoline, alcohol-enriched gasoline, used oil, lubricating oil, heating oil, kerosene, aviation gas, jet fuel, hazardous substance, other or unknown;

(13) use of tank (list all that apply): bulk fuel storage, retail fuel sales, aviation, fleet fuel supply, emergency generator, on-site heating, other (please specify);

(14) method of release detection for each tank: visual inspection, tank tightness testing with inventory control, automatic tank gauging, vapor monitoring, groundwater monitoring, interstitial monitoring, statistical inventory reconciliation, secondary containment or other (please specify);

(15) method of release detection for piping: visual inspection, secondary containment, vapor monitoring, interstitial monitoring, automatic line leak detectors, line tightness testing or other (please specify);

(16) date of installation of each tank;

(17) status of each tank (list all that apply): new installation, upgraded or modified, currently in service or out of service less than 12 months, change of service and for tanks out of use: estimated date last used, estimated quantity of substance remaining in tank in gallons, date tank filled with solid material (if applicable), and date tank removed (if applicable);

(18) certifications required in 20.5.4 NMAC, 20.5.5 NMAC and 20.5.14 NMAC;

(19) whether any part of the storage tank system is within 1,000 feet of any water supply well;

(20) a description of the method and provider of financial responsibility meeting the requirements of 20.5.9 NMAC; and

(21) a description of the spill and overflow prevention systems for each tank (product level sensor/alarm, automatic tank fill shut-off and type, spill catchment basin, less than 25 gallons at a time transferred to tank, none, or other).

B. Signature required. A registration submitted by a corporation shall be signed by a principal executive officer of at least the level of vice president or a duly authorized agent of the corporation with authority to represent the corporation in these matters. A registration submitted by a partnership or a sole proprietorship shall be signed by a general partner or proprietor. A registration submitted by a municipal, state or other public facility shall be signed by either a principal executive officer, ranking elected official or other duly authorized employee.

C. Registrations shall be sent or delivered to the petroleum storage tank bureau.

[20.5.2.14 NMAC - Rp, 20.5.2.206 NMAC, 04/04/2008]

[The department provides an optional form that may be used for registration. The Petroleum Storage Tank Bureau address is 1301 Siler Road, Building B, Santa Fe, New Mexico, 87507.]

**20.5.2.15 REGISTRATION CERTIFICATE:**

A. No person shall operate a storage tank system without a current and valid registration certificate.

(1) The operator of any storage tank system shall display a current and valid registration certificate on the premises of the storage tank system at all times.

(2) Upon submittal to the department of a complete registration application or EPA form 7530-1 and payment of the annual fee, the department shall issue an initial registration certificate. An initial registration certificate shall expire on the next succeeding June 30, regardless of its date of issuance.

(3) After issuance of the initial registration certificate, except as provided in Paragraph (5) of this subsection, the department shall issue a renewed registration certificate upon payment of the annual fee on or before July 1 of each year. A renewed registration certificate shall expire on June 30 of each year.

(4) After receiving a registration form for a transfer as provided in Paragraph (2) of Subsection A of 20.5.2.9 NMAC, the department shall issue a registration certificate within 30 days for the transferee if the annual fees for the current fiscal year have been paid as required in 20.5.2.9 NMAC.

(5) The registration certificate for any storage tank system for which any annual fee or late fee is delinquent as of June 30 of any year shall not be renewed until:

(a) all past due annual fees and late fees have been paid; or

(b) the department and the owner or operator have agreed to a schedule for

payment, provided any renewed certificate issued to an owner or operator who has agreed to such a schedule shall be valid only so long as the owner or operator continues to make payments in accordance with the payment schedule.

B. In the event any information provided on the registration form or EPA form 7530-1 changes or is no longer accurate, the owner or operator shall report the change within 30 days to the department.

[20.5.2.15 NMAC - Rp, 20.5.2.207 NMAC, 04/04/2008]

#### 20.5.2.16 REQUIREMENT FOR A CORRECT MAILING ADDRESS:

All registration forms, inspection reports, correspondence, or other documents sent by owners or operators to the department shall include the correct mailing address of the owner or operator, and the owner and operator shall advise the department, in writing, within 7 days of any change in mailing address.

[20.5.2.16 NMAC - N, 04/04/2008]

## NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

### TITLE 20 ENVIRONMENTAL PROTECTION CHAPTER 5 PETROLEUM STORAGE TANKS PART 3 ANNUAL FEE

**20.5.3.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.

[20.5.3.1 NMAC - Rp, 20.5.3.1 NMAC, 04/04/2008]

**20.5.3.2 SCOPE:** This part applies to any owner and operator of a storage tank as provided in 20.5.1 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirement of this part, including any notice, reporting and payment requirements; however, both parties are liable in the event of noncompliance.

[20.5.3.2 NMAC - Rp, 20.5.3.2 NMAC, 04/04/2008]

**20.5.3.3 STATUTORY AUTHORITY:** This part is promulgated pursuant to the provisions of the Hazardous Waste Act, NMSA 1978, Sections 74-4-1 through 74-4-14; provisions of the Ground Water Protection Act, NMSA 1978, 74-6B-1 through 74-6B-14; and the general provisions of the Environmental Improvement Act, NMSA 1978, Sections 74-1-1 through 74-1-16.

[20.5.3.3 NMAC - Rp, 20.5.3.3 NMAC, 04/04/2008]

**20.5.3.4 DURATION:** Permanent.

[20.5.3.4 NMAC - Rp, 20.5.3.4 NMAC, 04/04/2008]

**20.5.3.5 EFFECTIVE DATE:** April 4, 2008, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.3.5 NMAC - Rp, 20.5.3.5 NMAC, 04/04/2008]

**20.5.3.6 OBJECTIVE:** The purpose of this part is to regulate storage tank systems in order to protect the public health, safety and welfare and the environment of the state, and to interpret, implement and enforce the provisions of the Hazardous Waste Act relating to storage tank systems.

[20.5.3.6 NMAC - Rp, 20.5.3.6 NMAC, 04/04/2008]

**20.5.3.7 DEFINITIONS:** The definitions in 20.5.1 NMAC apply to this part.

[20.5.3.7 NMAC - Rp, 20.5.3.7 NMAC, 04/04/2008]

**20.5.3.8 PAYMENT OF FEE:**

A. The owner or operator shall pay an annual per tank fee to the department on July 1 for each current fiscal year (July 1 through June 30) or portion of a year that a tank is in use. A storage tank shall be deemed "in use" until notice is received by the department that the storage tank has been permanently closed in a manner acceptable to the department.

B. Schedule for payment.

(1) For USTs, the owner or operator shall pay the annual fee:

(a) for a UST in service on June 1, 1988, for calendar year 1988, the fee was due on June 1, 1988;

(b) for the period from January 1, 1989 through June 30, 1990, the fee was due on May 1, 1989;

(c) for each subsequent fiscal year (July 1 to June 30) on the July 1 that is the first day of each fiscal year;

(d) for a new UST, within 30 days after the UST is placed in service.

(2) For ASTs, the owner or operator shall pay the annual fee:

(a) for an AST in service on July 1, 2002, for fiscal year 2003, the fee was due, on September 14, 2002; or within 30 days after the AST was placed in service for any AST installed after September 14, 2002;

(b) for each subsequent fiscal year (July 1 to June 30) on the July 1 that is the first day of each fiscal year;

(c) for a new AST, within 30 days after the AST is placed in service.

C. The department shall waive the annual tank fee for the current fiscal year for a storage tank system permanently closed in accordance with 20.5.8 NMAC on or before July 31.

D. When there is a transfer of ownership, control or possession, whether by lease, conveyance or otherwise, of a property with a registered storage tank system, the transferor shall pay the tank fees for storage tank systems on the transferred property for the fiscal year of the transfer. The transferee shall pay the tank fees for storage tank systems on the transferred property starting the first July 1 after any transfer. In addition, both parties shall comply with 20.5.2.9 NMAC.

[20.5.3.8 NMAC - Rp, 20.5.3.300 NMAC, 04/04/2008]

**20.5.3.9 AMOUNT OF FEE:**

A. The annual fee for all underground storage tanks shall be:

(1) twenty-eight dollars (\$28.00) per UST in calendar year 1988;

(2) seventy-five dollars (\$75.00) per UST in calendar year 1989; and

(3) for subsequent years, one hundred dollars (\$100.00) per UST as established by NMSA 1978, Section 74-6B-9 NMSA 1978 and Section 74-4-4.4 NMSA 1978.

B. The annual fee for all above ground storage tanks shall be one hundred dollars (\$100.00) per AST as established by Section 74-6B-9 NMSA 1978 and Section 74-4-4.4 NMSA 1978, beginning July 1, 2002.

[20.5.3.9 NMAC - Rp, 20.5.3.301 NMAC, 04/04/2008]

**20.5.3.10 TIMELINESS AND LATE FEES:**

A. Due date. A tank owner and operator become liable for a fee as soon as the event generating the fee occurs, such as a due date; payment is not due, however, until on or after the date established by these rules for the payment of the fee. The fact that the owner has not registered a tank is not material to the owner's and operator's liability for payment of a fee.

B. Determination of timeliness.

(1) Fees and late fees are timely if the postmark on the envelope made by the United States postal service bears the date on or before the date the payment is due. The date affixed on an envelope by a postage meter stamp will be considered the postmark date if it is not superseded by a postmark made by the United States postal service.

(2) Illegible postmark. If the postmark on the envelope is not legible and



the department receives the contents by the second business day following the due date, the payment will be deemed timely. If the department receives the contents after the second business day following the due date, the owner or operator who is liable for the fees has the burden of proving the time when the postmark was made.

(3) If an envelope is improperly addressed and is returned to the sender by the post office, there has been no timely mailing within the meaning of these rules. The postmark date on the improperly addressed envelope will not be deemed the date of receipt by the department.

(4) If the payment is sent or delivered to the department by any means other than by mailing with the United States postal service, it must be received by the department on or before the payment due date. Received by the department means received at the department or bureau during the department's normal business hours.

C. Saturday, Sunday or holiday due date.

(1) If a payment due date falls on a Saturday, Sunday or a state of New Mexico or national holiday, the payment shall be considered timely if postmarked on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

(2) Example: The due date for payment of annual fees is July 1. If July 1 is a Saturday, the due date for payment of annual fees is Monday July 3. In this example, the department will consider any payment postmarked on July 3 to be timely.

D. In the event the annual fee is not paid when due, the department shall impose a late fee of twenty-five dollars (\$25.00) or twenty-five percent of the unpaid balance, whichever is greater, which shall accumulate on the entire unpaid balance until all annual fees and all accrued late fees are paid.

[20.5.3.10 NMAC - Rp, 20.5.3.302 NMAC, 04/04/2008]

**20.5.3.11 DESIGNATION OF FEES:**

All fees described in this part shall be deposited in the storage tank fund.

[20.5.3.11 NMAC - Rp, 20.5.3.303 NMAC, 04/04/2008]

**NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD**

**TITLE 20 ENVIRONMENTAL PROTECTION  
CHAPTER 5 PETROLEUM STORAGE TANKS  
PART 4 NEW AND UPGRAD- ED STORAGE TANK SYSTEMS:**

**DESIGN, CONSTRUCTION AND INSTALLATION**

**20.5.4.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.5.4.1 NMAC - Rp, 20.5.4.1 NMAC, 04/04/2008]

**20.5.4.2 SCOPE:**

This part applies to owners and operators of storage tanks as provided in 20.5.1 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance.

[20.5.4.2 NMAC - Rp, 20.5.4.2 NMAC, 04/04/2008]

**20.5.4.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the provisions of the Hazardous Waste Act, NMSA 1978, Sections 74-4-1 through 74-4-14, and the general provisions of the Environmental Improvement Act, NMSA 1978, Sections 74-1-1 through 74-1-15.

[20.5.4.3 NMAC - Rp, 20.5.4.3 NMAC, 04/04/2008]

**20.5.4.4 DURATION :**

Permanent.

[20.5.4.4 NMAC - Rp, 20.5.4.4 NMAC, 04/04/2008]

**20.5.4.5 EFFECTIVE DATE:**

April 4, 2008, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.4.5 NMAC - Rp, 20.5.4.5 NMAC, 04/04/2008]

**20.5.4.6 OBJECTIVE:**

The purpose of 20.5.4 NMAC is to set forth the requirements for the design, construction, installation and upgrading of storage tank systems in a manner that will prevent releases and to protect the public health, safety and welfare and the environment of the state.

[20.5.4.6 NMAC - Rp, 20.5.4.6 NMAC, 04/04/2008]

**20.5.4.7 DEFINITIONS:**

The definitions in 20.5.1 NMAC apply to this part.

[20.5.4.7 NMAC - Rp, 20.5.4.7 NMAC, 04/04/2008]

**20.5.4.8 GENERAL PERFORMANCE STANDARDS FOR UST SYSTEMS:**

In order to prevent releases due to structural failure, corrosion or spills and overfills for as long as a UST system is used

to store regulated substances, owners and operators of any UST system shall properly design, construct, and initially test each new UST system; provide project drawings; and ensure that any portion of a UST system that routinely contains regulated substances and is in contact with the ground or water shall be protected from corrosion, in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall ensure that the entire UST system is compatible with any regulated substance conveyed, as required by 20.5.5.16 NMAC.

[20.5.4.8 NMAC - Rp, 20.5.4.400 NMAC, 04/04/2008]

**20.5.4.9 PERFORMANCE STANDARDS FOR FIBERGLASS-REINFORCED PLASTIC USTS:**

If a UST is constructed of fiberglass-reinforced plastic, owners and operators shall comply with the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. The following may be used to comply with this requirement:

A. underwriters laboratories standard 1316, "standard for safety for glass-fiber-reinforced plastic underground storage tanks for petroleum products, alcohols, and alcohol-gasoline mixtures;"

B. underwriters' laboratories of Canada CAN4-S615-M83, "standard for underground reinforced plastic tanks;" or

C. American society of testing and materials D4021 "specification for glass-fiber-reinforced polyester underground petroleum storage tanks."

[20.5.4.9 NMAC - Rp, 20.5.4.400 NMAC, 04/04/2008]

**20.5.4.10 PERFORMANCE STANDARDS FOR STEEL USTS:**

A. Owners and operators shall cathodically protect steel USTs by:

(1) coating the tank with a suitable dielectric material;

(2) ensuring that field-installed cathodic protection systems are designed by a corrosion expert;

(3) designing impressed current systems to allow determination of current operating status as required in Subsection C of 20.5.5.15 NMAC; and

(4) operating and maintaining cathodic protection systems in accordance with 20.5.5 NMAC.

B. In addition, owners and operators shall ensure that for any new or

existing steel UST systems, owners and operators shall design and install any cathodic protection system (whether impressed current or sacrificial) to allow ready determination of current operating status.

C. If a UST is constructed of steel, owners and operators shall comply with the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. The following may be used to comply with applicable requirements of this section:

(1) steel tank institute "specification for sti-P3 system of external corrosion protection of underground steel storage tanks;"

(2) underwriters laboratories standard 1746, "external corrosion protection systems for steel underground storage tanks;"

(3) underwriters' laboratories of Canada CAN4-S603-N85, "standard for underground steel tanks;"

(4) underwriters' laboratories of Canada CAN4-G603.1-M85, "standard for galvanic corrosion protection systems for underground steel;"

(5) underwriters' laboratories of Canada CAN4-S631-M84, "isolating bushings for steel underground tanks protected with coatings and galvanic systems;"

(6) national association of corrosion engineers standard RP0285, "corrosion control of underground storage tanks systems by cathodic protection;"

(7) underwriters laboratories standard 58, "standard for safety for steel underground tanks for flammable and combustible liquids;"

(8) national fire protection association 30, "flammable and combustible liquids code;"

(9) national fire protection association 30A, "code for motor fuel dispensing facilities and repair garages;"

(10) American petroleum institute publication RP 1615, "installation of underground petroleum storage systems;"

(11) American petroleum institute publication RP 1632, "cathodic protection of underground petroleum storage tanks and piping systems;"

(12) national association of corrosion engineers international standard RP0169 "control of external corrosion on underground or submerged metallic piping systems;"

(13) steel tank institute R892, "recommended practice for corrosion protection of underground piping networks associated with liquid storage and dispensing systems;"

(14) American petroleum institute publication RP 1631, "interior lining and

periodic inspection of underground storage tanks;"

(15) national leak prevention association standard 631, "spill prevention, minimum 10 year life extension of existing steel underground tanks by lining without the addition of cathodic protection;"

(16) American society of testing and materials G158, "standard guide for three methods of assessing buried steel tanks;" or

(17) international code council, "international fire code."

[20.5.4.10 NMAC - Rp, 20.5.4.400 NMAC, 04/04/2008]

#### 20.5.4.11 PERFORMANCE STANDARDS FOR STEEL-FIBER-GLASS-REINFORCED-PLASTIC COMPOSITE USTS:

If a UST is constructed of a steel-fiberglass-reinforced-plastic composite, owners and operators shall meet the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. The following may be used to comply with this requirement:

A. underwriters laboratories standard 1746, "external corrosion protection systems for steel underground storage tanks;" or

B. association for composite tanks ACT-100, "specification for the fabrication of FRP clad underground storage tanks."

[20.5.4.11 NMAC - Rp, 20.5.4.400 NMAC, 04/04/2008]

#### 20.5.4.12 PERFORMANCE STANDARDS FOR METAL USTS WITHOUT CORROSION PROTECTION:

If a UST is constructed of metal without additional corrosion protection measures, owners and operators shall only install the tank at a site that is approved in writing in advance of installation by a corrosion expert not to be corrosive enough to cause the UST to have a release due to corrosion during its operational life.

[20.5.4.12 NMAC - Rp, 20.5.4.400 NMAC, 04/04/2008]

#### 20.5.4.13 PERFORMANCE STANDARDS FOR EXISTING UST SYSTEMS:

A. Not later than December 22, 1998, all existing UST systems shall comply with one of the following requirements:

(1) new UST performance standards in 20.5.4 NMAC;

(2) upgrading requirements in Subsection B of 20.5.4.13 NMAC; or

(3) closure requirements in 20.5.8 NMAC.

B. UST upgrading requirements. Owners and operators shall upgrade existing steel USTs to meet one of the following requirements in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

(1) Internal lining. A UST may be upgraded by internal lining if the lining is installed in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. If a UST has been internally lined, owners and operators shall, within 10 years after installation of internal lining and every five years thereafter, internally inspect the lined tank in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, or manufacturer's recommendation, approved in advance by the department. National leak prevention association 631, Chapter B may be used to comply with this requirement. If the internal lining is not performing in accordance with the original design specifications, owners and operators shall either:

(a) close the tank in compliance with the requirements of 20.5.8 NMAC until the lining is repaired to original design specifications in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department; American petroleum institute RP 1631 may be used to comply with this requirement; or

(b) discontinue use of the tank until owners and operators perform an integrity test approved in advance by the department and ensure that the tank meets the requirements of Subsection B of this section.

(2) Cathodic protection. USTs may be upgraded by cathodic protection if the cathodic protection system meets the requirements of 20.5.4.10 NMAC and if owners and operators ensure the integrity of the tank by:

(a) performing internal inspections and assessments to ensure that the tank is structurally sound and free of corrosion holes prior to installing the cathodic protection system; or

(b) if the tank has been installed for less than ten years, by either monitoring monthly for releases in accordance with 20.5.6 NMAC; or by assessing for corrosion holes by conducting 2 tightness tests that meet the requirements of 20.5.6 NMAC and that are approved in advance by the depart-

ment; owners and operators shall conduct the first tightness test prior to installing the cathodic protection system; owners and operators shall conduct the second tightness test between 3 and 6 months following the first operation of the cathodic protection system.

(3) Internal lining combined with cathodic protection. A UST may be upgraded by internal lining combined with cathodic protection if:

(a) the lining is installed in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory; and

(b) the cathodic protection meets the requirements of 20.5.4.10 NMAC.

C. Piping upgrade requirements. Owners and operators shall upgrade piping in existing UST systems to meet the requirements of 20.5.4.21 NMAC, 20.5.4.22 NMAC, or 20.5.4.24 NMAC.

D. Spill and overfill prevention equipment. Owners and operators shall comply with the spill and overfill prevention requirements in 20.5.4.33 NMAC, [20.5.4.13 NMAC - Rp, 20.5.4.400 NMAC, 04/04/2008]

#### **20.5.4.14 INSTALLATION OF UST SYSTEMS:**

A. Owners and operators shall properly install all USTs and piping:

(1) in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department; and

(2) in accordance with the manufacturer's instructions.

B. The following may be used to comply with the requirements of this section:

(1) American petroleum institute publication RP 1615, "*installation of underground petroleum storage systems*;"

(2) petroleum equipment institute publication RP100, "*recommended practices for installation of underground liquid storage systems*;" or

(3) American society of mechanical engineering standard B31.3, "*process piping*."

[20.5.4.14 NMAC - Rp, 20.5.4.400 NMAC, 04/04/2008]

#### **20.5.4.15 SECONDARY CONTAINMENT FOR UST SYSTEMS:**

A. After April 4, 2008 owners and operators shall install secondary containment for any new UST system (including dispensers and piping) and for any UST, dispenser or piping replaced after April 4, 2008.

(1) Owners and operators shall design, provide project drawings for, and construct the entire new UST system with the secondary containment system in compliance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. The secondary containment system shall include all tanks, piping, dispensers, and all containment sumps for any piping and ancillary equipment that routinely contains regulated substances, and shall include interstitial monitoring that meets the requirements of 20.5.6 NMAC.

(2) If owners and operators replace a UST, they shall install a double-walled tank with an inner and outer barrier and a release detection system that meets the requirements of 20.5.6 NMAC.

(3) If owners and operators replace a dispenser, they shall install, in accordance with manufacturer's recommendations, an under-dispenser containment system that shall be hydrostatically tested and approved by the department prior to use. Types of under-dispenser containment systems include, but are not limited to, dispenser liners, containment sumps, dispenser pans and dispenser sump liners.

(4) If owners and operators replace piping, they shall install only double-walled piping with an inner and outer barrier and a release detection system that meets the requirements of 20.5.6 NMAC for the replaced piping.

(5) The following may be used to comply with secondary containment requirements:

(a) petroleum equipment institute publication RP100, "*recommended practices for installation of underground liquid storage systems*;" or

(b) American petroleum institute publication RP 1615, "*installation of underground petroleum storage systems*."

B. The department shall not require owners and operators to install secondary containment required in this section if the owners and operators demonstrate to the department's satisfaction that no part of the UST system is within 1,000 feet of a community water system, potable drinking water well, or source water.

(1) In advance of construction or replacement, owners and operators shall submit in advance of construction or replacement, for approval by the department, a detailed to-scale map of the proposed UST system that demonstrates that no part of the UST system is within 1,000 feet of any existing community water system, any existing potable drinking water well, any potable drinking water well the owner or operator plans to install at the facility, or

any source water.

(2) The map shall be accompanied by a certified statement by owners and operators explaining who researched the existence of community water systems, potable drinking water wells, and source water; how the research was conducted; and how the proposed UST system complies with this subsection.

(3) To determine if any part of a UST system is within 1,000 feet of any existing community water systems, potable drinking water well, or source water, at a minimum owners and operators shall measure the distance from the closest part of the new or replaced UST, piping or dispenser, or other part of a UST system, to the closest part of the nearest community water system, potable drinking water well, or source water, including such components as the location of wellheads for groundwater, depth to groundwater, the location of the intake point for surface water, water lines, processing tanks, water storage tanks, and water distribution or service lines.

C. In a manifolded UST system, secondary containment is only required for a new or replaced UST; existing USTs in the manifolded system are not required to have secondary containment. Additionally, the secondary containment requirements of this section shall not apply to:

(1) repairs meant to restore a UST, piping or dispenser to operating condition;

(2) piping runs that are not new or replaced for USTs with multiple piping runs; or

(3) suction piping that meets the requirements of Subparagraphs (a) through (e) of Paragraph (2) of Subsection B of 20.5.6.10 NMAC.

[20.5.4.15 NMAC - N, 04/04/2008]

#### **20.5.4.16 PERFORMANCE STANDARDS FOR AST SYSTEMS:**

A. In order to prevent releases due to structural failure, corrosion or spills and overfills for as long as an AST system is used to store regulated substances, owners and operators of new AST systems shall properly design, construct and initially test each new AST system, provide project drawings, and ensure that any portion of an AST system that routinely contains regulated substances and is in contact with soil, concrete or water shall be protected from corrosion, in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall ensure that the entire AST system is compatible with any regulated substance con-

veyed.

B. Owners and operators shall install and operate only ASTs made of steel.

C. The following may be used to comply with the requirements of this section:

(1) underwriters laboratories 142, "steel aboveground tanks for flammable and combustible liquids;"

(2) underwriters laboratories 2085, "standard for safety for protected aboveground tanks for flammable and combustible liquids;"

(3) underwriters laboratories 2245, "standard for safety for below-grade vaults for flammable liquid storage tanks;"

(4) American petroleum institute standard 650, "welded steel tanks for oil storage;"

(5) national fire protection association 30, "flammable and combustible liquids code;"

(6) national fire protection association 30A, "code for motor fuel dispensing facilities and repair garages;"

(7) petroleum equipment institute publication RP200, "recommended practices for installation of above ground storage systems for motor vehicle fueling;"

(8) American petroleum institute publication RP 1632, "cathodic protection of underground petroleum storage tanks and piping systems;"

(9) national association of corrosion engineers international standard RP0169, "control of external corrosion on underground or submerged metallic piping systems;"

(10) steel tank institute R892, "recommended practice for corrosion protection of underground piping networks associated with liquid storage and dispensing systems;"

(11) steel tank institute R893, "recommended practice for external corrosion protection of shop fabricated above-ground tank floors;"

(12) international code council, "international fire code;" or

(13) American petroleum institute publication RP651, "cathodic protection of aboveground petroleum storage tanks."

[20.5.4.16 NMAC - Rp, 20.5.4.401 NMAC, 04/04/2008]

#### **20.5.4.17 USTS USED AS ASTS:**

A. Before August 15, 2003, owners and operators shall close any above ground storage tank that was designed and built for underground use unless the tank meets one of the following requirements:

(1) the tank is certified for above-ground use by the original equipment manufacturer, in accordance with the current

edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance in writing by the department;

(2) a professional engineer certifies that the tank meets the standards for above-ground use in the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance in writing by the department; or

(3) the tank is certified for above-ground use by either an authorized inspector with certification from the American petroleum institute, or a steel tank institute trained and certified tank inspector, approved in advance in writing by the department; the inspector shall personally inspect the tank in order to complete the certification process.

B. After April 4, 2008 owners and operators shall not install USTs for use as ASTs.

[20.5.4.17 NMAC - Rp, 20.5.4.401 NMAC and 20.5.4.405 NMAC, 04/04/2008]

#### **20.5.4.18 ADDITIONAL PERFORMANCE STANDARDS FOR FIELD-ERECTED ASTS:**

A. If owners and operators install a field-erected tank, owners and operators shall comply with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

B. The following may be used to comply with the requirements of this section:

(1) American petroleum institute standard 620, "design and construction of large, welded, low pressure storage tanks;"

(2) American petroleum institute standard 650, "welded steel tanks for oil storage;"

(3) American petroleum institute specification 12B, "bolted tanks for storage of production liquids;"

(4) American petroleum institute specification 12D, "field welded tanks for storage of production liquids;" or

(5) American society of mechanical engineers B96.1, "welded aluminum-alloy storage tanks."

[20.5.4.18 NMAC - Rp, 20.5.4.401 NMAC, 04/04/2008]

#### **20.5.4.19 INSTALLATION OF AST SYSTEMS:**

A. Owners and operators shall properly install all ASTs and piping:

(1) in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing

laboratory approved in advance by the department, that includes or provides for the following:

(a) foundation, support and anchorage;

(b) fills, gauges and vents;

(c) environmental protection;

(d) testing and inspection; and

(2) in accordance with the manufacturer's instructions.

B. The following may be used to comply with the requirements of this section:

(1) American petroleum institute standard 650, "welded steel tanks for oil storage;"

(2) national fire protection association 30, "flammable and combustible liquids code;"

(3) national fire protection association 30A, "code for motor fuel dispensing facilities and repair garages;"

(4) petroleum institute publication RP200, "recommended practices for installation of above ground storage tank systems for motor vehicle fueling;"

(5) steel tank institute RP R912, "installation instructions for shop fabricated stationary aboveground storage tanks for flammable, combustible liquids;" or

(6) international code council, "international fire code."

C. In addition to other requirements of this section, if owners or operators want to place into service any shop-fabricated AST that has been permanently closed at any location, owners and operators shall:

(1) not use the AST until they have provided to the department:

(a) the age and type of tank;

(b) the tank manufacturer;

(c) a list of regulated and non-regulated substances previously stored in the tank and for what duration;

(d) a description of any unusual circumstances involving the AST; and

(e) any other information requested by the bureau based on the circumstances; and

(2) install the system in compliance with all requirements for new AST systems in this part.

D. Based on the information received in Subsection C of this section, the department may require owners and operators who want to relocate an AST that has been temporarily or permanently closed to have the tank recertified by a certified tank inspector, the tank manufacturer, or a professional engineer prior to use.

[20.5.4.19 NMAC - Rp, 20.5.4.401 NMAC, 04/04/2008]

#### **20.5.4.20 GENERAL PERFORMANCE STANDARDS FOR PIPING:**

A. Owners and operators

shall properly design and construct new piping, provide project drawings, initially test piping, and ensure that any steel portion of piping that routinely contains regulated substances and is in contact with the ground or water shall be protected from corrosion, in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. The following may be used to comply with this requirement:

(1) third party certification from a nationally recognized laboratory;

(2) American society of mechanical engineering standard B31.3, "process piping;"

(3) American society of testing and materials A53, "standard specification for pipe, steel, black and hot-dipped, zinc-coated, welded and seamless;"

(4) American society of testing and materials A106, "standard specification for seamless carbon steel pipe for high-temperature service;" or

(5) American society of testing and materials A135, "standard specification for electric-resistance-welded steel pipe."

B. Owners and operators shall ensure that piping is compatible with any regulated substance conveyed.

C. Owners and operators shall protect all piping from impact, settlement, vibration, expansion, corrosion, and damage by fire.

D. Owners and operators shall install a containment sump at any point where piping transitions from above the surface of the ground to below the ground surface.

E. If owners and operators install more than one type of piping at a storage tank system, then owners and operators shall comply with the requirements applicable to each type of piping for that run of piping.

[20.5.4.20 NMAC - Rp, 20.5.4.401 NMAC, 04/04/2008]

#### **20.5.4.21 PERFORMANCE STANDARDS FOR FIBERGLASS-REINFORCED PLASTIC AND FLEXIBLE PIPING:**

A. If owners and operators construct or operate piping of fiberglass-reinforced plastic or flexible piping, the piping shall:

(1) be completely underground;

(2) be within secondary containment that includes a release detection system that meets the requirements of 20.5.6 NMAC;

(3) have a suitable cover approved by the piping manufacturer; or

(4) have equivalent protection

approved by the piping manufacturer and approved by the department prior to installation.

B. If owners and operators install fiberglass-reinforced or flexible piping in an AST system, the piping shall be double-walled.

C. Owners and operators shall ensure that the piping meets the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department, and that the piping is approved by the manufacturer for the application for which it is to be used. The following may be used to comply with this requirement:

(1) underwriters laboratories standard 971, "standard for safety for nonmetallic underground piping for flammable liquids;"

(2) underwriters laboratories standard 567, "pipe connectors for petroleum products and lp-gas;"

(3) underwriters' laboratories of Canada guide ULC-107.7, "glass-fibre reinforced plastic pipe and fittings for flammable liquids;" or

(4) underwriters' laboratories of Canada standard CAN 4-S633-M81, "flexible underground hose connectors."

[20.5.4.21 NMAC - Rp, 20.5.4.400 and NMAC 20.5.4.401 NMAC, 04/04/2008]

#### **20.5.4.22 PERFORMANCE STANDARDS FOR STEEL PIPING FOR UST SYSTEMS:**

A. If owners and operators construct or operate piping of steel for a UST system, owners and operators shall:

(1) coat the piping with a suitable dielectric material;

(2) field-install a cathodic protection system designed by a corrosion expert; and

(3) design any impressed current system to allow ready determination of current operating status as required in Subsection C of 20.5.5.15 NMAC.

B. If owners and operators construct piping of steel for a UST system without additional corrosion protection measures, owners and operators shall only install the piping at a site that is approved in writing in advance of installation by a corrosion expert to not be corrosive enough to cause the piping to have a release due to corrosion during its operational life.

[20.5.4.22 NMAC - Rp, 20.5.4.400 NMAC, 04/04/2008]

#### **20.5.4.23 PERFORMANCE STANDARDS FOR STEEL PIPING FOR AST SYSTEMS:**

If owners and operators construct or operate piping of

steel for an AST system, owners and operators shall properly design and construct and provide project drawings for piping that routinely contains regulated substances in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall install all piping in accordance with the piping manufacturer's recommendations.

A. Steel piping for ASTs shall be coated with a suitable material approved by the piping manufacturer and shall be either:

(1) totally above the ground with all surfaces visible, or

(2) entirely contained in secondary containment that complies with the requirements of 20.5.4.27 NMAC and either the requirements of 20.5.4.28 or 20.5.4.29 NMAC.

B. The following may be used to comply with the requirements of this section:

(1) American society of mechanical engineering standard B31.3, "process piping;"

(2) American society of testing and materials A53, "standard specification for pipe, steel, black and hot-dipped, zinc-coated, welded and seamless;" or

(3) American society of testing and materials A 135, "standard specification for electric-resistance-welded steel pipe."

[20.5.4.23 NMAC - Rp, 20.5.4.401 NMAC, 04/04/2008]

#### **20.5.4.24 SECONDARY CONTAINMENT FOR PIPING:**

A. To install new piping or replace existing piping in an AST system, owners and operators shall use only piping that is:

(1) double-walled in compliance with 20.5.4.28 NMAC;

(2) designed and constructed with secondary containment that meets the requirements of 20.5.4.27 and 20.5.4.29 NMAC; or

(3) steel piping that meets the requirements of 20.5.4.23 NMAC.

B. After April 4, 2008, to install new piping or replace existing piping in a UST system, owners and operators shall use only piping that meets the requirements of 20.5.4.15 NMAC.

[20.5.4.24 NMAC - N, 04/04/2008]

#### **20.5.4.25 ADDITIONAL REQUIREMENTS FOR AST SYSTEMS:**

A. Above ground tanks located at an elevation so as to produce a

gravity head on the dispenser or piping shall be equipped with an anti-siphon or solenoid valve which meets the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall install and adjust the anti-siphon or solenoid valve so that fuel cannot flow by gravity from the tank to the dispenser if the piping fails when the dispenser is not in use.

B. The following may be used to meet the requirements of this section:

(1) national fire protection association 30A, "code for motor fuel dispensing facilities and repair garages;" or

(2) international code council, "international fire code."  
[20.5.4.25 NMAC - Rp, 20.5.4.401 NMAC, 04/04/2008]

#### **20.5.4.26 STORAGE TANKS AT MARINAS:**

A. Owners and operators of storage tank systems at marinas shall install an automatic break-away device to shut off flow of fuel from on-shore piping, which shall be located at the connection of the on-shore piping and the piping leading to the dock. Owners and operators shall install another automatic break-away device to shut off flow of fuel located at any connection between flexible piping and hard piping on the dispenser and dock. The automatic break-away devices shall be easily accessible, and their location shall be clearly marked.

B. Owners and operators of storage tank systems at marinas shall electrically isolate dock piping where excessive stray electrical currents are encountered.

C. Owners and operators of storage tank systems at marinas shall protect piping from stress due to tidal action.  
[20.5.4.26 NMAC - Rp, 20.5.4.401 NMAC, 04/04/2008]

#### **20.5.4.27 SECONDARY CONTAINMENT FOR NEW AST SYSTEMS:**

Owners and operators shall design, provide project drawings for, and construct all new AST systems with a secondary containment system approved in this part, except for any piping that meets the requirements of 20.5.4.23 NMAC. Owners and operators shall base all secondary containment systems on the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. The following may be used to comply with this requirement:

A. petroleum equipment

institute publication RP 200, "recommended practices for installation of above ground storage systems for motor vehicle fueling;"

B. society of protective coatings SSPC-TU2/NACE6G197, "design, installation and maintenance of coating systems for concrete used in secondary containment;"

C. American concrete institute publication ACI 350R, "environmental engineering of concrete structures;"

D. American petroleum institute standard 650, "welded steel tanks for oil storage;" or

E. steel tank institute RP R912, "installation instructions for shop fabricated stationary aboveground storage tanks for flammable, combustible liquids."  
[20.5.4.27 NMAC - Rp, 20.5.4.401 NMAC, 04/04/2008]

#### **20.5.4.28 AST SECONDARY CONTAINMENT: DOUBLE-WALLED TANKS AND PIPING:**

Owners and operators may use double-walled ASTs and piping as secondary containment. The following may be used to comply with the requirements of this section and 20.5.4.27 NMAC:

A. underwriters laboratories standard 971, "standard for safety for nonmetallic underground piping for flammable liquids;"

B. underwriters laboratories standard 567, "pipe connectors for petroleum products and lp-gas;"

C. underwriters' laboratories of Canada guide ULC-107.7, "glass-fibre reinforced plastic pipe and fittings for flammable liquids;"

D. underwriters' laboratories of Canada standard CAN 4-S633-M81, "flexible underground hose connectors;"

E. underwriters laboratories 142, "steel aboveground tanks for flammable and combustible liquids;"

F. underwriters laboratories 2085, "standard for safety for protected aboveground tanks for flammable and combustible liquids;" or

G. underwriters laboratories 2245, "standard for safety for below-grade vaults for flammable liquid storage tanks."  
[20.5.4.28 NMAC - Rp, 20.5.4.401 NMAC, 04/04/2008]

#### **20.5.4.29 AST SECONDARY CONTAINMENT: SINGLE-WALLED TANKS AND PIPING:**

Owners and operators shall construct a containment area under and around single-walled ASTs and piping, except for piping that meets the requirements of 20.5.4.23 NMAC. Internal lining of ASTs shall not be used as a method of secondary containment.

A. General requirements:

(1) Owners and operators shall

design and construct secondary containment to minimize damage to the surfaces of the tanks due to corrosion, accumulation of water, and stray electrical current.

(2) Owners and operators shall ensure that any regulated substance stored in an AST system is chemically compatible with the secondary containment material. If owners and operators store more than one type of regulated substance within a single containment area, owners and operators shall ensure that the substances are chemically compatible with each other and with the containment material.

(3) Owners and operators shall construct a containment area which has a capacity of at least one hundred ten percent of the size of the largest AST in the containment area plus the volume displaced by the other AST(s).

(4) Owners and operators shall not use clay for the construction of secondary containment.

(5) Owners and operators may use a vault which complies with the requirements of this section as secondary containment.

B. Concrete secondary containment. Owners and operators may use concrete for construction of the containment area.

(1) If owners and operators use concrete for construction of secondary containment, the concrete containment shall be constructed in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, which shall be approved in advance of construction by the department. Concrete secondary containment shall be coated or internally lined with a material which, in conjunction with the concrete, has a permeability rate to the regulated substance stored of  $1 \times 10^{-7}$  centimeters per second or less.

(2) Existing AST systems with secondary containment constructed of concrete shall meet the requirements of this section on the schedule established in 20.5.4.35 NMAC, if the secondary containment is made impervious in accordance with the standard in Paragraph (1) of this subsection. Owners and operators shall install the coating or internal lining in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, which shall be approved by the department in advance of installation.

(3) Owners and operators of AST systems shall submit to the department a report on the installation of the coating or internal lining for concrete secondary containment which shall certify that the coating or internal lining has been installed in

accordance with the manufacturer's recommendations or an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory. The report shall contain the date of the inspection or installation, the test methods used during the inspection, the data collected during the inspection, and the standard or code of practice according to which the installation was conducted. One of the following shall conduct the inspection and prepare the inspection report:

(a) a coating inspector who is certified by the national association of corrosion engineers; or

(b) a protective coatings specialist who is certified by the society for protective coatings.

(4) The following may be used to comply with the concrete secondary containment requirements:

(a) American concrete institute 350R, "*environmental engineering of concrete structures*;"

(b) American concrete institute 224R, "*control of cracking in concrete structures*;"

(c) national association of corrosion engineers international RP0892, "*coatings and linings over concrete for chemical immersion and containment service*;"

(d) society of protective coatings TU2/NACE6G197, "*design, installation and maintenance of coating systems for concrete used in secondary containment*;"

(e) national association of corrosion engineers international standard number 6/SSPC 13, "*surface preparation of concrete*;"

(f) national association of corrosion engineers international RP0281, "*method for conducting coating (paint) panel evaluation testing in atmospheric exposures*; or

(g) American society for testing and materials D4258, "*standard practice for cleaning concrete for coating*."

C. Liners as secondary containment.

(1) If owners and operators use geo-synthetic membrane for secondary containment, the geo-synthetic membranes or liners shall have a minimum thickness of 60 mils.

(2) Owners and operators shall install liners in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department, or in accordance with the manufacturer's specifications. Owners and operators shall submit to the department a report on the installation of the geo-synthetic membrane which shall certify that the

geo-synthetic membrane has been installed in accordance with the manufacturer's recommendations or an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory. The report shall contain the date of the inspection and installation of the geo-synthetic membrane, the test methods used during the inspection, data collected during the inspection, and the standard or code of practice according to which the installation was conducted. An installer or inspector with appropriate certification or experience (which shall be documented in the report) shall prepare the report.

(3) Earthen dike fields shall be lined with a geo-synthetic membrane to qualify as secondary containment.

D. Steel as secondary containment. If owners and operators use steel for construction of the secondary containment area, and if the steel is routinely in contact with soil, water or concrete, owners and operators shall cathodically protect the containment area in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

[20.5.4.29 NMAC - Rp, 20.5.4.401 NMAC, 04/04/2008]

#### 20.5.4.30 VENTING FOR NEW AST SYSTEMS:

A. Owners and operators shall design and construct venting for all new AST systems, following the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

B. Types of vent pipes.

(1) Vent pipes that are provided for normal tank venting shall extend at least 12 feet above ground level.

(2) If attached to a structure, vent pipes shall extend at least 5 feet above the highest projection of the canopy or roof.

(3) Vent pipes for normal tank venting shall be of appropriate size for the capacity and operating conditions of the tank.

(4) Emergency vents shall be of appropriate size for the capacity of the AST and shall be installed on the primary tank and on the interstice of all double-walled tanks.

C. The following may be used to comply with the requirements of this section:

(1) petroleum equipment institute publication RP200 "*recommended practices for installation of above ground storage systems for motor vehicle fueling*;"

(2) national fire protection association 30, "*flammable and combustible liquids code*;"

(3) underwriters laboratories 142, "*steel aboveground tanks for flammable and combustible liquids*;" or

(4) international code council, "*international fire code*."

[20.5.4.30 NMAC - Rp, 20.5.4.401 NMAC, 04/04/2008]

#### 20.5.4.31 VAULTS:

A. Owners and operators shall provide project drawings for and install new AST systems which include vaults in accordance with the following requirements:

(1) A vault must completely enclose each tank, with no openings in the vault enclosure except those necessary for access to, inspection of, and filling, emptying, and venting of the tank. Each tank shall be enclosed in its own vault, although adjacent vaults may share a common wall. However, for good cause shown, the department, in its sole discretion, may grant a variance from the one-tank-one-vault requirement, for existing tanks only, if owners and operators demonstrate that the variance will provide equivalent protection of health, safety and welfare and the environment.

(2) Every vault shall be liquid tight or sealed with no backfill around the tank. If a vault is constructed of concrete, owners and operators shall ensure it meets the requirements of Subsection B of 20.5.4.29 NMAC.

(3) There shall be adequate space between the tank and the vault for inspection of the tanks and its appurtenances.

(4) Above-grade vaults shall be resistant to damage from the impact of a motor vehicle, or suitable collision barriers shall be installed.

(5) A vault shall include connections to permit venting of each vault to dilute, disperse, and remove any vapors prior to personnel entering the vault.

(6) A vault shall be equipped with a detection system capable of detecting liquids, including water, and capable of activating an audible alarm.

(7) A vault shall include a means for recovering liquid from the vault.

(a) If a pump is used to meet this requirement, it shall not be permanently installed in the vault.

(b) Electric-powered portable pumps shall meet the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

(c) National fire protection asso-



ciation 70, "national electrical code," may be used to comply with the requirements of Paragraph (7) of Subsection A of 20.5.4.31 NMAC.

**B. Vault construction.**

Owners and operators shall design and construct:

(1) the walls and floor of a vault of reinforced concrete at least six inches thick;

(2) the top of an above-grade vault of noncombustible material, and shall design and construct the top:

(a) to be weaker than the walls of the vault, to ensure that the thrust of any explosion occurring inside the vault is directed upward before significantly high pressure can develop within the vault; and

(b) to safely relieve or contain the force of any explosion occurring inside the vault;

(3) the top and floor of the vault and the tank foundation to withstand the anticipated loading, including loading from vehicular traffic, where applicable;

(4) the walls and floor of any vault installed below grade in compliance with good engineering practice to withstand anticipated soil and hydrostatic loading.

**C. All tanks, piping and other associated equipment in the interior of a vault shall meet the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. The following may be used to comply with this requirement:**

(1) national fire protection association 70, "national electrical code;" or

(2) underwriters laboratories 2245, "standard for safety for below-grade vaults for flammable liquid storage tanks;"

**D. Venting of vaults.**

(1) Vent pipes that are provided for normal tank venting shall extend at least 12 feet above ground level.

(2) Emergency vents shall be vapor tight and may be permitted to discharge inside the vault.

(3) Owners and operators shall not use long-bolt manhole covers for this purpose.

(4) Owners and operators shall ensure that all vault vents meet the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. The following may be used to comply with this requirement: national fire protection association 91, "standard for exhaust systems for air conveying of vapors, gases, mists, and non-combustible particulate solids."

**E. Vault entry.**

(1) A vault shall include a method

of personnel entry.

(2) Owners and operators shall post a warning sign indicating procedures for safe entry at each entry point.

(3) Owners and operators shall secure each entry point against unauthorized entry and vandalism.

(4) Owners and operators shall provide each vault with a suitable means for admission of a fire suppression agent.

[20.5.4.31 NMAC - Rp, 20.5.4.401 NMAC, 04/04/2008]

**20.5.4.32 AST DISPENSERS:**

Owners and operators shall install a containment sump underneath each dispenser associated with an AST, unless the dispenser is located within secondary containment.

**A. Owners and operators shall hydrostatically test the sump upon installation, in accordance with manufacturer's recommendations.**

**B. The following may be used to comply with this containment sump requirement: dispenser liners, under-dispenser containment, dispenser pans, and dispenser sump liners.**

[20.5.4.32 NMAC - Rp, 20.5.4.401 NMAC, 04/04/2008]

**20.5.4.33 SPILL AND OVERFILL PREVENTION:**

**A. Except as provided in Subsection B of this section, to prevent spilling and overfilling associated with transfers of regulated substances to storage tank systems, owners and operators shall use the following spill and overfill prevention equipment as of August 15, 2004, for ASTs and as of December 22, 1998, for USTs:**

(1) spill prevention equipment that will prevent release of regulated substances to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and

(2) overfill prevention equipment for USTs that will:

(a) automatically shut off flow into the tank when the tank is no more than 95 percent full; or

(b) alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level audible alarm;

(3) overfill prevention equipment for ASTs that will:

(a) automatically shut off flow into the tank when the tank is no more than 95 percent full; or

(b) alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level audible and visual alarm.

**B. Owners and operators**

are not required to use the spill and overfill prevention equipment specified in Subsection A of this section if approved in writing in advance by the department where:

(1) alternative equipment is used that is determined by the department to be no less protective of public health, safety and welfare and the environment than the equipment specified in Paragraphs (1), (2) or (3) of Subsection A of this section; or

(2) the storage tank system is filled by transfers of no more than 25 gallons at one time;

**C. Owners and operators are not required to install and operate spill and overfill prevention equipment required in Paragraph (1) of Subsection A of this section for any AST system where the fill port is located within a secondary containment system meeting the requirements of 20.5.4.27 NMAC and 20.5.4.29 NMAC.**

**D. Owners and operators shall install any AST for a marina with a system that will allow the level of regulated substance in the AST to be monitored during a delivery of fuel to the AST in addition to spill catchment basins. Unless the AST system is equipped with an audible overfill alarm that will alert the transfer operator at 90 percent of capacity, and overfill protection which will shut off flow of product during a fuel delivery to the tank at 95 percent, owners and operators shall visually monitor the delivery of fuel.**

[20.5.4.33 NMAC - Rp, 20.5.4.402 NMAC, 04/04/2008]

**20.5.4.34 LOADING RACKS:**

**A. Owners and operators shall design, construct and install loading racks following the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. The following may be used to comply with this requirement:**

(1) American petroleum institute standard 2610, "design, construction, operation, maintenance & inspection of terminal and tank facilities;"

(2) national fire protection association 30, "flammable and combustible liquids code;" or

(3) international code council, "international fire code."

**B. Owners and operators shall install a containment system that is designed to contain all releases of regulated substances that occur during loading and unloading operations at the loading rack. For all loading racks, owners and operators shall install either:**

(1) a drainage system, or secondary containment system meeting the requirements of 20.5.4 NMAC, with a



catchment basin capable of containing the largest compartment of a tank car or tanker truck that is loaded or unloaded at the facility; or

(2) a drainage system that is connected to a treatment facility designed to receive releases of regulated substances that occur during loading and unloading operations.

C. Owners and operators shall ensure that loading racks are at least 25 feet from ASTs, buildings, and property lines.

[20.5.4.34 NMAC - N, 04/04/2008]

**20.5.4.35 DEADLINES FOR CLOSING OR UPGRADING EXISTING AST SYSTEMS:** Not later than July 1, 2011, all owners and operators shall:

A. upgrade existing AST systems to meet all performance standards for new AST systems in 20.5.4 NMAC, with the exception that existing AST systems need not submit project drawings; or

B. close any AST system that does not meet performance standards in 20.5.4 NMAC; and

C. close any UST being used as an AST.

[20.5.4.35 NMAC - Rp, 20.5.4.405 NMAC, xx/xx/200x]

**20.5.4.36 REQUIRED NOTIFICATION PRIOR TO INSTALLATION:**

To ensure that an inspector has an opportunity to be present during the steps in procedures which are important to the prevention of releases, owners, operators, and certified tank installers shall give the department notice of the dates on which critical junctures in the installation of a storage tank system are to take place. The inspector may require that critical junctures be performed from Monday through Friday during regular business hours.

A. For installations, the term "critical junctures" means:

(1) preparation of the excavation immediately prior to receiving backfill and a UST or piping for an AST or UST;

(2) installation of any tank pad, vault, or secondary containment for a storage tank system;

(3) setting of a storage tank and piping, including placement of any anchoring devices, backfill to the level of the tank, and strapping, if any;

(4) any time during the installation in which components of piping are connected;

(5) all pressure testing or integrity testing of a storage tank system, including associated piping, performed during the installation; and

(6) completion of backfill and filling of the excavation.

B. Owners, operators and certified tank installers shall give at least 30 days written notice before the installation of a storage tank system. At a minimum, the installation notice shall contain the following information:

(1) date the form is completed;

(2) facility name, number, address (with county), and telephone number;

(3) owner name, number, address, and telephone number;

(4) contractor name, address, and telephone number;

(5) tank details (number and size, type and materials, products to be stored);

(6) piping material and type of leak detection;

(7) type of spill and overfill prevention;

(8) type of corrosion protection (sacrificial, impressed current, or none with explanation why corrosion protection not required);

(9) method of leak detection (statistical inventory reconciliation, automatic tank gauges, visual, vapor monitoring, interstitial monitoring, inventory control with tightness testing);

(10) whether any part of the system is within 1,000 feet of a community water system or a potable drinking water well;

(11) approximate date installation will take place; and

(12) the signature of the owner or owner's representative filling out the form.

C. In addition to the written notice described in this section, owners, operators and certified tank installers shall give oral notice at least 24 hours in advance of the commencement of the procedure. In the oral notice, owners, operators and certified tank installers shall describe any changes to the 30-day written notice required in Subsection B of this section, such as different equipment or installation methods.

D. If owners, operators and certified tank installers are separate persons, only one person is required to comply with the notice requirements of this section; however, all parties are liable in the event of noncompliance.

[20.5.4.36 NMAC - Rp, 20.5.5.505 NMAC, 04/04/2008]

[The department provides an optional form that may be used for notification of installation.]

**20.5.4.37 REQUIRED CERTIFICATIONS:**

A. Certification of compliance. All owners and operators of new storage tank systems shall certify in the registration form required by 20.5.2 NMAC compliance with the following require-

ments:

(1) installation of tanks and piping in 20.5.4.14 NMAC for UST systems, 20.5.4.19 NMAC for AST systems or 20.5.4.38 NMAC for either;

(2) cathodic protection of steel tanks and piping in 20.5.4.10 NMAC and 20.5.4.22 NMAC for UST systems, or 20.5.4.12 NMAC for UST systems, or 20.5.4.16 and 24 NMAC for AST systems;

(3) financial responsibility under 20.5.9 NMAC; and

(4) release detection in 20.5.6 NMAC.

B. Installer certification. All owners and operators of new storage tank systems shall ensure that the installer certifies in the registration form required by 20.5.2 NMAC that the methods used to install the tanks and piping comply with the requirements in 20.5.4.14 NMAC for UST systems and 20.5.4.19 NMAC for AST systems.

C. Certification of installation. For installations after August 15, 2003, owners and operators shall demonstrate compliance with the installation standards in 20.5.4.19 NMAC (for ASTs) and 20.5.4.14 NMAC (for USTs). Owners and operators shall provide a certification of installation on the UST or AST registration form required by 20.5.2 NMAC, which asserts that one or more of the following methods of certification, testing, or inspection was used to demonstrate compliance with installation requirements of the AST or UST system:

(1) the installer has been certified by the tank and piping manufacturers;

(2) the installer has been certified or licensed as required in 20.5.14 NMAC;

(3) the installation has been inspected and certified by a registered professional engineer with education and experience in UST system or AST system installation (whichever is applicable);

(4) the installation has been inspected and approved by the department; or

(5) all work listed in the manufacturer's installation checklists has been completed.

[20.5.4.37 NMAC - Rp, 20.5.4.402 NMAC and 20.5.4.406 NMAC, 04/04/2008]

**20.5.4.38 ALTERNATE METHODS:**

A. If owners and operators want to install tanks, piping, storage tank systems, spill and overfill equipment, secondary containment, or any other requirement of this part by another method in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, owners

and operators shall apply in writing to the department, shall provide supporting documentation, and shall not begin the installation unless and until the department approves the request in writing. At a minimum, the request for an alternate method shall contain the following:

- (1) date the form is completed;
- (2) facility name, number, address (with county) and telephone number;
- (3) owner name, number, address and telephone number;
- (4) citation to regulation for which alternate method or material (such as type of piping) is requested;
- (5) brief description of the proposed alternate method or material; and
- (6) justification of proposed alternate method or material, including citation to the standard or code supporting its use, and demonstration of its equivalent protection of public health, safety and welfare and the environment.

B. The department shall not grant the request unless owners and operators demonstrate that the request will provide equivalent protection of public health, safety and welfare and the environment.

[20.5.4.38 NMAC - Rp, 20.5.4.404 NMAC, 04/04/2008]

[The bureau provides an optional form that may be used to request approval of an alternate method.]

## NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

### TITLE 20 ENVIRONMENTAL PROTECTION CHAPTER 5 P E T R O L E U M STORAGE TANKS PART 5 GENERAL OPERATING REQUIREMENTS

**20.5.5.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.

[20.5.5.1 NMAC - Rp, 20.5.5.1 NMAC, 04/04/2008]

**20.5.5.2 SCOPE:** This part applies to owners and operators of storage tanks as provided in 20.5.1 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance.

[20.5.5.2 NMAC - Rp, 20.5.5.2 NMAC, 04/04/2008]

**20.5.5.3 STATUTORY AUTHORITY:** This part is promulgated

pursuant to the provisions of the Hazardous Waste Act, NMSA 1978, Sections 74-4-1 through 74-4-14, and the general provisions of the Environmental Improvement Act, NMSA 1978, Sections 74-1-1 through 74-1-16.

[20.5.5.3 NMAC - Rp, 20.5.5.3 NMAC, 04/04/2008]

**20.5.5.4 DURATION:** Permanent.

[20.5.5.4 NMAC - Rp, 20.5.5.4 NMAC, 04/04/2008]

**20.5.5.5 EFFECTIVE DATE:** April 4, 2008, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.5.5 NMAC - Rp, 20.5.5.5 NMAC, 04/04/2008]

**20.5.5.6 OBJECTIVE:** The purpose of 20.5.5 NMAC is to ensure that the operation and maintenance of storage tanks will prevent releases and to protect the public health, safety and welfare and the environment of the state.

[20.5.5.6 NMAC - Rp, 20.5.5.6 NMAC, 04/04/2008]

**20.5.5.7 DEFINITIONS:** The definitions in 20.5.1 NMAC apply to this part.

[20.5.5.7 NMAC - Rp, 20.5.5.7 NMAC, 04/04/2008]

**20.5.5.8 OPERATION AND MAINTENANCE OF STORAGE TANK SYSTEMS:** Owners and operators shall properly maintain all tanks, piping, secondary containment and other associated equipment required in 20.5.4 NMAC, and shall ensure that all tanks, piping, secondary containment and other associated equipment for all storage tank systems are fully operational at all times.

A. Owners and operators shall visually inspect monthly an AST and all its components that are readily accessible to visual inspection.

B. Owners and operators shall maintain the exterior coating of an AST and ancillary equipment not in contact with soil in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. The following may be used to comply with this requirement:

(1) society of protective coatings SSPC-PA 1, "*shop, field, and maintenance painting of steel*;"

(2) society of protective coatings, "*the inspection of coatings and linings: a handbook of basic practice for inspectors, owners and specifiers*;"

(3) society of protective coatings SSPC-PA Guide 4, "*guide to maintenance repainting with oil base or alkyd painting systems*;" or

(4) society of protective coatings SSPC-PA Guide 5, "*guide to maintenance coating of steel structures in atmospheric service*."

C. Owners and operators shall mark fill port lids of ASTs and USTs in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. The following may be used to comply with this requirement: American petroleum institute RP1637, "*using the API color-symbol system to mark equipment and vehicles for product identification at service stations and distribution terminals*." Owners and operators shall clearly label the contents of all storage tanks.

D. If any steel piping installed in a trench is used in an AST or UST system, owners and operators shall visually inspect the trench monthly. Owners and operators shall draw off any water that has accumulated in the trench within one week of a rainfall event, and shall remove any other debris that has accumulated inside the trench. Owners and operators shall properly treat and dispose of any accumulated water with a visible sheen. If a basin sump is located in the trench, owners and operators shall keep the basin sump free of water and debris. Owners and operators shall not install any valves in any basin sump in a piping trench.

E. Owners and operators shall maintain all sumps (including, but not limited to: turbine sumps, STP and submersible pumps), and draw off water that has accumulated in the sumps within one week of a rainfall event, and shall remove any other debris that has accumulated inside the containment sumps. Owners and operators shall properly treat and dispose of any accumulated water with a visible sheen. If gravity drain valves are used to remove water from the containment sumps, owners and operators shall keep all valves closed except during the process of draining water.

F. Owners and operators shall check ASTs monthly for the presence of water at the lowest possible point inside the tank, and remove any water found to the extent technically possible. Owners and operators shall properly dispose of any and all water removed from an AST.

[20.5.5.8 NMAC - Rp, 20.5.5.400 NMAC, 04/04/2008]

**20.5.5.9 OPERATIONS AND MAINTENANCE PLAN:** Owners and operators of all storage tank systems shall adopt and implement a written operations

and maintenance plan, which they shall keep at the facility for the life of the storage tank system. The operations and maintenance plan shall be as specific as possible for each facility and shall include the piping and ancillary equipment that routinely contains regulated substances, or controls the flow of regulated substances. Owners and operators may use, by reference, operational and maintenance guidance from the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory. Owners and operators who reference a current edition of an industry standard or code of practice shall maintain a copy of the code or standard they reference. Owners and operators shall not implement the plan until it has been approved by the department.

A. At a minimum the operations and maintenance plan shall include the following:

(1) a detailed plan showing what inspections, operations, testing and maintenance shall be done on a daily, monthly, quarterly and annual basis in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department; the plan shall include a description of how owners and operators properly dispose of regulated substances spilled at the facility, and any water or soil removed from any part of the storage tank system where there is any indication it might be or have been contaminated with a regulated substance; and

(2) responses to emergency situations; this information shall be readily accessible at the facility; responses to emergency situations shall include the following:

(a) the location of equipment to be shut down during an emergency and how to safely perform these tasks;

(b) actions to be taken in the event of a fire, flooding, a spill, or a release of regulated substances;

(c) a site diagram; and

(d) a list of whom to notify or call during or after an emergency situation.

B. The following may be used to comply with the requirements of this section:

(1) American petroleum institute 570, "*pipe inspection code: inspection repair, alteration, and rerating of in-service piping systems*;"

(2) American petroleum institute standard 653, "*tank inspection, repair, alteration, and reconstruction*;" or

(3) steel tank institute standard SP001, "*standard for inspection of in-service shop fabricated aboveground tanks for storage of combustible and flammable liq-*

*uids*."

C. Owners and operators may submit to the department for approval an alternate plan which contains all the information requested in this section.

[20.5.5.9 NMAC - Rp, 20.5.5.400 NMAC, 04/04/2008]

#### **20.5.5.10 OPERATION, MAINTENANCE, REPAIR AND REPLACEMENT OF SECONDARY CONTAINMENT FOR ASTS:**

A. Owners and operators shall operate, maintain and repair secondary containment in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

B. Owners and operators shall not store inside the secondary containment any material which is chemically reactive with the regulated substance stored in the AST system, or with the AST itself. Owners and operators shall not store any material in the secondary containment that reduces the capacity of the secondary containment below the requirements in 20.5.4.29 NMAC.

C. Owners and operators shall draw off water that has accumulated in the secondary containment, including all sumps, within one week of a rainfall event, and shall remove any other debris that has accumulated inside the secondary containment. Owners and operators shall properly treat and dispose of any accumulated water with a visible sheen. If gravity drain valves are used to remove water from the secondary containment, owners and operators shall keep all valves closed except during the process of draining water.

D. In order to maintain the highest level of secondary containment in case of a discharge from, or an overflow of, an AST system, owners and operators shall keep the spill containment buckets, catchment basins, containment sumps, basin sumps, and piping trenches free of water, regulated substances and debris.

E. Owners and operators shall maintain, repair and replace any concrete secondary containment systems in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. The following may be used to comply with this requirement:

(1) society of protective coating and national association of corrosion experts SSPC-TU2/NACE 6G197, "*design, installation and maintenance of coating systems for concrete used in secondary con-*

*tainment*;"

(2) American concrete institute 224R, "*control of cracking in concrete structures*;" or

(3) American concrete institute "*concrete repair manual*."

F. Owners and operators shall maintain, repair and replace any geosynthetic liner according to manufacturer's instructions, which owners and operators shall keep readily available at the facility for the life of the liner.

G. Owners and operators shall protect from corrosion any secondary containment constructed of steel, and shall cathodically protect any portion of the steel secondary containment that is in contact with soil or water. Owners and operators shall maintain the exterior of any steel secondary containment in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. The following may be used to comply with this requirement: society of protective coatings SSPC-PA-1, "*shop, field, and maintenance painting of steel*."

H. Owners and operators of above ground storage tanks which are either double-walled or which have an interstitial space that is monitored as a method of release detection shall comply with the following requirements:

(1) where design and release detection method allow the interstice of a double-walled above ground storage tank to be visually inspected without disturbance of the release detection system, owners and operators shall monthly visually inspect for the presence of water, regulated substances or debris;

(2) owners and operators shall notify the department in accordance with 20.5.7 NMAC if a visual inspection, other inspection or testing conducted in accordance with 20.5.5 or 20.5.6 NMAC indicate that a release may have occurred;

(3) if testing conducted in accordance with 20.5.4, 20.5.5 or 20.5.6 NMAC indicates that the stored regulated substance is leaking into the interstice of the AST, then owners and operators shall have the tank repaired in accordance with the tank manufacturer's instructions or specifications, or with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory;

(4) owners and operators shall monitor all vertical ASTs with an interstitial space between the tank bottom and secondary containment for the presence of water or regulated substances; if gravity drain valves are used for monitoring and removal of water or regulated substances, owners and

operators shall keep them closed except during the process of monitoring and draining;

(5) owners and operators shall keep all sumps associated with interstitial monitoring free of water;

(6) owners and operators shall inspect all sensors used to monitor interstitial spaces annually in accordance with manufacturer's recommendations, or in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department;

(7) owners and operators shall remove all liquid found in interstitial spaces, and dispose of it properly.  
[20.5.5.10 NMAC - Rp, 20.5.5.401 NMAC, 04/04/2008]

#### **20.5.5.11 OPERATION, REPAIR AND MAINTENANCE OF SECONDARY CONTAINMENT FOR USTS:**

A. Owners and operators of underground storage tank systems shall operate, maintain and repair secondary containment in accordance with the manufacturer's instructions or specifications, or with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. The following may be used to comply with this requirement:

(1) U.S. environmental protection agency #510-R-05-001, "*ust systems: inspecting and maintaining sumps and spill buckets;*" or

(2) U.S. environmental protection agency #510-B-05-002, "*operating and maintaining underground storage tank systems: practical help and checklists.*"

B. Owners and operators shall draw off water that has accumulated in the secondary containment, including all sumps, within one week of a rainfall event, and shall remove any other debris that has accumulated inside the secondary containment. Owners and operators shall properly treat and dispose of any accumulated water with a visible sheen.  
[20.5.5.11 NMAC - N, 04/04/2008]

#### **20.5.5.12 OPERATION, REPAIR AND MAINTENANCE OF VAULTS:**

A. Owners and operators shall operate, maintain and repair the walls and floor of a vault in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. The following may be used to comply with this requirement:

(1) society of protective coating and national association of corrosion experts SSPC-TU2/NACE 6G197, "*design, installation and maintenance of coating systems for concrete used in secondary containment;*"

(2) American concrete institute 224R, "*control of cracking in concrete structures;*" or

(3) American concrete institute "*concrete repair manual.*"

B. Owners and operators shall visually inspect the interior of any vault from the outside monthly, and annually shall enter and inspect the interior of the vault. Owners and operators shall draw off any water that has accumulated in a vault within one week of a rainfall event if the water is in contact with the tank or piping (but need not draw off water only in contact with a tank's saddles, skid or other support), and shall remove any other debris that has accumulated inside the vault and which is in contact with the tank, piping or saddle, skid or other support. Owners and operators shall properly treat and dispose of any accumulated water with a visible sheen. If a sump is located in the vault, owners and operators shall keep the liquid trap free of water and debris. Owners and operators shall not install any valves in any sump in a vault.

C. Owners and operators shall not store inside a vault any material which is chemically reactive with the regulated substance stored in the AST system, or with the AST itself.

D. Owners and operators shall ensure that a vault is well vented before any fuel transfer begins, and shall keep open all vents during the transfer.

E. For vaults with roofs, owners and operators shall properly maintain and repair the roof of a vault in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

[20.5.5.12 NMAC - Rp, 20.5.5.402 NMAC, 04/04/2008]

#### **20.5.5.13 OPERATION, REPAIR AND MAINTENANCE OF VENTING SYSTEMS:**

Owners and operators shall operate, maintain and repair venting systems in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. At least monthly, owners and operators shall check emergency vents to ensure they are operational. The following may be used to comply with this requirement: national fire protection association standard 91, "*standard for exhaust systems*

*for air conveying of vapors, gases, mists, and noncombustible particulate solids.*"  
[20.5.5.13 NMAC - Rp, 20.5.5.403 NMAC, 04/04/2008]

#### **20.5.5.14 OPERATION AND MAINTENANCE OF SPILL AND OVERFILL PREVENTION:**

A. Owners and operators shall ensure that releases due to spilling or overfilling do not occur. Owners and operators shall ensure that all spill and overfill equipment required in 20.5.4.33 NMAC is properly maintained and fully operational at all times. Owners and operators shall ensure that the volume available in a tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling. Owners and operators shall comply with the transfer procedures described in the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. The following may be used to comply with this requirement:

(1) national fire protection association standard 385, "*standard for tank vehicles for flammable and combustible liquids;*"

(2) American petroleum institute publication RP 1621, "*bulk liquid stock control at retail outlets;*"

(3) national fire protection association 30, "*flammable and combustible liquids code;*"

(4) national fire protection association 30A, "*code for motor fuel dispensing facilities and repair garages;*"

(5) petroleum equipment institute publication RP200, "*recommended practices for installation of above ground storage systems for motor vehicle fueling;*" or

(6) international code council, "*international fire code.*"

B. Owners and operators shall report, investigate, and clean up any spills and overfills in accordance with 20.5.7 NMAC.

[20.5.5.14 NMAC - Rp, 20.5.5.500 NMAC, 04/04/2008]

#### **20.5.5.15 OPERATION AND MAINTENANCE OF CORROSION PROTECTION:**

Owners and operators of steel storage tank systems with any steel tank or piping with corrosion protection shall comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the storage tank system is used to store regulated substances.

A. Owners and operators shall operate and maintain corrosion protection systems to continuously provide corro-

sion protection to all metal components of the system that routinely contain regulated substances and are in contact with the ground or water. Owners and operators shall operate and maintain corrosion protection systems in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. The following may be used to comply with this requirement:

(1) steel tank institute, "*specification for sti-P3 system of external corrosion protection of underground steel storage tanks;*"

(2) underwriters laboratories standard 1746, "*external corrosion protection system for steel underground storage tanks;*"

(3) underwriters' laboratories of Canada CAN4-S603-N85, "*standard for steel underground tanks for flammable and combustible liquids;*"

(4) underwriters' laboratories of Canada CAN4-G03.1-M85, "*standard for galvanic corrosion protection systems for underground tanks for flammable and combustible liquids;*"

(5) underwriters' laboratories of Canada CAN4-S631-M84, "*isolating bushings for steel underground tanks protected with coatings and galvanic systems;*"

(6) national association of corrosion engineers international standard RP0-0285, "*corrosion control of underground storage tanks systems by cathodic protection;*" or

(7) underwriters laboratories standard 58, "*standard for safety for steel underground tanks for flammable and combustible liquids.*"

B. Owners and operators shall ensure that all storage tank systems equipped with cathodic protection are inspected for proper operation by a qualified corrosion expert in accordance with the following requirements:

(1) frequency: owners and operators shall test all cathodic protection systems within six months of installation and at least every three years thereafter or according to another reasonable time frame approved in advance by the department; and

(2) inspection criteria: the criteria that are used to determine that cathodic protection is adequate as required by this section must be in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department;

(3) the following may be used to comply with this requirement:

(a) national association of corro-

sion engineers international RP0285, "*corrosion control of underground storage tank systems by cathodic protection;*"

(b) national fire protection association 30, "*flammable and combustible liquids code;*"

(c) national fire protection association 30A "*code for motor fuel dispensing facilities and repair garages;*"

(d) American petroleum institute publication RP 1615, "*installation of underground petroleum storage systems;*"

(e) American petroleum institute publication RP 1632, "*cathodic protection of underground petroleum storage tanks and piping systems;*"

(f) national association of corrosion engineers international RP0169, "*control of external corrosion on underground or submerged metallic piping systems;*" or

(g) international code council, "*international fire code.*"

C. Owners and operators shall inspect storage tank systems with impressed current cathodic protection systems every 60 days to ensure the equipment is running properly. Owners and operators shall record the date, time, readings and results of each inspection in a log kept at the facility, and indicate who performed each inspection.

D. For storage tank systems using cathodic protection, owners and operators shall maintain records of the operation of the cathodic protection in accordance with 20.5.5.19 NMAC to demonstrate compliance with the performance standards in this section. These records shall provide the following:

(1) the results of the last three inspections required in Subsection C of this section; and

(2) the results of testing from the last two inspections required in Subsection B of this section.

[20.5.5.15 NMAC - Rp, 20.5.5.501 NMAC, 04/04/2008]

#### 20.5.5.16 COMPATIBILITY:

Owners and operators shall use a storage tank system made of or lined with materials that are compatible with the substance stored in the storage tank system. Owners and operators storing alcohol blends shall use the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. The following may be used to comply with this requirement:

A. American petroleum institute publication RP1626, "*storing and handling ethanol and gasoline-ethanol blends at distribution terminals and service stations;*" or

B. American petroleum institute publication RP1627, "*storage and handling of gasoline-methanol/cosolvent blends at distribution terminals and service stations.*"

[20.5.5.16 NMAC - Rp, 20.5.5.502 NMAC, 04/04/2008]

#### 20.5.5.17 REPAIRS, REPLACEMENTS AND MODIFICATIONS:

Owners and operators of a storage tank system shall ensure that repairs, replacements and modifications will prevent releases due to structural failure or corrosion as long as the storage tank system is used to store regulated substances.

A. Determining whether repair, replacement or modification is necessary. Owners and operators shall determine whether a repair, replacement or modification to a storage tank system is necessary in consultation with a department inspector, after providing notice required by this part.

(1) If owners and operators are repairing, replacing or modifying piping of any kind that is connected to a storage tank, the determination shall be made during an on-site inspection that provides the inspector the opportunity to view the piping while it is exposed.

(2) If, during an on-site inspection, the inspector determines that:

(a) any steel piping connected to a tank indicates corrosion;

(b) any rigid fiberglass-reinforced piping connected to a tank shows signs of deterioration or failure; or

(c) any flexible piping connected to a tank shows any signs of deterioration or failure,

(3) Then the owner and operator shall replace all piping connected to that tank, and shall inspect all other piping at the same facility that is made of the same material to determine its condition prior to returning the facility to operation.

B. Owners and operators shall properly conduct repairs, replacements and modifications to storage tank systems in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department, and in accordance with the manufacturer's instructions and recommended practices. The following may be used to comply with this requirement:

(1) national fire protection association 30, "*flammable and combustible liquids code;*"

(2) American petroleum institute publication RP 2200, "*repairing crude oil, liquified petroleum gas, and product pipelines;*"

(3) American petroleum institute publication RP 1631, "interior lining and periodic inspection of underground storage tanks;"

(4) national leak prevention association standard 631, "spill prevention, minimum 10 year life extension of existing steel underground tanks by lining without the addition of cathodic protection;"

(5) national fire protection association 30A, "code for motor fuel dispensing facilities and repair garages;"

(6) petroleum equipment institute publication RP200, "recommended practices for installation of above ground storage systems for motor vehicle fueling;"

(7) American society for testing and materials ES40, "emergency standard practice for alternative procedures for the assessment of buried steel tanks prior to the addition of cathodic protection;"

(8) American petroleum institute 570, "piping inspection code: inspection, repair, alteration and rerating of in-service piping systems;"

(9) American petroleum institute standard 653, "tank inspection, repair, alteration, and reconstruction;"

(10) American society of mechanical engineering standard B31.1, "process piping;" or

(11) international code council, "international fire code."

C. Owners and operators shall not internally line ASTs as a means of repair.

D. Owners and operators shall tightness test a storage tank system that has been replaced, modified or repaired, prior to returning the system to service, in accordance with 20.5.6.15 and 20.5.6.10 NMAC and 20.5.6.23 NMAC except as provided below:

(1) the repaired or modified tank is internally inspected in accordance with the current edition of an industry standard or code of practice approved in advance by the department;

(2) the repaired or modified portion of the storage tank system is monitored monthly for releases in accordance with a method specified in 20.5.6.16, 17, 18, 19, 20, 21, or 22 NMAC; or

(3) owners and operators shall use an equivalent test method, which complies with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance in writing by the department.

E. Upon completion of a modification or repair of any cathodically protected storage tank system, owners and operators shall test the cathodic protection system in accordance with Subsections B and C of 20.5.5.15 NMAC to ensure that it is operating properly.

F. Owners and operators of a storage tank system shall maintain records of each repair, replacement and modification for the remaining operating life of the storage tank system that demonstrate compliance with the requirements of this section.

G. Owners and operators shall repair an above ground storage tank if an internal inspection determines that a release is occurring or that the tank bottom or shell thickness is below minimum thickness requirements. Owners and operators shall keep the records of internal inspections for the life of the tank. Minimum thickness requirements shall be determined by one of the following:

(1) manufacturer's specifications;

(2) current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department; or

(3) minimum thickness for the tank bottom shall never be less than one half of the original bottom plate thickness and minimum thickness for the tank shall never be less than 0.1 inch.

H. Owners and operators shall meet all applicable installation requirements of 20.5.4 NMAC, including testing requirements, when repairing, replacing or modifying a storage tank system involves installing new components. If any tank or piping of a tank system is replaced, owners and operators shall follow all requirements for properly assessing the site for contamination in compliance with 20.5.8 NMAC prior to installing the new components.

[20.5.5.17 NMAC - Rp, 20.5.5.503 NMAC, 04/04/2008]

#### 20.5.5.18 REPORTING :

Owners and operators of a storage tank system shall cooperate fully with inspections, monitoring and testing conducted by the department, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to Section 9005 of Subtitle I of the federal Resource Conservation and Recovery Act, as amended. Owners and operators shall submit the following information to the department:

A. registration for all storage tank systems in accordance with 20.5.2 NMAC, which includes certification of installation for new UST and AST systems in accordance with Subsection C of 20.5.4.37 NMAC;

B. reports of all releases in accordance with 20.5.2 NMAC and the requirements in 20.5.7 NMAC for reporting suspected releases, spills and overfills and confirmed releases;

C. corrective actions

planned or taken as required by 20.5.12 and 20.5.13 NMAC;

D. notification before storage tank system installation, replacement, repair or modification in accordance with 20.5.5 NMAC, and before permanent closure or change-in-service in accordance with 20.5.8 NMAC; it may not be feasible for owners and operators to provide advance notice of emergency repairs; however, owners and operators shall provide notice of emergency repairs as soon as possible after completing emergency repairs; and

E. updated project drawings for any addition, replacement or modification of a storage tank system.

[20.5.5.18 NMAC - Rp, 20.5.5.504 NMAC, 04/04/2008]

#### 20.5.5.19 RECORD KEEPING:

A. Owners and operators shall maintain the following information:

(1) a corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used, in accordance with 20.5.4.12 NMAC and 20.5.4.22 NMAC;

(2) documentation of operation of corrosion protection equipment that demonstrate compliance with 20.5.5.15 NMAC;

(3) documentation of storage tank system repairs, replacements and modifications that demonstrate compliance with 20.5 NMAC;

(4) recent compliance with release detection requirements in accordance with 20.5.6 NMAC;

(5) results of the site investigation conducted at permanent closure in accordance with 20.5.8 NMAC;

(6) inspection logs required by 20.5.5 NMAC and 20.5.6 NMAC;

(7) tank tightness, internal inspection and integrity test documents required by 20.5 NMAC;

(8) any document approving any alternate method; and

(9) any other record or written approval required in 20.5 NMAC.

B. Availability and maintenance of records. Owners and operators shall keep the required records for the operational life of a tank, piping and tank system either:

(1) at the storage tank site and immediately available for inspection by the department; or

(2) at a readily available alternative site and the records shall be provided for inspection to the department upon request; if records are not available at a site during inspection, owners and operators shall mail or send by facsimile transmission to the inspector within 10 working days all records requested by the inspector;

(3) in the case of permanent clo-

sure records required under 20.5.8 NMAC, owners and operators are also provided with the additional alternative of mailing closure records to the department if they cannot be kept at the site or an alternative site as indicated above.

C. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirements of this section; however, both parties are liable in the event of non-compliance.

[20.5.5.19 NMAC - Rp, 20.5.5.504 NMAC, 04/04/2008]

#### **20.5.5.20 INSPECTIONS, MONITORING AND TESTING:**

A. For the purpose of enforcing the provisions of these regulations, all owners and operators of storage tanks shall, upon the request of the secretary or authorized department representatives, furnish information relating to such tanks, including tank equipment and contents, conduct monitoring or testing, and permit any department representative at all reasonable times to have access to, and to copy all records relating to such tanks. Owners and operators shall comply with all applicable and appropriate Occupational Health and Safety Act requirements, NMSA 1978, Sections 50-9-1 through 50-9-25, so that storage tanks may be safely inspected. For the purpose of enforcing these regulations, department officers, employees, or representatives are authorized to:

(1) enter at reasonable times any establishment or place where a storage tank is located;

(2) inspect the storage tank system and obtain samples of its contents; and

(3) conduct monitoring or testing of the tanks, associated equipment, contents, or surrounding soils, air, surface water, or groundwater.

B. The department shall commence and complete each inspection with reasonable promptness. If the secretary or department representative obtains any samples, prior to leaving the premises he shall give to the owner, operator or agent in charge a receipt describing the sample obtained and, if requested, a portion of each sample equal in volume or weight to the portion retained. If any analysis is made of the samples, a copy of the results of the analysis shall be furnished promptly to the owner, operator or agent in charge.

C. Owners and operators shall permit the department or authorized department representative to be present at and inspect all storage tank system installations, replacements, repairs, substantial modifications, installations of leak detection systems and storage tank system closures.

[20.5.5.20 NMAC - Rp, 20.5.5.505 NMAC, 04/04/2008]

**20.5.5.21 REQUIRED NOTIFICATION PRIOR TO REPLACEMENT, REPAIR AND MODIFICATION:** To ensure that an inspector has an opportunity to be present during the steps in procedures which are important to the prevention of releases, owners, operators, and certified tank installers shall give the department notice of the dates on which critical junctures in the replacement, repair, and modification of the storage tank system are to take place. Notice need not be provided for normal maintenance. The inspector may require that critical junctures be performed from Monday through Friday during regular business hours.

A. For replacements, modifications (including internal lining or changes to cathodic protection systems), and repairs, the term "critical junctures" means:

(1) completion of the excavation of existing tanks or piping;

(2) actual performance of the repair, lining or modification;

(3) any time during the project in which components of piping are connected; and

(4) any time during the project in which a tank or its associated piping is tested.

B. Owners, operators and certified tank installers shall give at least 30 days written notice before the replacement, modification or repair of a storage tank system. It may not be feasible for owners, operators, and certified tank installers to provide advance notice of emergency repairs; however, owners, operators, and certified tank installers shall provide notice of emergency repairs as soon as possible after completing emergency repairs. At a minimum, the notice for replacements, modifications, and repairs shall contain the following information:

(1) date the form is completed;

(2) facility name, number, address (with county), and telephone number;

(3) owner name, number, address, and telephone number;

(4) contractor name, address, and telephone number;

(5) description of type of replacement, modification or repair to be performed (such as spill containment, overspill prevention, release detection, piping or other);

(6) expected date on which replacement, modification or repair will be performed;

(7) whether any part of the system is within 1,000 feet of a community water system or a potable drinking water well; and

(8) signature of owner, operator or an authorized representative.

C. In addition to the written notices described in this section, owners, operators and certified tank installers shall give oral notice at least 24 hours in advance of the commencement of the procedure. In the oral notice, owners, operators and certified tank installers shall describe any changes to the 30-day written notice required in Subsection B of this section, such as different equipment or installation methods.

D. If owners, operators and certified tank installers are separate persons, only one person is required to comply with the notice requirements of this section; however, all parties are liable in the event of noncompliance.

[20.5.5.21 NMAC - Rp, 20.5.5.505 NMAC, 04/04/2008]

[The bureau provides an optional form that may be used for notification of replacement, repair and modification.]

#### **20.5.5.22 DEPARTMENT REVIEW AND APPROVAL OF PLANS, INSTALLATION, OPERATION AND MAINTENANCE:**

Owners and operators shall view any inspection, review or approval by the department as permission to proceed in accordance with all applicable rules, codes and standards. Review and approval by the department shall not relieve any owner, operator, or certified tank installer of his responsibility for compliance. If the department overlooks any deficiencies or violations in the course of plan review or inspection provided in 20.5 NMAC, the department may later require correction and compliance.

[20.5.5.22 NMAC - N, 04/04/2008]

#### **20.5.5.23 ALTERNATE METHODS:**

A. If owners and operators want to operate, maintain, replace, repair or modify any part of a storage tank system by another method, other than that specified in this part, in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, owners and operators shall apply in writing to the department, shall provide supporting documentation, and shall not begin to operate, maintain, replace, repair or modify the system, unless and until the department approves the request in writing. At a minimum, the request for an alternate method shall contain the following:

(1) date the form is completed;

(2) facility name, number, address (with county) and telephone number;

(3) owner name, number, address and telephone number;

(4) citation to regulation for which alternate method or material (such as type of piping) is requested;

(5) brief description of the proposed alternate method or material; and

(6) justification of proposed alternate method or material, including citation to the standard or code supporting its use, and demonstration of its equivalent protection of public health, safety and welfare and the environment.

B. The department shall not grant the request unless owners and operators demonstrate that the request will provide equivalent protection of public health, safety and welfare and the environment.

[20.5.4.23 NMAC - N, 04/04/2008]

[The bureau provides an optional form that may be used for notification of replacement, repair and modification.]

**NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD**

**TITLE 20 ENVIRONMENTAL PROTECTION  
CHAPTER 5 P E T R O L E U M STORAGE TANKS  
PART 6 RELEASE DETECTION**

**20.5.6.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.  
[20.5.6.1 NMAC - Rp, 20.5.6.1 NMAC, 04/04/2008]

**20.5.6.2 SCOPE:** This part applies to owners and operators of storage tanks as provided in 20.5.1 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance.  
[20.5.6.2 NMAC - Rp, 20.5.6.2 NMAC, 04/04/2008]

**20.5.6.3 STATUTORY AUTHORITY:** This part is promulgated pursuant to the provisions of the Hazardous Waste Act, NMSA 1978, Sections 74-4-1 through 74-4-14; and the general provisions of the Environmental Improvement Act, NMSA 1978, Sections 74-1-1 through 74-1-16.  
[20.5.6.3 NMAC - Rp, 20.5.6.3 NMAC, 04/04/2008]

**20.5.6.4 DURATION:** Permanent.  
[20.5.6.4 NMAC - Rp, 20.5.6.4 NMAC,

04/04/2008]

**20.5.6.5 EFFECTIVE DATE:** April 4, 2008, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.6.5 NMAC - Rp, 20.5.6.5, 04/04/2008]

**20.5.6.6 OBJECTIVE:** The purpose of 20.5.6 NMAC is to ensure that releases from storage tanks are detected early to minimize potential harmful resulting effects, and to regulate storage tank systems in order to protect the public health, safety and welfare and the environment of the state.

[20.5.6.6 NMAC - Rp, 20.5.6.6 NMAC, 04/04/2008]

**20.5.6.7 DEFINITIONS:** The definitions in 20.5.1 NMAC apply to this part.

[20.5.6.7 NMAC - Rp, 20 NMAC 5.6.7 NMAC, 04/04/2008]

**20.5.6.8 REQUIREMENTS AND DEADLINES FOR RELEASE DETECTION FOR AST SYSTEMS:**

A. Owners and operators of new and existing AST systems shall provide a method, or combination of methods, of release detection that:

(1) can detect a release from any portion of the tank, connected piping and ancillary equipment that routinely contains a regulated substance; and

(2) is installed, calibrated, operated and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for proper operating condition; and

(3) meets the applicable performance requirements in 20.5.6 NMAC following the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department; or

(4) meets all the requirements for visual inspections in 20 of 20.5.6 NMAC.

B. When a release detection method operated in accordance with the performance standards in 20.5.6 NMAC indicates a release may have occurred, owners and operators shall notify the department in accordance with 20.5.2.7 and 20.5.12 NMAC.

C. New AST systems shall meet the release detection requirements of 20.5.6 NMAC when installed.

D. For existing AST systems installed before July 1, 1991, or where the installation date is unknown, owners and operators shall perform either a tightness test, or an internal inspection on the AST system by August 15, 2004. The tight-

ness test or internal inspection shall be conducted in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, and shall be approved in advance by the department. If a tightness test or internal inspection shows that a system has a suspected release, then owners and operators shall comply with the requirements of 20.5.7 NMAC. The following may be used to comply with the above testing requirements:

(1) American petroleum institute specification 12F: "*shop-welded tanks for storage of production liquids;*"

(2) American petroleum institute standard 650, "*welded steel tanks for oil storage;*" with applicable addenda;

(3) American petroleum institute standard 653, "*tank inspection, repair, alteration, and reconstruction;*"

(4) petroleum equipment institute RP200, "*recommended practices for installation of aboveground storage systems for motor vehicle fueling;*"

(5) underwriter's laboratories standards: UL 142, "*steel aboveground tanks for flammable and combustible liquids;*" or

(6) steel tank institute standard SP001, "*standard for inspection of in-service shop fabricated aboveground tanks for storage of combustible and flammable liquids.*"

E. Owners and operators of AST systems installed between July 1, 1991 and August 14, 2003 shall comply with the release detection requirements in 20.5.6 NMAC by August 15, 2004.

F. Owners and operators of AST systems installed on or after August 15, 2003 shall comply with the release detection requirements in 20.5.6 NMAC when installed.

G. Owners and operators shall complete the closure procedures in 20.5.8 NMAC for any existing AST system to which an owner and operator cannot apply a method of release detection that complies with the requirements of 20.5.6 NMAC by the deadlines in 20.5.6 NMAC.  
[20.5.6.8 NMAC - Rp, 20.5.6.600 NMAC, 04/04/2008]

**20.5.6.9 REQUIREMENTS FOR UST SYSTEMS:**

A. Owners and operators of new and existing UST systems shall provide a method or combination of methods, of release detection that:

(1) can detect a release from any portion of the tank, connected piping and ancillary equipment that routinely contains a regulated substance;

(2) is installed, calibrated, operat-



ed and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for proper operating condition; and

(3) meets the applicable performance requirements in 20.5.6 NMAC with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer, following the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department; in addition, methods for USTs used after December 22, 1990, except for methods permanently installed prior to that date, shall be capable of detecting the leak rate or quantity specified for that method in 20.5.6 NMAC with a probability of detection of 0.95 and a probability of false alarm of 0.05.

B. When a release detection method operated in accordance with the performance standards in 20.5.6 NMAC indicates a release may have occurred, owners and operators shall notify the department in accordance with 20.5.2.12 and 20.5.7 NMAC.

C. Owners and operators of all UST systems shall comply with the release detection requirements of this section.

D. Owners and operators of underground storage tank systems shall provide release detection for tanks by monitoring monthly for releases using one of the methods listed in 20.5.6 NMAC with the following exceptions:

(1) UST systems that meet the performance standards in 20.5.4 NMAC may use the monthly inventory control requirements in 20.5.6 NMAC, in conjunction with tank tightness testing conducted in accordance with this part at least every five years until 10 years after the tank is installed or upgraded under 20.5.4 NMAC;

(2) UST systems that do not meet the performance standards in 20.5.4 NMAC shall upgrade under 20.5.4 NMAC or permanently close under 20.5.8 NMAC;

(3) USTs with capacity of up to 2,000 gallons may use manual tank gauging conducted in accordance with 20.5.6 NMAC;

(4) owners and operators of UST systems installed or replaced as required by Subsection A of 20.5.4.15 NMAC after April 4, 2008 shall monitor the UST system monthly for releases in accordance with 20.5.6.19 NMAC and Subsection D of 20.5.6.23 NMAC.

[20.5.6.9 NMAC - Rp, 20.5.6.601 NMAC, 04/04/2008]

#### **20.5.6.10 REQUIREMENTS FOR AST SYSTEMS:**

A. Owners and operators of new and existing AST systems shall provide a method or combination of methods of release detection that follows the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department, and by monitoring monthly for releases using one of the applicable methods listed in 20.5.6 NMAC.

B. Owners and operators shall perform a tightness test or internal inspection of ASTs 10 years after installation, unless the AST is in secondary containment that complies with the requirements of 20.5.4 NMAC. The following may be used as guidance for compliance with this requirement:

(1) American petroleum institute standard 653, "*tank inspection, repair, alteration, and reconstruction*;" or

(2) steel tank institute standard SP001, "*standard for inspection of in-service shop fabricated aboveground tanks for storage of combustible and flammable liquids*."

C. Owners and operators of an aboveground storage tank who perform a tank tightness test shall ensure that the test method is capable of detecting a 0.2 gallon per hour leak rate from any portion of the AST that routinely contains regulated substances while accounting for the effects of thermal expansion or contraction of the regulated substance, vapor pockets, tank deformation and evaporation or condensation.

D. Owners and operators of AST systems shall provide the department with a report on all tank tightness testing, line tightness and leak detector functionality testing conducted on their petroleum storage tank systems that includes the following:

(1) name of the technician who performed the test;

(2) training and equivalent experience of the technician in the type of testing performed, including certification numbers and national association where certification was obtained or a detailed description of where and when the technician gained experience;

(3) brand name and model number of the testing equipment used during the test, the date the testing equipment was last calibrated and by whom;

(4) date of the test;

(5) duration of the test; and

(6) results of the test.

[20.5.6.10 NMAC - N, 04/04/2008]

#### **20.5.6.11 REQUIREMENTS FOR PIPING:** Owners and operators of petroleum storage tank systems shall pro-

vide release detection for piping that routinely contains regulated substances by following the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department, and by monitoring for releases in a manner specified below.

A. Owners and operators of piping that conveys regulated substances under pressure shall:

(1) equip pressurized piping with an automatic line leak detector in accordance with 20.5.6.23 NMAC; and

(2) conduct annual line tightness testing in accordance with 20.5.6.23 NMAC or conduct monthly monitoring in accordance with 20.5.6.23 NMAC, as applicable.

B. Piping that conveys regulated substances under suction shall either have a line tightness test conducted at least every three years in accordance with 20.5.6.23 NMAC or use a monthly monitoring method conducted in accordance with 20.5.6.23 NMAC. No release detection is required for suction piping that is designed and constructed to meet all of the following standards:

(1) the below-grade piping operates at less than atmospheric pressure;

(2) the below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;

(3) only one check valve is included in each suction line;

(4) the check valve is located directly below and as close as practical to the suction pump;

(5) a method is provided that allows compliance with Paragraphs (2) through (4) of Subsection B of this section to be readily determined.

C. Owners and operators of aboveground storage tank systems with underground piping that conveys regulated substances under suction shall either have a line tightness test conducted every 12 months and in accordance with Subsection B of 20.5.6.23 NMAC or conduct monthly monitoring in accordance with Subsection E of 20.5.6.23 NMAC.

D. Owners and operators of storage tank systems shall provide the department with a report on all line or piping tightness testing conducted on their petroleum storage tank systems that includes the following:

(1) name of the technician who performed the test;

(2) training and equivalent experience of the technician in the type of testing performed, including certification numbers and national association where certification was obtained or a detailed description of where and when the technician gained experience.

rience;

(3) brand name and model number of the testing equipment used during the test, date the testing equipment was last calibrated and by whom;

(4) date of the test;

(5) duration of the test; and

(6) results of the test.

E. Owners and operators shall provide release detection for piping by monitoring at least monthly for releases using one of the methods in 20.5.6.23 NMAC, except if using automatic line leaks detectors in compliance with Subsection A of 20.5.6.23 NMAC or line tightness testing in compliance with Subsection B of 20.5.6.23 NMAC.

[20.5.6.11 NMAC - Rp, 20.5.6.601 NMAC, 04/04/2008]

#### **20.5.6.12 REQUIREMENTS FOR HAZARDOUS SUBSTANCE UST SYSTEMS:**

A. Owners and operators of hazardous substance UST systems shall provide release detection at existing UST systems that meets the requirements for petroleum UST systems in 20.5.6.9 NMAC and 20.5.6.11 NMAC. Owners and operators shall install at hazardous substance UST systems one or more of the release detection requirements Subsection B of this section, and shall comply with the standards listed below as applicable.

B. Release detection at hazardous substance UST systems installed on or after December 22, 1993, shall meet the following requirements.

(1) Owners and operators shall design, construct and install secondary containment systems to:

(a) contain regulated substances released from the tank system until they are detected and removed;

(b) prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and

(c) be checked for evidence of a release monthly; the provisions of 40 CFR 265.193, containment and detection of releases, may be used to comply with Paragraph (1) of Subsection B of this section.

(2) Double-walled tanks shall be designed, constructed, and installed to:

(a) contain a release from any portion of the inner tank within the outer wall; and

(b) detect the failure of the inner wall.

(3) External liners (including vaults) shall be designed, constructed and installed to:

(a) contain 100 percent of the capacity of the largest tank within its boundary;

(b) prevent the interference of precipitation or groundwater intrusion with the ability to contain or detect a release of regulated substances; and

(c) surround the tank completely, thereby preventing lateral as well as vertical migration of regulated substances.

(4) Underground piping shall be equipped with secondary containment that satisfies the requirements of Paragraph (1) of Subsection B of this section (for example: trench liners, or jacketing of double-walled pipe). In addition, underground piping that conveys regulated substances under pressure shall be equipped with an automatic line leak detector in accordance with Subsection A of 20.5.6.24 NMAC.

[20.5.6.12 NMAC - Rp, 20.5.6.602 NMAC, 04/04/2008]

#### **20.5.6.13 INVENTORY CONTROL WITH TANK TIGHTNESS TESTING REQUIREMENTS FOR USTS:**

Owners and operators of underground storage tanks who use inventory control in conjunction with tank tightness testing as release detection shall meet the following requirements:

A. inventory control or another test of equivalent performance shall be conducted monthly to detect a release of at least one percent of flow-through plus 130 gallons on a monthly basis;

B. inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the UST are recorded each operating day;

C. the equipment used is capable of measuring the level of regulated substance over the full range of the UST's height to the nearest one-eighth of an inch;

D. the regulated substance inputs are reconciled with delivery receipts by measurement of the UST inventory volume before and after delivery;

E. deliveries are made through a drop tube that extends to within one foot of the UST bottom;

F. regulated substance dispensing is metered and recorded within the state standards for meter calibration or an accuracy of six cubic inches for every five gallons of regulated substance withdrawn;

G. the measurement of any water level in the bottom of the UST is made to the nearest one-eighth of an inch at least once a month;

H. practices described in the American petroleum institute publication RP1621, "bulk liquid stock control at retail outlets," may be used, where applicable, as guidance in meeting the requirements of 20.5.6.14 NMAC;

I. owners and operators shall meet all the requirements for tank tightness testing in 20.5.6.15 NMAC.

[20.5.6.13 NMAC - Rp, 20.5.6.603 NMAC, 04/04/2008]

#### **20.5.6.14 MANUAL TANK GAUGING REQUIREMENTS FOR USTS:**

Owners and operators of underground storage tanks who use manual tank gauging as release detection shall meet the following:

A. tank liquid level measurements are taken at the beginning and ending of a period of at least 36 hours during which no liquid is added to or removed from the tank;

B. level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the period;

C. the equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;

D. a leak is suspected and subject to the requirements of 20.5.7 NMAC if the variation between beginning and ending measurements exceeds any of the weekly or monthly standards as follows:

(1) underground storage tank with a nominal capacity of 550 gallons or less where the weekly standard for one test exceeds ten gallons, or the monthly standard for four tests exceeds five gallons;

(2) underground storage tank with a nominal capacity of 551 gallons through 1000 gallons where the weekly standard for one test exceeds thirteen gallons or the monthly standard for four tests exceeds seven gallons;

(3) underground storage tank with a nominal capacity of 1001 gallons through 2000 gallons where the weekly standard for one test exceeds 26 gallons or the monthly standard for four tests exceeds thirteen gallons.

E. manual tank gauging may:

(1) be used as the sole method of release detection for regulated underground tanks of 550 gallons or less nominal capacity; for these tanks, owners and operators need not use tank tightness testing as part of release detection;

(2) be used in place of manual inventory control when it is used with tank tightness testing in compliance with 20.5.6.13 and 20.5.6.15 NMAC for tanks of 551 to 2,000 gallons; and

(3) not be used to meet the requirements of this part for tanks of greater than 2,000 gallons nominal capacity.

[20.5.6.14 NMAC - Rp, 20.5.6.603 NMAC, 04/04/2008]

#### **20.5.6.15 TANK TIGHTNESS TESTING FOR USTS:**

A. Tank tightness testing (or another test of equivalent performance)

shall be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table. Owners and operators may not use tank tightness testing alone as a method of release detection.

B. Owners and operators of UST systems shall provide the department with a copy of the report for all tank tightness testing conducted on their petroleum storage systems and the report shall include the following:

- (1) name of the technician who performed the test;
- (2) training and equivalent experience of the technician in the type of testing performed, including certification numbers and national association where certification was obtained or a detailed description of where and when the technician gained experience;
- (3) brand name and model number of testing equipment used during the test, date the testing equipment was last calibrated and by whom;
- (4) date of the test;
- (5) duration of the test;
- (6) results of the test.

[20.5.6.15 NMAC - Rp, 20.5.6.603 NMAC, 04/04/2008]

**20.5.6.16 AUTOMATIC TANK GAUGING REQUIREMENTS FOR USTS:** Owners and operators of underground storage tanks may use automatic tank gauging as a method of release detection if the automatic tank gauging system:

A. tests for the loss of product and can detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains regulated substances; and

B. conducts inventory control in accordance with 20.5.6.13 NMAC or another test of equivalent performance.

[20.5.6.16 NMAC - Rp, 20.5.6.603 NMAC, 04/04/2008]

**20.5.6.17 VAPOR MONITORING REQUIREMENTS FOR USTS:**

Owners and operators of underground storage tanks may use vapor monitoring or testing as a method of release detection as long as the testing or monitoring for vapors within the soil gas of the excavation zone meets all of the following requirements:

A. the materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area;

B. the stored regulated

substance, or a tracer compound placed in the UST system, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the UST;

C. the measurement of vapors by the monitoring device is not rendered inoperative by the groundwater, rainfall, or soil moisture or other known interferences so that a release could go undetected for more than 30 days;

D. the level of background contamination in the excavation zone will not interfere with the method used to detect releases from the UST;

E. the vapor monitors are designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the UST system, a component or components of that substance, or a tracer compound placed in the UST system;

F. in the UST excavation zone, the site is assessed to ensure compliance with the requirements in Subsections A through D of this section and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains a regulated substance;

G. monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

[20.5.6.17 NMAC - Rp, 20.5.6.603 NMAC, 04/04/2008]

**20.5.6.18 GROUNDWATER MONITORING REQUIREMENTS FOR USTS:**

Owners and operators of underground storage tanks may use groundwater monitoring as a method of release detection as long as the testing or monitoring for liquids on the groundwater meets all of the following requirements:

A. the regulated substance stored is immiscible in water and has a specific gravity of less than one;

B. groundwater is never more than 20 feet from the ground surface and the hydraulic conductivity of the soil between the UST system and the monitoring wells or devices is not less than 0.01 centimeters per second (e.g., the soil should consist of gravels, coarse to medium sands, coarse silts or other permeable materials);

C. the slotted portion of the monitoring well casing shall be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the water table into the well under both high and low groundwater conditions;

D. monitoring wells shall be sealed from the ground surface to the top

of the filter pack;

E. monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible;

F. the continuous monitoring devices or manual methods used can detect the presence of at least one-eighth of an inch of non-aqueous phase liquid on top of the groundwater in the monitoring wells;

G. within and immediately below the UST system excavation zone, the site is assessed to ensure compliance with the requirements in Subsections A through E of this section and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains product;

H. monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

[20.5.6.18 NMAC - Rp, 20.5.6.603 NMAC, 04/04/2008]

#### **20.5.6.19 INTERSTITIAL MONITORING REQUIREMENTS**

**FOR USTS:** Owners and operators of underground storage tanks may use interstitial monitoring between the UST and a secondary barrier immediately around and underneath the tank, but only if the system is designed, constructed and installed to detect a leak from any portion of the tank system that routinely contains any regulated substance and also meets one of the following requirements:

A. for double-walled UST systems, the sampling or testing method can detect a release through the inner wall in any portion of the tank that routinely contains a regulated substance, and the sampling or testing method complies with the requirements of the current edition of an industry code or standard approved in advance by the department; steel tank institute standard F841, "*standard for dual wall underground storage tanks*" may be used to meet this requirement;

B. for UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a release between the UST system and the secondary barrier; the monitoring system shall meet all of the following requirements:

(1) the secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least 1 x 10 (-6) centimeters per second for the regulated substance stored) to direct a release to the monitoring point and permit its detection;

(2) the barrier is compatible with the regulated substance stored so that a release from the UST system will not cause

a deterioration of the barrier allowing a release to pass through undetected;

(3) for cathodically protected USTs, the secondary barrier shall be installed so that it does not interfere with the proper operation of the cathodic protection system;

(4) the groundwater, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than 30 days;

(5) the site is assessed to ensure that the secondary barrier is always above the groundwater and not in a 25-year flood plain, unless the barrier and monitoring designs are for use under such conditions;

(6) monitoring wells are clearly marked and secured to avoid unauthorized access and tampering;

C. for USTs with an internally fitted liner, an automated device can detect a release between the inner wall of the UST and the liner, and the liner is compatible with the regulated substance stored. [20.5.6.19 NMAC - Rp, 20.5.6.603 NMAC, 04/04/2008]

#### 20.5.6.20 VISUAL INSPECTION REQUIREMENTS FOR ASTS:

Owners and operators of ASTs may use visual inspection as a method of release detection if:

A. all portions of the ASTs, including the AST bottoms, are completely visible, readily accessible, not in contact with the ground or soil and are inspected monthly;

B. owners and operators maintain a written log of the visual inspections for each AST conducted monthly to include the following:

(1) the date and time the inspection was conducted;

(2) name and signature of the person who conducted the inspection;

(3) comments on the condition of each AST;

(4) the results of each inspection; and

(5) the volume of water found in the AST and if the water has been removed from the tank;

C. owners and operators keep visual inspection logs available at the facility.

[20.5.6.20 NMAC - N, 04/04/2008]

#### 20.5.6.21 INTERSTITIAL MONITORING REQUIREMENTS FOR ASTS:

Owners and operators of ASTs may use interstitial monitoring between the AST and a secondary barrier immediately around and underneath the tank, but only if the tank system meets all of the following requirements:

A. the ASTs are manufac-

ured or upgraded to include a double-walled bottom in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory which can be remotely monitored, or the ASTs are installed inside secondary containment with an impervious barrier beneath the ASTs meeting the requirements of 20.5.4.27 NMAC and the interstice between them can be remotely monitored;

B. the monitoring system between the AST and the secondary barrier shall meet all of the following requirements:

(1) for cathodically protected ASTs, the secondary barrier shall be installed so that it does not interfere with the proper operation of the cathodic protection system;

(2) the groundwater, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than 30 days;

(3) the site is assessed to ensure that the secondary barrier is always above the groundwater and not in a 25-year flood plain, unless the barrier and monitoring designs are for use under such conditions;

(4) the locations and ports of monitoring wells are clearly marked and secured to avoid unauthorized access and tampering;

C. owners and operators conduct an annual test of the operation of the interstitial sensor in accordance with the manufacturer's requirements or in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory.

[20.5.6.21 NMAC - N, 04/04/2008]

#### 20.5.6.22 AUTOMATIC TANK GAUGING REQUIREMENTS FOR ASTS:

Owners and operators of ASTs may use automatic tank gauging as a method of release detection if the automatic tank gauging system:

A. tests for the loss of product and can detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains regulated substances; and

B. can conduct inventory control or another test of equivalent performance in accordance with the following:

(1) inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the AST are recorded each operating day;

(2) the equipment used is capable of measuring the level of regulated substance over the full range of the AST's height to the nearest one-eighth of an inch;

(3) the regulated substance inputs are reconciled with delivery receipts by

measurement of the AST inventory volume before and after delivery;

(4) deliveries are made through a drop tube that extends to within one foot of the AST bottom, unless the AST is bottom loaded;

(5) regulated substance dispensing is metered and recorded within the state standards for meter calibration or an accuracy of six cubic inches for every five gallons of regulated substance withdrawn;

(6) the measurement of any water level in the bottom of the AST is made to the nearest one-eighth of an inch at least once a month;

(7) practices described in the American petroleum institute publication RP1621, "bulk liquid stock control at retail outlets," may be used, where applicable, as guidance in meeting the requirements of this section.

[20.5.6.22 NMAC - N, 04/04/2008]

#### 20.5.6.23 METHODS OF RELEASE DETECTION FOR PIPING:

Each method of release detection for piping used to meet the requirements of 20.5.6 NMAC shall comply with the equipment manufacturer's recommendations, shall be appropriate for the type and length of piping, and shall comply with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall conduct release detection in accordance with the following requirements:

A. automatic line leak detectors; methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping may be used only if they detect leaks of three gallons per hour at 10 pounds per square inch line pressure within one hour; owners and operators shall conduct an annual test of the operation of the leak detector in accordance with the manufacturer's requirements;

B. line tightness testing; a periodic test of piping may be conducted only if it can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure;

C. applicable tank methods; any of the methods in 20.5.6.16 NMAC through 20.5.6.19 NMAC may be used if they are designed to detect a release from any portion of underground piping that routinely contains regulated substances;

D. interstitial monitoring; owners and operators may use interstitial monitoring if they ensure that interstitial monitoring for double-walled piping, whether under pressure or under suction, is approved in advance by the department, and that the interstitial monitoring:

(1) complies with 20.5.6.19 NMAC for USTs or 20.5.6.21 NMAC for ASTs; and

(2) shall automatically shut off the turbine if the sensors used for interstitial monitoring detect regulated substances or water within the interstice or in the containment sumps associated with the piping;

(3) for ASTs and USTs in operation on April 4, 2008, owners and operator shall have until July 1, 2011 to meet the requirements of Paragraph (3) of this subsection; owners and operators that install tank systems after April 4, 2008 shall comply with all requirements of this subsection;

E. for above ground storage tanks, visual inspection may be used for piping if all portions of the piping are completely visible, readily accessible, not in contact with the ground or soil, and are inspected monthly; owners and operators shall keep a log of visual inspection of piping that meets the requirements of Subsections B and C of 20.5.6.20 NMAC;

F. the following may be used to comply with the requirements of this section:

(1) petroleum equipment institute publication RP100, "*recommended practices for installation of underground liquid storage systems*;"

(2) petroleum equipment institute RP200, "*recommended practices for installation of aboveground storage systems for motor vehicle fueling*;"

(3) American petroleum institute publication RP 1615, "*installation of underground petroleum storage systems*;"

(4) American petroleum institute 570, "*pipe inspection code: inspection repair, alteration, and rerating of in-service piping systems*;" and

(5) American society of mechanical engineering standard B31.3, "*process piping*." [20.5.6.23 NMAC - Rp, 20.5.6.604 NMAC, 04/04/2008]

**20.5.6.24 ALTERNATE METHODS:**

A. If owners and operators want to install another method of release detection equipment for tanks or piping required in 20.5.6 NMAC in accordance with the current edition of an industry code or standard, owners and operators shall apply in writing to the department, shall provide supporting documentation, and shall not begin the installation unless and until the department approves the request in writing. at a minimum, the request for an alternate method shall contain the following:

- (1) date the form is completed;
- (2) facility name, number, address (with county) and telephone number;

(3) owner name, number, address and telephone number;

(4) citation to regulation for which alternate method or material (such as type of piping) is requested;

(5) brief description of the proposed alternate method or material; and

(6) justification of proposed alternate method or material, including citation to the standard or code supporting its use and demonstration of its equivalent protection of public health, safety and welfare and the environment.

B. Another type of release detection method, or combination of methods, may be used if approved pursuant to this section, and if, for either ASTs or USTs, it can detect a 0.2 gallon per hour leak rate monthly or a release of 150 gallons within a month from a tank with a probability of detection of 0.95 and a probability of false alarm of 0.05. Owners and operators may propose inventory control as a method of leak detection for ASTs, which will only be approved on a case-by-case basis by the department in accordance with Subsections B and C of this section.

C. The department may approve another method if owners and operators can demonstrate that the method can detect a release as effectively as any of the applicable methods allowed in 20.5.6 NMAC. In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator shall comply with any conditions imposed by the department on its use to ensure the protection of public health, safety and welfare and the environment. The department shall not grant the request unless owners and operators demonstrate that the request will provide equivalent protection of public health, safety and welfare and the environment as the methods provided in this section.

D. In addition to the requirements in Subsections B and C of this section, any request for an alternate method of release detection for hazardous substance UST systems, shall also include information on effective corrective action technologies, health risks and chemical and physical properties of the stored substance, and the characteristics of the UST site. [20.5.6.24 NMAC - Rp, 20.5.6.605 NMAC, 04/04/2008] [The bureau provides an optional form that may be used to request approval of an alternate method.]

**20.5.6.25 RELEASE DETECTION RECORDKEEPING:**

A. All storage tank system owners and operators shall maintain records

in accordance with 20.5.5 NMAC demonstrating compliance with all applicable requirements of this part. If the owner and operator of a storage tank are separate persons, only one person is required to maintain the records required by this section; however, both parties are liable in the event of noncompliance.

B. These records shall meet all of the following requirements:

(1) all written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, shall be maintained for five years, or for another reasonable period of time approved in advance of installation by the department, from the date of installation;

(2) the results of any sampling, testing, or monitoring shall be maintained for at least one year, or for another reasonable period of time approved in advance of installation by the department, except that the results of tank tightness testing conducted in accordance with 20.5.6.10 NMAC shall be retained until the next test is conducted;

(3) written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site shall be maintained for at least one year after the servicing work is completed, or for another reasonable time period approved in advance of installation by the department; any schedules of required calibration and maintenance provided by the release detection equipment manufacturer shall be retained for five years from the date of installation. [20.5.6.25 NMAC - Rp 20.5.6.606 NMAC, 04/04/2008]

**NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD**

**TITLE 20 ENVIRONMENTAL PROTECTION  
CHAPTER 5 PETROLEUM STORAGE TANKS  
PART 8 OUT-OF-SERVICE SYSTEMS AND CLOSURE**

**20.5.8.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board. [20.5.8.1 NMAC - Rp, 20.5.8.1 NMAC, 04/04/2008]

**20.5.8.2 SCOPE:** This part applies to owners and operators of storage tanks as provided in 20.5.1 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirements of

this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance.

[20.5.8.2 NMAC - Rp, 20.5.8.2 NMAC, 04/04/2008]

**20.5.8.3 STATUTORY**

**AUTHORITY:** This part is promulgated pursuant to the provisions of the Hazardous Waste Act, NMSA 1978, Sections 74-4-1 through 74-4-14, and the general provisions of the Environmental Improvement Act, NMSA 1978, Sections 74-1-1 through 74-1-16.

[20.5.8.3 NMAC - Rp, 20.5.8.3 NMAC, 04/04/2008]

**20.5.8.4 DURATION:**

Permanent.

[20.5.8.4 NMAC - Rp, 20.5.8.4 NMAC, 04/04/2008]

**20.5.8.5 EFFECTIVE DATE:**

April 4, 2008, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.8.5 NMAC - Rp, 20.5.8.5 NMAC, 04/04/2008]

**20.5.8.6 OBJECTIVE:**

The purpose of 20.5.8 NMAC is to regulate storage tank systems to protect the public health, safety and welfare and the environment of the state, and to provide safe and effective closure requirements for out-of-service systems.

[20.5.8.6 NMAC - Rp, 20.5.8.6 NMAC, 04/04/2008]

**20.5.8.7 DEFINITIONS:**

The definitions in 20.5.1 NMAC apply to this part.

[20.5.8.7 NMAC - Rp, 20.5.8.7 NMAC, 04/04/2008]

**20.5.8.8 REQUIRED NOTIFICATION PRIOR TO TEMPORARY OR PERMANENT CLOSURE, RETURN TO SERVICE, REMOVAL, OR CHANGE IN SERVICE:**

A. Notice required.

(1) At least 30 days before beginning either permanent closure, temporary closure, return to service, change-in-service, or removal of a tank pursuant to this part, or within another reasonable time period if approved in advance by the department, owners and operators shall notify the department orally or in writing of their intent to remove, close or make the return to or change-in-service, unless such action is in response to corrective action.

(2) Additionally, owners and operators shall notify the department orally or in writing at least 30 days prior to placing any regulated substance into a tank that has been in temporary or permanent closure, or

before a return to service.

B. Opportunity for inspector to be present. To ensure that a department inspector has an opportunity to be present during the steps in procedures which are important to the prevention of releases, owners, operators, and certified tank installers shall give the department notice of the dates on which critical junctures in the removal, change in service, return to service and closure of the storage tank system are to take place. This notice shall be given at least 24 hours before any critical juncture begins, and shall be either oral or written. The inspector may require that critical junctures be performed from Monday through Friday during regular business hours.

C. Critical junctures. For removal, change in service, return to service, or storage tank system closure, the term "critical junctures" means:

(1) completion of the excavation of a UST or piping;

(2) cleaning and devaporizing of a tank;

(3) the actual removal of a UST or its associated piping from the ground, or the filling of a UST in place;

(4) actual permanent closure of an AST and its associated piping from any location where it has been in use; and

(5) assessment of a tank site for releases.

D. At a minimum, the notice for removal, change in service, return to service or temporary or permanent closure of a storage tank system shall contain the following information:

(1) date the form is completed;

(2) facility name, number, address (with county), and telephone number;

(3) owner name, number, and address, and telephone number;

(4) description of type of change of status (change in service, return to service or closure);

(5) expected date of change in service, return to service or closure; and

(6) signature of owner, operator or an authorized representative.

E. In addition to the written notices described in this section, owners, operators and certified tank installers shall give oral notice at least 24 hours in advance of the commencement of the procedure. In the oral notice, owners, operators and certified tank installers shall describe any changes to the 30-day written notice required in Subsection D of this section, such as different equipment or installation methods.

F. If owners, operators and certified tank installers are separate persons, only one person is required to comply with the notice requirements of this section; however, all parties are liable in the event of

noncompliance.

[The bureau has optional forms for use in providing notice required in this section.]

[20.5.8.8 NMAC - Rp, 20.5.8.799 NMAC, 04/04/2008]

**20.5.8.9 TEMPORARY CLOSURE AND RETURN TO SERVICE:**

A. When a storage tank system is temporarily closed, owners and operators shall continue operation and maintenance of corrosion protection in accordance with 20.5.5 NMAC, and any release detection in accordance with 20.5.6 NMAC. Owners and operators shall comply with 20.5.7, 20.5.12 and 20.5.13 NMAC if a release is suspected or confirmed. However, release detection is not required as long as the storage tank system is empty. For purposes of this section, storage tank system is empty when all regulated substances have been removed using commonly employed practices so that no more than two and a half centimeters (one inch) of residue, or three-tenths percent by weight of the total capacity of the storage tank system, remain in the system.

B. When a storage tank system is temporarily closed for three months or more, owners and operators shall also comply with all of the following requirements:

(1) leave vent lines open and functioning;

(2) cap and secure all other lines, pumps, manways, and ancillary equipment; and

(3) for ASTs, disconnect and cap all associated piping from the AST as soon as the tank is emptied in accordance with Subsection A of this section.

C. When a UST system is temporarily closed for more than 12 months, owners and operators shall permanently close the UST system if it does not meet either performance standards for new UST systems or the UST upgrade requirements in 20.5.4 NMAC, except that the spill and overfill equipment requirements do not have to be met. When an AST system is temporarily closed for more than 12 months, owners and operators shall permanently close the AST system if it does not meet the performance standards for new AST systems in 20.5.4 NMAC except that the spill and overfill equipment requirements do not have to be met. Owners and operators shall permanently close any substandard storage tank systems at the end of this 12-month period in accordance with 20.5.8 NMAC, unless the department provides an extension of the 12-month temporary closure period. Owners and operators shall complete a site assessment in accordance with 20.5.8 NMAC before applying for such an extension.

D. When a field-erected

AST system has been temporarily closed for three to 12 months, and meets the performance standards for new AST systems in 20.5.4 NMAC, prior to placing any regulated substance in the AST system, owners and operators shall:

(1) perform an internal inspection on the AST in accordance with the current edition of an industry code or standard approved in advance in writing by the department;

(2) perform a tightness test on all piping in accordance with the current edition of an industry code or standard approved in advance in writing by the department; and

(3) perform a functionality test on any automatic line leak detectors in accordance with the manufacturer's recommendations.

E. After temporary or permanent closure and before returning any part of a storage tank system to service, owners and operators shall demonstrate the integrity of the entire tank system in a manner approved in advance by the department. American petroleum institute publication RP 1615, "*installation of underground petroleum storage systems*" may be used to comply with this requirement.

[20.5.8.9 NMAC - Rp, 20.5.8.800 NMAC, 04/04/2008]

#### **20.5.8.10 PERMANENT CLOSURE:**

A. To permanently close a tank, owners and operators shall empty and clean it by removing all liquids, accumulated sludges, and vapors. Owners and operators shall properly dispose of any liquids and sludge removed from a storage tank.

(1) Owners and operators shall either remove from the ground all USTs closed permanently or fill them with an inert solid material.

(2) Owners and operators shall perform the following closure operations on ASTs:

(a) ASTs being closed in place shall be rendered vapor free; owners and operators shall make provisions for adequate ventilation to ensure that the AST remains vapor free;

(b) vent lines shall remain open and shall be maintained in accordance with the current edition of a standard or code of practice developed by a nationally recognized association or independent testing laboratory, or manufacturer's recommendations;

(c) all access openings shall be secured, normally with spacers, to assist ventilation;

(d) ASTs shall be secured against tampering and flooding;

(e) the name of the product last

stored, the date of permanent closure and "PERMANENTLY CLOSED" shall be stenciled in a readily visible location on each AST;

(f) piping shall be removed or closed in place; if closed in place, piping shall be disconnected from ASTs, rendered vapor free, and filled with inert material, capped or blind flanged; owners and operators seeking to close piping in place shall propose a closure plan for the piping in writing to the department at least 30 days prior to closure; the department may approve the plan on a case-by-case basis, after considering the extent and depth of piping, the proximity of the piping to buildings, the extent of pavement at the facility, and other factors raised by owners and operators; if the department does not approve a closure plan, owners and operators shall remove the piping; and

(g) owners and operators shall dismantle or remove ASTs and secondary containment to the extent needed to conduct the site assessment required in 20.5.8 NMAC.

(3) For mobile ASTs, owners and operators shall perform all of the closure requirements in Paragraph (2) of this subsection, except they need not perform the requirements of Subparagraph (a), (e) or (f) of Paragraph (2) of this subsection. Owners and operators shall remove or cap piping when permanently closing a mobile AST. Owners and operators shall perform a site assessment that complies with the requirements of 20.5.8 NMAC after permanent closure of any permanently installed mobile tank.

B. The current edition of the following cleaning and closure procedures may be used to comply with this section:

(1) American petroleum institute publication RP 1604, "*closure of underground petroleum storage tanks*;"

(2) American petroleum institute standard 2015, "*requirements for safe entry and cleaning of petroleum storage tanks*;"

(3) American petroleum institute publication RP 2016, "*guidelines and procedures for entering and cleaning petroleum storage tanks*;"

(4) American petroleum institute publication 2202, "*dismantling and disposing of steel from aboveground leaded gasoline storage tanks*;"

(5) American petroleum institute publication RP 1631, "*interior lining and periodic inspections of underground storage tanks*," may be used as guidance for compliance with this section; or

(6) the national institute for occupational safety and health "*criteria for a recommended standard: working in confined space*," may be used as guidance for

conducting safe closure procedures at some hazardous substance tanks.

C. Owners and operators shall perform an assessment meeting the requirements of 20.5.8.12 NMAC after notifying the department but before completion of permanent closure.

D. Owners and operators that have installed any monitoring wells as release detection pursuant to 20.5.6 NMAC shall properly close the wells in a manner approved by the department as part of permanent closure activities.

[20.5.8.10 NMAC - Rp, 20.5.8.801 NMAC, 04/04/2008]

#### **20.5.8.11 CHANGES-IN-SERVICE:**

A. Continued use of a storage tank system to store a non-regulated substance is a change-in-service.

B. Owners and operators shall notify the department in compliance with 20.5.8.8 NMAC of any change in service, and any change in location of ASTs that are operational and registered pursuant to 20.5.2 NMAC.

C. Before a change-in-service, owners and operators shall empty and clean the tank by removing all liquid and accumulated sludge, and shall properly dispose of any liquids and sludge removed from a storage tank. Owners and operators shall also conduct a site assessment meeting the requirements of 20.5.8 NMAC. The current edition of the following cleaning and closure procedures may be used to comply with the requirements of this section:

(1) American petroleum institute publication RP 1604, "*closure of underground petroleum storage tanks*;"

(2) American petroleum institute standard 2015, "*requirements for safe entry and cleaning of petroleum storage tanks*;"

(3) American petroleum institute publication RP 2016, "*guidelines and procedures for entering and cleaning petroleum storage tanks*;"

(4) American petroleum institute publication 2202, "*dismantling and disposing of steel from aboveground leaded gasoline storage tanks*;"

(5) American petroleum institute publication RP 1631, "*interior lining and periodic inspections of underground storage tanks*," may be used as guidance for compliance with this section; or

(6) the national institute for occupational safety and health "*criteria for a recommended standard: working in confined space*," may be used as guidance for conducting safe closure procedures at some hazardous substance tanks.

[20.5.8.11 NMAC - Rp, 20.5.8.801 NMAC, 04/04/2008]

**20.5.8.12 ASSESSING THE SITE AT CLOSURE OR CHANGE-IN-SERVICE:**

A. Before permanent closure or a change-in-service is completed, owners and operators shall measure for the presence of a release where contamination is most likely to be present at the storage tank site.

(1) In selecting sample types, sample locations, and measurement methods, the bureau shall consider the method of closure, the nature of the stored regulated substance, the type of backfill for any USTs, the depth to groundwater, and other factors appropriate for identifying the presence of a release. Examples of sample locations may include but are not limited to piping junctions, under dispensers and under storage tanks.

(2) A bureau inspector may waive the requirement for soil sampling when an AST is closed or may require alternate tests for the presence of a release, based on site specific conditions that demonstrate equivalent environmental protection. For example, at a site where an AST has been operated for less than 10 years with impervious secondary containment, the inspector may waive soil sampling as the secondary containment would have effectively prevented any release outside the containment. The bureau may require soil sampling or a site assessment at a later date if site-specific circumstances indicate that a release may have occurred.

(3) The requirements of this section are satisfied if one of the external release detection methods allowed in 20.5.6.17 and 20.5.6.18 NMAC is operating in accordance with the requirements in 20.5.6 NMAC at the time of closure, and indicates no release has occurred.

B. If contaminated soils, contaminated groundwater, non-aqueous phase liquid or vapor is discovered as a result of activities required by this section, or by any other manner, owners and operators shall notify the department in accordance with 20.5.7 NMAC and begin corrective action in accordance with 20.5.12 and 20.5.13 NMAC.

[20.5.8.12 NMAC - Rp, 20.5.8.802 NMAC, 04/04/2008]

**20.5.8.13 APPLICABILITY TO PREVIOUSLY CLOSED STORAGE TANK SYSTEMS:**

A. When directed by the department, owners and operators of UST systems permanently closed before December 22, 1988, shall assess the excavation zone and close the UST systems in accordance with this part if releases from the UST may, in the judgment of the department, pose a current or potential threat to public health, safety and welfare and the

environment.

B. When directed by the department, owners and operators of AST systems permanently closed before August 15, 2003, shall assess the entire AST system area and close the AST systems in accordance with this part if releases from the AST may, in the judgment of the department, pose a current or potential threat to public health, safety and welfare and the environment.

[20.5.8.13 NMAC - Rp, 20.5.8.803 NMAC, 04/04/2008]

**20.5.8.14 CLOSURE RECORDS:**

A. Owners and operators shall maintain records in accordance with 20.5.5 NMAC that demonstrate compliance with all closure requirements of this part.

B. Owners and operators shall ensure that the results of the assessment required in 20.5.8.12 NMAC are maintained for at least three years after completion of permanent closure or change-in-service in one of the following ways:

(1) by the owners and operators who took the storage tank system out of service;

(2) by the current owners and operators of the storage tank system site; or

(3) by mailing these records to the department if they cannot be maintained at the closed facility.

[20.5.8.14 NMAC - Rp, 20.5.8.804 NMAC, 04/04/2008]

**NEW MEXICO  
ENVIRONMENTAL  
IMPROVEMENT BOARD**

**TITLE 20 ENVIRONMENTAL PROTECTION  
CHAPTER 5 PETROLEUM STORAGE TANKS  
PART 14 CERTIFICATION OF TANK INSTALLERS**

**20.5.14.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.

[20.5.14.1 NMAC - Rp, 20.5.14.1 NMAC, 04/04/2008]

**20.5.14.2 SCOPE:** This part applies to persons installing, replacing, repairing, modifying or removing storage tank systems.

[20.5.14.2 NMAC - Rp, 20.5.14.2 NMAC, 04/04/2008]

**20.5.14.3 STATUTORY AUTHORITY:** This part is promulgated pursuant to the provisions of the Hazardous Waste Act, NMSA 1978, Sections 74-4-1 through 74-4-14, and the general provisions

of the Environmental Improvement Act, NMSA 1978, Sections 74-1-1 through 74-1-16.

[20.5.14.3 NMAC - Rp, 20.5.14.3 NMAC, 04/04/2008]

**20.5.14.4 DURATION:** Permanent.

[20.5.14.4 NMAC - Rp, 20.5.14.4 NMAC, 04/04/2008]

**20.5.14.5 EFFECTIVE DATE:** April 4, 2008, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.14.5 NMAC - Rp, 20.5.14.5 NMAC, 04/04/2008]

**20.5.14.6 OBJECTIVE:** The purpose of this part is to provide for the regulation of persons installing, replacing, repairing, modifying and removing storage tank systems that contain regulated substances in order to assure that storage tank systems are being installed, replaced, repaired, modified and removed in a manner which shall not encourage or facilitate leaking, and which shall protect the public health, safety and welfare and the environment of the state.

[20.5.14.6 NMAC - Rp, 20.5.14.6 NMAC, 04/04/2008]

**20.5.14.7 DEFINITIONS:** The definitions in 20.5.1 NMAC apply to this part.

[20.5.14.7 NMAC - Rp, 20.5.14.7 NMAC, 04/04/2008]

**20.5.14.8 GENERAL REQUIREMENTS FOR UST SYSTEMS:**

A. Beginning September 16, 1989, no person may install, replace, repair or modify UST systems in this state unless the person is, or employs, an individual who has been certified by the department to perform that work on UST systems. This provision requires certification of the individual who exercises supervisory control over the installation, replacement, repair or modification work, whether as an officer or employee of the UST system owner or operator performing its own installation, replacement, repair or modification, or as an officer or employee of the contracting company agreeing to perform the installation, replacement, repair or modification for the owner or operator. Exceptions to this requirement for a certified installer include:

(1) internal lining of a tank through the application of such materials as epoxy resins;

(2) installation, replacement, repair or modification of cathodic protection systems;



(3) any other installation, replacement, repair or modification specifically approved in writing by the department as an exception to the requirement for a certified tank installer;

(4) an applicant for UST installer certification pursuant to Subsection C of 20.5.14.13 NMAC;

(5) normal maintenance; and

(6) work on line or tank leak detection systems performed by technicians trained to work on line or tank leak detection systems by the manufacturer of the systems, or other equivalent training approved by the department.

B. Beginning September 16, 1989, no contracting company may install, replace, repair or modify an UST system in this state unless it has in its employ a certified installer who shall control and supervise a given installation, replacement, repair or modification and who shall be physically present on-site at the critical junctures in the installation, replacement, repair or modification.

C. The requirements of this part are not intended to prohibit the employment of apprentices or helpers so long as a certified installer exercises responsible supervisory control and is physically present on-site at the critical junctures in the installation, replacement, repair or modification.

D. The requirements of this part are in addition to and not in lieu of any other licensing and registration requirements imposed by law, including any applicable requirements of the Construction Industries Act, NMSA 1978, Sections 60-13-1 through 60-13-59.

E. The provisions of this part are not intended to relieve owners and operators of UST systems of their obligations and liabilities under applicable state and federal laws and regulations.

F. The department may deny an application or renewal and may suspend or revoke certification pursuant to the Parental Responsibility Act, NMSA 1978, Sections 40-5A-1 through 40-5A-13. [20.5.14.8 NMAC - Rp, 20.5.14.1401 NMAC, 04/04/2008]

#### **20.5.14.9 GENERAL REQUIREMENTS FOR AST SYSTEMS:**

A. Beginning August 15, 2004, no person may install, replace, repair or modify AST systems in this state unless the person is, or employs, an individual who has been certified by the department to perform that work on AST systems. This provision requires certification of the individual who exercises supervisory control over the installation, replacement, repair or modification work, whether as an officer or

employee of the AST system owner or operator performing its own installation, replacement, repairs or modification, or as an officer or employee of the contracting company agreeing to perform the installation, replacement, repair or modification for the owner or operator. Exceptions to this requirement for a certified installer include:

(1) internal lining of a tank through the application of such materials as epoxy resins;

(2) coating or lining of secondary containment for AST systems;

(3) installation, replacement, repair or modification of cathodic protection systems;

(4) any other installation, replacement, repair or modification specifically approved in writing by the department as an exception to the requirement for a certified tank installer;

(5) an applicant for AST installer certification pursuant to Subsection C of 20.5.14.13 NMAC;

(6) normal maintenance; and

(7) work on line or tank leak detection systems performed by technicians trained to work on line or tank leak detection systems by the manufacturer of the systems, or other equivalent training approved by the department.

B. Beginning August 15, 2004, no contracting company may install, replace, repair or modify an AST system in this state unless it has in its employ a certified installer who shall control and supervise a given installation, replacement, repair or modification and who shall be physically present on-site at the critical junctures in the installation, replacement, repair or modification.

C. The requirements of this part are not intended to prohibit the employment of apprentices or helpers so long as a certified installer exercises responsible supervisory control and is physically present on-site at the critical junctures in the installation, replacement, repair or modification.

D. The requirements of this part are in addition to and not in lieu of any other licensing and registration requirements imposed by law, including any applicable requirements of the Construction Industries Act, NMSA 1978, Sections 60-13-1 through 60-13-59.

E. The provisions of this part are not intended to relieve owners and operators of AST systems of their obligations and liabilities under applicable state and federal laws and regulations.

F. The department may deny an application or renewal and may suspend or revoke certification pursuant to the Parental Responsibility Act, NMSA 1978, Sections 40-5A-1 through 40-5A-13.

[20.5.14.9 NMAC - Rp, 20.5.14.1402 NMAC, 04/04/2008]

#### **20.5.14.10 INDIVIDUAL CERTIFICATION FOR UST SYSTEMS:**

A. An applicant for an individual's UST certification shall meet all of the following requirements in order to receive certification from the department.

(1) The applicant shall file an application with the department accompanied by a nonrefundable fee of \$50.00. At a minimum the application shall contain the following information:

(a) applicant's name, permanent residence address and telephone number;

(b) applicant's business address and any business name used by the applicant, with the business address, telephone number and facsimile transmission number;

(c) applicant's date of birth;

(d) applicant's social security number;

(e) construction industries division license number, type of license, name of license holder under which applicant is working and expiration of license;

(f) whether the construction industries division license in Subparagraph (e) of Paragraph (1) of this subsection has ever been suspended or revoked; if so, an explanation of the circumstances of the suspension or revocation;

(g) the supervisor's name, business name, address and telephone number with whom the applicant apprenticed as a tank installer;

(h) a description of the number of years of experience the applicant has as a tank installer (specify USTs and ASTs);

(i) a description of the types and number of tanks the applicant has installed (specify USTs and ASTs) in the past 4 years;

(j) a description of the types and number of piping systems the applicant has installed, replaced, repaired or modified (specify USTs and ASTs) in the past 4 years; and

(k) whether applicant owes child support in New Mexico or another state.

(2) The applicant shall be an individual and at least 18 years of age.

(3) The applicant need not, for purposes of this part, be a resident of the state.

(4) The applicant shall demonstrate that the applicant is in good standing with all licensing authorities by whom licensing is required, given the nature and scope of the applicant's work, and that the applicant has not had a business or occupational license or certificate suspended or revoked in this or any other state, except as provided in Subsection B of this section.

(5) The applicant shall meet the

experience requirements of 20.5.12 NMAC.

(6) The applicant shall pass the on-site examination for which 20.5.14.13 NMAC provides. The installation for an on-site examination shall include the on-site installation of a tank, dispenser or meter, venting, ancillary equipment and initial testing.

(7) The applicant shall provide the department with evidence that the applicant has passed a New Mexico UST installer's test administered by an approved certification educator, and is certified by that educator. For purposes of this section, the international code council is an approved certification educator

(8) As an alternative to the test required in Paragraph (7) of this subsection, applicants may propose alternate tests and approved certification to the department for consideration, including a tank installer certification program sponsored by another state or organization, but these courses shall not be approved for the requirement in Paragraph (7) of this subsection unless approved by the department in writing. Applicants seeking approval of alternate courses and alternate certification shall provide the department with all information about the course and the proposed educator to allow the department to determine whether to approve them, in the department's sole discretion. In determining whether to approve an alternate course and alternate certification, the department shall determine whether the alternate course and alternate certification provide an equivalent demonstration of knowledge of New Mexico petroleum storage tank regulations, 20.5 NMAC, and technical installation requirements.

(9) The applicant shall provide to the department a notarized affidavit from the applicant stating that all information submitted in the application is true and correct, and that the applicant shall continuously maintain evidence of a passing grade on an installer's test from an approved certification educator. For example, if an installer passes an international code council test good for two years, the installer must re-take and pass the test before the end of the two-year period to maintain New Mexico certification for four years.

B. Notwithstanding the provisions of Paragraph (4) of Subsection A of this section, the department may grant certification to an applicant who has had a business or occupational license or certificate suspended or revoked where the suspension or revocation, by reason of its date, nature or other considerations, is not directly relevant to the applicant's competence to install, replace, repair, or modify UST systems.

[20.5.14.10 NMAC - Rp, 20.5.14.1403 NMAC, 04/04/2008]

[The department provides an optional form that may be used to apply for certification. Applicants should submit application forms to the Petroleum Storage Tank Bureau, attention: Application for Certified Installer, 1301 Siler Road, Building B, Santa Fe, New Mexico 87507.]

#### **20.5.14.11 INDIVIDUAL CERTIFICATION FOR AST SYSTEMS:**

A. An applicant for an individual's AST certification shall meet all of the following requirements in order to receive certification from the department.

(1) The applicant shall file an application with the department with the information required in Paragraph (1) of Subsection A of 20.5.14.10 NMAC, accompanied by a nonrefundable fee of \$50.00.

(2) The applicant shall be an individual and at least 18 years of age.

(3) The applicant need not, for purposes of this part, be a resident of the state.

(4) The applicant shall demonstrate that the applicant is in good standing with all licensing authorities by whom licensing is required, given the nature and scope of the applicant's work, and that the applicant has not had a business or occupational license or certificate suspended or revoked in this or any other state, except as provided in Subsection B of this section.

(5) The applicant shall meet the experience requirements of 20.5.12 NMAC.

(6) The applicant shall pass the on-site examination for which 20.5.14.13 NMAC provides. The installation for an on-site examination shall include the on-site installation of a tank and tank foundation, dispenser or meter, venting, ancillary equipment and initial testing. Installation of a self-contained, concrete-encased or self-contained, skid-mounted AST system is not an AST system installation for purposes of this requirement.

(7) The applicant shall provide the department with evidence that the applicant has passed a New Mexico AST installer's test administered by an approved certification educator, and is certified by that educator. For purposes of this section, the international code council is an approved certification educator.

(8) As an alternative to the test required in Paragraph (7) of this subsection, applicants may propose alternate tests and approved certification to the department for consideration, including a tank installer certification program sponsored by another state or organization, but these courses shall not be approved for the requirement in Paragraph (7) of this subsection unless approved by the department in writing. Applicants seeking approval of alternate courses and alternate certification shall provide the department with all information

about the course and the proposed educator to allow the department to determine whether to approve them, in the department's sole discretion. In determining whether to approve an alternate course and alternate certification, the department shall determine whether the alternate course and alternate certification provide an equivalent demonstration of knowledge of New Mexico petroleum storage tank regulations, 20.5 NMAC, and technical installation requirements.

(9) The applicant shall provide to the department a notarized affidavit from the applicant stating that all information submitted in the application is true and correct, and that the applicant shall continuously maintain evidence of a passing grade on an installer's test from an approved certification educator. For example, if an installer passes an international code council test good for two years, the installer must re-take and pass the test before the end of the two-year period to maintain New Mexico certification for four years.

B. Notwithstanding the provisions of Paragraph (4) of Subsection A of this section, the department may grant certification to an applicant who has had a business or occupational license or certificate suspended or revoked where the suspension or revocation, by reason of its date, nature or other considerations, is not directly relevant to the applicant's competence to install, replace, repair or modify AST systems.

[20.5.14.11 NMAC - Rp, 20.5.14.1404 NMAC, 04/04/2008]

[The department provides an optional form that may be used to apply for certification. Applicants should submit application forms to the Petroleum Storage Tank Bureau, attention: Application for Certified Installer, 1301 Siler Road, Building B, Santa Fe, New Mexico 87507.]

#### **20.5.14.12 EXPERIENCE REQUIREMENTS:**

A. To qualify for individual certification under 20.5.14.10 or 11 NMAC, an applicant shall demonstrate that the applicant has had one year, within the three years immediately prior to making the application, of field experience in the installation, replacement, repair or modification of the type of storage tank systems for which the applicant is applying for certification or, with the approval of the department, closely related work.

B. An engineering degree or a license to practice engineering may substitute for six months of the experience required by Subsection A of this section.

[20.5.14.12 NMAC - Rp, 20.5.14.1405 NMAC, 04/04/2008]

#### **20.5.14.13 ON-SITE EXAMINA-**

**TION:**

A. To qualify for individual certification under 20.5.14.10 or 20.5.14.11 NMAC, an applicant shall pass an on-site examination consisting of a successful installation of the applicable type of storage tank system in the presence of a designated employee of the department. The applicant shall complete each aspect of the installation successfully in order to pass the examination, including use of proper materials, proper assembly of materials and proper testing of the tank and piping at the appropriate times during the installation.

B. An applicant may request an on-site examination for UST or AST certification any time within 180 days of the date of submission of the application provided for in Paragraph (1) of Subsection A of 20.5.14.10 NMAC or Paragraph (1) of Subsection A of 20.5.14.11 NMAC and accompany the request with a nonrefundable \$300 fee. The applicant shall notify the department of the date and the site of the on-site examination 30 days prior to the examination. For good cause shown, the department may, in its sole discretion, grant an applicant one 180-day extension of the time period during which the applicant must take the on-site examination. The department shall not grant more than one extension. If the applicant does not schedule an on-site examination within these time periods, the applicant shall file a new application for certification and comply with all the application requirements in 20.5.14.10 or 11 NMAC (as applicable).

C. The applicant shall be responsible, subject to approval by department staff, for identifying a satisfactory site and date(s) for the on-site examination. The applicant is also responsible for ensuring that all necessary equipment and appropriate materials necessary for the installation are on site. Use of inappropriate materials shall constitute failure of the examination. As long as a department staff member responsible for assessing the on-site exam is present, the applicant may perform the activities involved in the exam even though the applicant is not a certified installer.

D. The installation shall be assessed by the department employee present at the examination who shall present his findings to the department, with a recommendation as to whether or not the applicant passed the on-site examination. The department shall make the determination as to the success of the installation and notify the applicant by mail within 30 days of completion of the installation. If the applicant did not pass the examination, the department shall inform the applicant that the applicant may retake the examination upon payment of a nonrefundable \$300.00 fee and upon such conditions as the department may

impose to ensure that the applicant is prepared to perform a more successful installation. If the applicant does not retake the examination within 180 days of being notified that the applicant did not pass the examination or if the applicant fails the on-site examination a second time, the applicant shall file a new application for certification with the department if the applicant desires to become a certified installer.

E. The department employee may stop an on-site examination if the employee determines that the installation being conducted constitutes a threat to public health, safety or welfare or the environment. If the examiner stops the installation, his findings shall be presented to the department with a "do not pass" recommendation. The department shall notify the applicant of its decision as provided in Subsection D of this section.

[20.5.14.13 NMAC - Rp, 20.5.14.1406 NMAC, 04/04/2008]

**20.5.14.14 DENIAL OF CERTIFICATION:** An applicant shall be afforded an opportunity for a hearing before the secretary under 20.5.14.19 NMAC, in any instance afforded pursuant to these regulations and to the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 through 61-1-33.

[20.5.14.14 NMAC - Rp, 20.5.14.1407 NMAC, 04/04/2008]

**20.5.14.15 RENEWAL OF CERTIFICATION:**

A. Certification issued under 20.5.14.10 and 11 NMAC shall be renewed no later than September 16 of the fourth year after the certification was granted, and shall expire September 16 of the fourth calendar year after it was issued. Certification should be renewed prior to expiration but may be renewed up to three months after the date of expiration upon payment of a late fee in addition to the renewal fee and the meeting of the requirements for renewal set forth below. Certification which has not been renewed within this time period shall be considered lapsed and invalid; the department shall not accept applications for renewal after the close of the period. Any installer whose certification has lapsed as provided in this subsection shall submit each application for new certification under 20.5.14.10 or 20.5.14.11 NMAC and comply with the requirements thereof.

B. At least 30 days before the expiration date of certification, the department shall mail a renewal application reminder to the installer, at the installer's address of record with the department. It is the duty and responsibility of the installer to timely renew the certification whether or

not an application reminder has been received from the department.

C. To qualify for renewal, a UST certified individual or installer shall:

(1) file an application with the department with the information required in Paragraphs (1), (4) and (9) of Subsection A of 20.5.14.10 NMAC, accompanied by a nonrefundable \$50.00 fee, together with a \$25.00 late fee if the renewal application is filed after, but within three months of, the date of expiration;

(2) demonstrate that the installer has completed at least two UST system installations, replacements, repairs or modifications in New Mexico during the four-year period preceding the renewal application; and

(3) demonstrate that the installer is certified by an approved certification educator pursuant to 20.5.14.10 NMAC.

D. To qualify for renewal, an AST certified installer shall:

(1) file an application with the department with the information required in Paragraphs (1), (4) and (9) of Subsection A of 20.5.14.11 NMAC, accompanied by a nonrefundable \$50.00 fee, together with a \$25.00 late fee if the renewal application is filed after, but within three months of, the date of expiration;

(2) demonstrate that the installer has completed at least two AST system installations, replacements, repairs or modifications in New Mexico during the four-year period preceding the renewal application; and

(3) demonstrate that the installer is certified by an approved certification educator pursuant to 20.5.14.11 NMAC.

E. An applicant for renewal shall be afforded opportunity for hearing before the secretary, as provided in 20.5.14.19 NMAC, in the event the department contemplates withholding renewal for any cause other than failure to pay the required renewal fee.

F. For purposes of this section, "demonstrate" means provide copies of registration forms, inspection reports, installation checklists, written statements or other documents verifying the certified installer's on-site, physical, hands-on participation in critical junctures of a particular installation, replacement, repair or modification.

[20.5.14.15 NMAC - Rp, 20.5.14.1408 NMAC, 04/04/2008]

[The department provides an optional form that may be used to apply for renewal of certification. Applicants should submit renewals forms to the Petroleum Storage Tank Bureau, attention: Application for Certified Installer, 1301 Siler Road, Building B, Santa Fe, New Mexico 87507.]

**DUTIES AND OBLIGATIONS:**

A. A contracting company shall not agree to perform installation, replacement, repair or modification services unless it is or has in its employ one or more certified installers competent to perform the particular installation, replacement, repair or modification involved, and who shall:

(1) exercise responsible supervisory control over any installation, replacement, repair or modification it undertakes;

(2) be physically present on-site at all critical junctures in the installation, replacement, repair or modification; and

(3) give notice as required by these regulations.

B. A certified installer shall exercise responsible, supervisory control over any installation, replacement, repair or modification undertaken and shall, at a minimum, be physically on-site at all critical junctures in the installation, replacement, repair or modification and give notice as required by these regulations, 20.5 NMAC.

C. A certified installer shall have adequate knowledge of appropriate materials, technical requirements and installation, replacement, repair or modification procedures for any storage tank system the installer undertakes to install, replace, repair or modify. A certified installer shall not perform any installation, replacement, repair or modification, or affix his signature or certification number to any installation, replacement, repair or modification for which the installer lacks competence.

D. A certified installer shall not certify to an owner or operator of a storage tank system that an installation, replacement, repair or modification is complete unless the installation, replacement, repair, or modification complies with the New Mexico Hazardous Waste Act, NMSA 1978, Sections 74-4-1 through 74-4-14, and the petroleum storage tank regulations promulgated pursuant to the act, 20.5 NMAC. Where the installation, replacement, repair or modification is being performed for an owner or operator on a contract basis, both the certified installer and the contracting company for whom the individual works are responsible for the accuracy of the representations made.

E. Certified installers have a duty to report to the department any and all suspected or confirmed releases, as those terms are used in 20.5.7 NMAC, detected at a site or the surrounding area by the installer or persons working under his supervisory control, as required by 20.5.7 NMAC.

F. Certified installers shall not perform any installation, replacement, repair, modification or removal without providing notice as required by the provisions of 20.5 NMAC, except for emergency

repairs as described in 20.5.5 NMAC and defined in 20.5.1 NMAC. Certified installers shall not perform any activity described as a critical juncture in 20.5.5 NMAC, without providing the 24-hour notice required by that part, except for emergency repairs.

G. Certified installers shall maintain certification from an approved certification educator throughout the term of certification granted pursuant to this part.

H. Certified installers shall comply with all of the provisions of the petroleum storage tank regulations, 20.5 NMAC.

[20.5.14.16 NMAC - Rp, 20.5.14.1409 NMAC, 04/04/2008]

**20.5.14.17 COMPLAINTS:**

A. When the department receives a signed written complaint from any person which indicates an apparent violation of applicable law by a certified installer, the department shall provide a copy of the complaint to the certified installer along with a letter from the department specifying the statute, regulation, order or license alleged to be violated. The letter shall include a reasonable description of the acts or practices alleged to be in violation of applicable law. The department shall provide a copy of the letter to the complainant.

B. The installer may, but need not, file a response to the complaint with the department. After reviewing the complaint together with any other matter in the certified installer's record, the department shall determine whether further action is to be taken.

[20.5.14.17 NMAC - Rp, 20.5.14.1410 NMAC, 04/04/2008]

**20.5.14.18 INVESTIGATIONS, ENFORCEMENT, PENALTIES:**

A. The department may undertake such investigations and take such actions as it deems necessary to ensure compliance with the provisions of this part, including the issuance of compliance orders and the commencement of civil actions under the provisions of the Hazardous Waste Act, NMSA 1978, Sections 74-4-1 through 74-4-14. The department may also initiate proceedings to revoke an installer's certification under NMSA 1978, Section 74-4-4.4C and 20.5.14.15 NMAC. The department may revoke certification for an installer upon grounds that the installer:

(1) exercised fraud, misrepresentation or deception in obtaining the certification;

(2) exhibited gross incompetence in the installation, replacement, repair, modification or removal of a storage tank system; or

(3) was derelict in the perform-

ance of a duty as a certified tank installer (including repeated failure to provide notice, as required in 20.5.14.16 NMAC).

B. Persons violating the provisions of this part may be subject to the imposition of penalties under the Hazardous Waste Act.

[20.5.14.18 NMAC - Rp, 20.5.14.1411 NMAC, 04/04/2008]

**20.5.14.19 DEPARTMENT ACTIONS AGAINST CERTIFIED INSTALLERS:**

A. When the department contemplates denying an application for or revoking certification, it shall serve upon the applicant or certified installer a written notice of contemplated action as required by the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 through 61-1-33.

B. If the applicant or the certified installer does not mail a request for a hearing within the time and in the manner required by the Uniform Licensing Act, NMSA 1978, Section 61-1-4, the department may take the action contemplated in the notice and such action shall be final and not subject to judicial review.

C. If a hearing is requested in accordance with the provisions of this section, the secretary shall, within 20 days of receipt of such request, notify the requestor of the time and place of hearing, the name or names of the person or persons who will conduct the hearing for the secretary and the statutes and regulations authorizing the secretary to take the contemplated action, which hearing shall be held not more than 60 nor less than 15 days from the date of service of such notice. Hearings under this section shall be conducted in accordance with the provisions of the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 through 61-1-33.

D. If the department revokes certification pursuant to this section, the certified installer may not re-apply for a minimum of two years for the type of installer certification revoked (either UST installer certification pursuant to 20.5.14.10 NMAC or AST installer certification pursuant to 20.5.14.11 NMAC). However, if the certified installer is certified for another type of installer certification, it shall not be affected by the revocation of the certification for the other type of installer certification.

[20.5.14.19 NMAC - Rp, 20.5.14.1412 NMAC, 04/04/2008]

**NEW MEXICO  
DEPARTMENT OF GAME  
AND FISH**

This is an amendment to 19.34.3 NMAC, Sections 7, 8, 9, 10, 11, 12, 13 and 14, effective March 31, 2008.

**19.34.3.7 DEFINITIONS:**

**A.** ~~“Bert Clancy wildlife area community shelters” means the two shelters on department of game and fish controlled land along the Pecos river near Willow creek in San Miguel county, New Mexico.~~ “Activity authorization” shall mean a document signed by the director that provides dates of use, allowable activities and other restrictions or prohibitions specific to an individual WMA.

**B.** “Commercial” means any activity conducted within lands owned or controlled by the state game commission in which a fee is charged or compensation is received, by an operator or operator’s agent, except for hunting activities conducted by a department registered outfitter.

~~“B.”~~ **C.** “Commission” shall mean the New Mexico state game commission.

~~“C.”~~ **D.** “Director” shall mean the director of the New Mexico department of game and fish.

~~“D.”~~ **E.** “Department” shall mean the New Mexico department of game and fish.

~~“E.”~~ **F.** “Gaining access into nature (GAIN) shall mean a program of the department to provide broadly based wildlife-associated recreation opportunity, not to include hunting or fishing, throughout New Mexico that offers new incentive to recreate, stimulates local economic development, engages diverse cooperating agencies and landowners, and enhances attention to conservation of public trust wildlife and the habitats they depend on.

**G.** Gain permit” - annual” shall mean a permit purchased from the department or a licensed vendor that authorizes the permit holder access to participate in a wildlife-associated activity on a WMA during the license year in which it was issued, subject to any WMA specific restriction or prohibitions as stated on the permit or WMA activity authorization.

**H.** Gain permit - temporary 5-day” shall mean a permit purchased from the department or a licensed vendor that authorizes the permit holder access to participate in a wildlife-associated activity on a WMA during an identified 5-day period, subject to any WMA specific restrictions or prohibitions as stated on the permit or WMA activity authorization.

**I.** “License year” shall

mean the period of April 1 through March 31.

**J.** “Operator” shall mean the owner of a business who operates a commercial activity on lands owned or controlled by the state game commission pursuant to a commercial permit with the department.

**K.** “Wildlife management area (WMA)” shall mean an area of land established, controlled or leased by the state game commission in accordance with Section 17-1-14, NMSA 1978.

[1/13/96, 1/29/99; 19.34.3.7 NMAC - Rn & A, 19 NMAC 34.3.7, 01/31/05; A, 03/31/08]

**19.34.3.8 DATES OF USE:**

~~[The Bert Clancy wildlife area community shelters may be used for camping from April 1 through October 31.]~~ The dates of use as provided by an annual GAIN permit shall correspond to a license year. Restrictions on dates of use for a particular property will be identified through an activity authorization signed by the director of the department of game and fish, with such restrictions being posted at each property and on the department website.

[9/1/89, 1/29/99; 19.34.3.8 NMAC - Rn, 19 NMAC 34.3.8, 01/31/05; A, 03/31/08]

**19.34.3.9 [FEES FOR USE: A**

~~\$25 fee shall be assessed each day for use of each unit of the Bert Clancy wildlife area community shelters. The fee shall cover the use of the unit for a 24 hour period and must accompany the request for reservation. No fee shall be refunded if the reservation is canceled.]~~ **USE OF PROPERTIES:**

Participation in GAIN activities on properties owned or controlled by the state game commission is a privilege and the issuance of a permit for GAIN activities, including commercial permits, does not constitute a right of use of the properties and is subject to revocation upon violation of rules and conditions of the property or terms of the permit.

[9/1/89, 1/29/99; 19.34.3.9 NMAC - Rn, 19 NMAC 34.3.9, 01/31/05; A, 03/31/08]

**19.34.3.10 PROHIBITION OF DISCRIMINATION:**

If otherwise qualified as stated above, no one shall be denied use of these department of game and fish controlled lands on the basis of race, color, religion, sex, disability, family status or national origin.

[9/1/89; 19.34.3.10 NMAC - Rn, 19 NMAC 34.3.10, 01/31/05; A, 03/31/08]

**19.34.3.11 PERMITS FOR USE OF PROPERTIES OWNED OR CONTROLLED BY THE STATE GAME COMMISSION FOR GAINING ACCESS INTO NATURE PROGRAM**

**A.** The director may from time to time designate commission owned properties or other enrolled properties on which wildlife-associated recreation activities other than hunting, fishing, and trapping may take place subject to regulations under this part. Such designation shall include the times and places when and where access for such activities is available, terms and condition of access to the properties, the activities authorized, and the form of a waiver and release, if any, to be executed and delivered to the department as a condition to any access or activity authorized under this part.

**B.** Upon application on a form approved by the director and subject to any designated fair and impartial selection process, the department shall issue GAIN activity permits authorizing the permittees to engage in the activities as designated by the director. GAIN activity permits may contain restrictions and limitations as determined by the department to protect habitat and wildlife interests associated with the property for which an activity permit is issued.

**C.** Applications for the Jamie Koch wildlife area community shelter shall be accepted at the main office in Santa Fe. Reservations are made on a first come first serve basis to determine availability. The fee shall cover the day use shelter for a 24 hour period up to 4 consecutive days.

~~“C.”~~ **D.** The department may charge a fee for the issuance of GAIN activity permits in an amount that shall not exceed the costs to the department for administration associated with each permit, including any application processing costs. Those permit types and fees are as follows, and may be less if department accounting indicates such reduced costs, but may not be more without commission approval.

(1) accompany department wildlife management actions/surveys - \$81;

(2) ~~[backpacking to wildlife viewing - \$14;]~~ GAIN permit - annual \$20;

(3) ~~[wildlife watching as designated and restricted but not selected - no fee;]~~ GAIN permit- temporary 5-day \$5;

~~[(4) cross-country skiing and snowshoeing to wildlife viewing - \$14;~~

~~(5) (4) department/cooperator-led wildlife viewing event - \$56;~~

~~(6) (5) department transported wildlife viewing - \$74;~~

~~(7) (6) general viewing opportunities as designated and selected - \$8;~~

~~(8) (7) horse-back riding to specialty wildlife viewing - \$23;~~

~~(9) mountain biking to wildlife viewing - \$19;~~

~~(10) site based wildlife viewing at commission facility - \$5 (self register), other is no fee;~~

~~(11) specialty department designated, limited schedule wildlife viewing \$16;~~

~~(12) yearly access pass for non-specialty wildlife viewing as allowed \$86.~~

~~D.] E.~~ The department shall specify restrictions for each activity designated pursuant to Subsection A of 19.34.3.11 NMAC. Such restrictions shall be posted on each property on which a designated activity is permitted, and a copy of the restrictions applicable to such property shall be delivered to a permittee in conjunction with issuance to him or her of a GAIN activity permit. The department will specify the form in which restrictions are posted and distributed.

~~E.] E.~~ A GAIN activity permit shall be revoked by the department upon its determination that a permittee has persistently, flagrantly, or knowingly violated any terms, conditions, or limitations to which the permit is subject, any violations of the rules and regulations applicable to the activity or property permitted, or a violation of any provision of Chapter 17, NMSA 1978 or of any of the regulations enacted there under. A revocation under this provision shall be subject to the procedural provisions of Section 17-3-34 NMSA 1978. Such revocation shall preclude issuance of any further GAIN activity permit to the permittee for a period designated by the commission, upon recommendation by the department. [19.34.3.11 NMAC - N, 01/31/05; A, 03/31/08]

#### 19.34.3.12 AUTHORITY OF DIRECTOR:

The director shall have the authority to close, in whole or in part, or otherwise restrict the use of commission-owned or managed lands when in the opinion of the director such closure or restriction is reasonably necessary for the protection of such lands, wildlife, habitat or the public or otherwise to respond to circumstances concerning such lands. The director shall have the authority to authorize by permit an activity not specified by regulation on commission-owned or managed land when in the opinion of the director such activity is not detrimental to the land, wildlife or purpose for which the property is managed.

[19.34.3.12 NMAC - N, 10/31/06; A, 03/31/08]

#### 19.34.3.13 USE OF WILDLIFE MANAGEMENT AREAS:

A. It shall be unlawful to conduct any activity on a WMA unless provided for by regulation, permit or agreement.

B. It shall be unlawful to operate any motorized vehicle or bicycle off of established roads or on closed roads within WMA's, except as allowed by the director of the department of game and fish

through permit or regulation, or any county, state or federal law enforcement officer in the discharge of his/her official duties.

C. It shall be unlawful for any person 18 years of age or older to enter a WMA pursuant to a GAIN activity approved by the director for the property without having in their possession a current license, annual GAIN permit, temporary 5-day GAIN permit, a valid park permit issued for a state park associated with that wildlife management area, or special activity GAIN permit; **AND** a habitat management and access validation (HMAV).

D. It shall be unlawful to deface or remove rocks, minerals, plants, firewood or man made feature from any WMA unless specifically allowed by regulation.

E. It shall be unlawful for any person to excavate, injure, destroy, or remove any cultural resource or artifact from any WMA.

F. It shall be unlawful to violate the provisions of posted signs on areas under the control of the state game commission.

G. It shall be unlawful to camp in excess of 9 consecutive days, except by licensed hunters and their guests concurrent with their permitted hunt.

H. It shall be unlawful to have an open fire unless contained in a metal fireplace or charcoal grill.

I. It shall be unlawful to use or possess any hay or feed on WMA's that is not certified as weed free.

J. It shall be unlawful to conduct a commercial activity on an WMA without first obtaining a commercial permit as described in 19.34.3.14 NMAC.

K. Nothing in this rule shall prevent employees or contract workers from performing administrative duties on properties owned or controlled by the New Mexico state game commission.

L. These restrictions are subject to terms and conditions imposed on state parks pursuant to agreements between the state game commission and energy minerals and natural resources department. [19.34.3.13 NMAC - N, 03/31/08]

#### 19.34.3.14 COMMERCIAL PERMITS:

A. A commercial permit is required for any person or business to conduct an activity on a WMA for which a fee is charged, compensation received or anything else of value is received by the person or business.

B. A commercial permit is valid from April 1st until March 31st each year unless specified otherwise on the permit. Each permit shall expire on March 31st regardless of the date it is issued.

C. Any person applying

for a commercial permit shall obtain a commercial permit application at any department office. The application shall be completed and returned to the conservation services division in Santa Fe, along with the appropriate fee. All applications for commercial permits received shall be reviewed and processed within 30 days.

D. Operators and their employees are exempt from the requirement to purchase annual or temporary GAIN permits when acting under the commercial permit, but shall possess a valid HMAV. A copy of the commercial permit must be in the possession of the operator or employee while on a WMA.

E. No commercial permit shall be issued until the applicant has provided proof of insurance or bond in the amount of \$100,000 naming the department, state game commission and state of New Mexico as additional insureds.

F. Operators, their employees and their clients are subject to all appropriate state and federal regulations.

G. Commercial permits are not transferable. A permit cannot be sold or transferred for any reason. The department will not refund any portion of the permit fee for any reason.

H. The director may limit the number and type of commercial permits issued for any WMA in order to protect WMA resources. The director may prescribe special requirements and conditions for commercial permits when it is in the best interests of the state to do so. Special requirements may include but are not limited to: limitations on use of WMA resources, grounds and facilities; designation of a specific area within a WMA in which a operator is allowed to operate; designation of specific days or hours during which a operator is allowed to operate; limitations on prices charged by the operators; requirements for submission of use and price data; and training requirements.

I. No operator shall violate any condition of the commercial permit or restriction of the WMA. Violation of the commercial permit or a WMA restriction may result in the immediate revocation of the permit. Operators shall be subject to the procedural provisions of Section 17-3-34 NMSA 1978.

[19.34.3.14 NMAC - N, 03/31/08]

**NEW MEXICO HEALTH POLICY COMMISSION**

The NM Health Policy Commission, repeals its rule entitled Data Reporting Requirements for Health Care Facilities, 7 NMAC 1.1 (filed 8/14/1997) and replaces it with the new rule 7.1.4 NMAC, *Data Reporting Requirements for Health Care Facilities*, effective 03/31/2008.

**NEW MEXICO HEALTH POLICY COMMISSION**

**TITLE 7 HEALTH**  
**CHAPTER 1 HEALTH GENERAL PROVISIONS**  
**PART 4 DATA REPORTING REQUIREMENTS FOR HEALTH CARE FACILITIES**

**7.1.4.1 ISSUING AGENCY:** New Mexico Health Policy Commission.  
 [7.1.4.1 NMAC - Rp, 7 NMAC 1.1.1, 03/31/2008]

**7.1.4.2 SCOPE:** This rule applies to all licensed inpatient and outpatient general and specialty health care facilities located within New Mexico.  
 [7.1.4.2 NMAC - Rp, 7 NMAC 1.1.2, 03/31/2008]

**7.1.4.3 STATUTORY AUTHORITY:** This rule is promulgated pursuant to Sections 24-14A-3D(5) and (6); 24-14A-5A through C; 24-14A-8A and B; and 24-14A-9 of the Health Information System Act, Section 24-14A-1 et seq. NMSA 1978.  
 [7.1.4.3 NMAC - Rp, 7 NMAC 1.1.3, 03/31/2008]

**7.1.4.4 DURATION:** Permanent.  
 [7.1.4.4 NMAC - Rp, 7 NMAC 1.1.4, 03/31/2008]

**7.1.4.5 EFFECTIVE DATE:** March 31, 2008, unless a later date is cited at the end of a section.  
 [7.1.4.5 NMAC - Rp, 7 NMAC 1.1.5, 03/31/2008]

**7.1.4.6 OBJECTIVE:** The purpose of this rule is to specify the data reporting requirements for licensed inpatient and outpatient general and specialty health care facilities pursuant to the Health Information System Act, Section 24-14A-1 et seq. NMSA 1978.  
 [7.1.4.6 NMAC - Rp, 7 NMAC 1.1.6, 03/31/2008]

**7.1.4.7 DEFINITIONS:** In addition to the definitions in the Health Information System Act, Section 24-14A-1 et seq. NMSA 1978, the following terms have the following meaning for purposes of this rule.

- A. **Age of patient** means the age of the patient at discharge calculated from the patient birth date.
  - (1) For patients one year and over, the age is stated in years, e.g., 1, 2, 3, etc.
  - (2) For patients under one year, the age of the patient is stated in days for the first month and in months thereafter.
  - (3) For newborns, the age is stated as follows:

Age	Code used
newborn	OD (zeroD)
1 day-31 days	1 D, 2D, ... 31 D
1 month -11 months	1 m, 2 m, ... 11 m

B. **Attending physician code** means the six digit unique physician identification number, assigned by medicare, of the licensed physician who would normally be expected to certify and recertify the medical necessity of the services rendered or who has primary responsibility for the patient's medical care and treatment.

C. **Calendar quarter ending** means the ending month, day, and year of the calendar quarter for which the data are reported. Report as "MMDDYYYY" (month day year), e.g. "09171990".

D. **Data provider** means a data source that has provided data to the health information system on a regular basis.

E. **Data source** has the meaning given in Section 24-14A-2 of the Health Information System Act, Section 24-14A-1 et seq. NMSA 1978, and includes those categories of persons or entities that possess health information, including any public or private sector licensed hospital, health care practitioner, primary care clinic, ambulatory surgery center, ambulatory urgent care center, ambulatory dialysis unit, home health agency, long-term care facility, pharmacy, third-party payer and any public entity that has health information

F. **E-code** means the ICD-9-CM diagnosis code for external causes of injury, poisoning, or adverse effect.

G. **EMS ambulance run number** means the emergency medical services ambulance run number.

H. **Health care** means any care, treatment, service or procedure to maintain, diagnose or otherwise affect an individual's physical or mental condition.

I. **Health information system or HIS** means the health information system established by the Health Information System Act, Section 24-14A-1 et seq. NMSA 1978.

J. **Inpatient health care facility** means a hospital or other health facility which admits patients for overnight or longer

(and therefore is responsible for patients' room and board) for the purpose of providing diagnostic treatment or other health services.

**K. Length of stay** means the number of patient days.

(1) **Calculation:** Calculate length of stay by using the admission and discharge dates of patient in conjunction with the following New Mexico hospital association definition: "A patient day is the unit of measure denoting lodging provided and services rendered to patients between the census taking hours (usually at midnight) of two successive days. A patient formally admitted who is discharged or dies on the same day is counted as one patient day, regardless of the number of hours the patient occupies a hospital bed."

(2) **Coding:** Code length of stay as digits, for example: 1, 2, 3, ... etc.

**L. Medicare provider number** means the six digit number assigned by medicare to the data source providing the reported service(s).

**M. National Provider Identifier (NPI)** means the ten digit NPI from the national plan and provider enumeration system (NPES).

**N. New Mexico state license number** means the four to eight digit license number issued by the New Mexico health department for the data source providing the reported service(s).

**O. Operating physician code** means the six digit unique physician identification number, assigned by medicare, of the licensed physician providing the principal surgical procedure.

**P. Outpatient health care facility** means a hospital or other health facility that provides ambulatory care to a patient without admitting the patient to the facility or providing lodging services.

**Q. Patient** means a person who has received or is receiving health care.

**R. Patient address** means the mailing address of the patient at the time of discharge including street name and number or post office box number or rural route number.

**S. Patient admission date** means the date the patient was admitted by the provider for inpatient care. Format as "MMDDYYYY". For example, if the admission date was July 1, 1983, "07011983" would be coded.

**T. Patient control number** means the patient's unique alphanumeric number assigned by the provider.

**U. Patient date of birth** means the date of birth of the patient. Required format is "MMDDYYYY". Note that all four digits of year are required, e.g., "08191898" is for August 19, 1898.

**V. Patient discharge date** means the date the patient was discharged

by the provider from the inpatient health care facility. Formatted as "MMD-DYYYY".

**W. Patient DRG code** means the diagnostic related group code.

**X. Patient ethnicity/race** means the gross classification of patient's stated ethnicity, coded as follows:

- (1) A - Asian/Pacific Islander;
- (2) B - black;
- (3) H - Hispanic;
- (4) I - Native American Indian;
- (5) O - other;
- (6) U - unknown;
- (7) W - white.

**Y. Patient first name** means the first name of the patient.

**Z. Patient last name** means the last name of patient. Last name should not have a space between a prefix and a name (as in MacBeth), but hyphenated names retain the hyphen (as in Smith-Jones). Titles should not be recorded. If the last name has a suffix, put the last name, a space, and then the suffix (as in "Snyder III"). Last name does not include abbreviations of academic achievement or profession, such as "M.D.", "Ph.D." etc.

**AA. Patient medicaid number** means the patient's unique identification number assigned by medicaid.

**BB. Patient medical record number** means the medical record number used by the provider to identify the patient.

**CC. Patient middle initial** means the middle initial of the patient.

**DD. Patient 2nd diagnosis code, patient 3rd diagnosis code, patient 4th diagnosis code, patient 5th diagnosis code, patient 6th diagnosis code, patient 7th diagnosis code, patient 8th diagnosis code, patient 9th diagnosis code** mean the ICD-9-CM diagnosis codes corresponding to additional conditions that co-exist at the time of admission, or develop subsequently, and which have an effect on the treatment received or the length of stay.

**EE. Patient 2nd procedure code, patient 3rd procedure code, patient 4th procedure code, patient 5th procedure code, patient 6th procedure code** mean the codes identifying the significant procedures, other than the principal procedure, performed during the patient stay.

**FF. Patient social security number** means the nine digit social security number provided by the patient, without section separating characters like dashes, hyphens or slashes, for example, "585940323".

**GG. Patient status** means the code indicating patient disposition at time of discharge. The codes are:

- (1) 01 - discharged to home or self care (routine discharge);
- (2) 02 - discharged/transferred to

another general hospital;

(3) 03 - discharged/transferred to skilled nursing facility;

(4) 04 - discharged/transferred to intermediate care facility (ICF);

(5) 05 - discharged/transferred to another type of institution;

(6) 06 - discharged/transferred to home under care of organized home health service organization;

(7) 07 - left against medical advice;

(8) 08 - reserved for national assignment;

(9) 09 - admitted as an inpatient to this hospital;

(10) 10 - 19 reserved for national assignment;

(11) 20 - expired;

(12) 21 - 29 - reserved for national assignment;

(13) 30 - still patient or expected to return for outpatient services;

(14) 31 - 39 - reserved for national assignment;

(15) 40 - expired at home (hospice claims only);

(16) 41 - expired in a medical facility, such as a hospital, SNF, ICF or free-standing hospice (hospice claims only);

(17) 42 - expired - place unknown (hospice claims only);

(18) 43 - discharged/transferred to a federal health care facility; (effective 03/31/2008) (usage note: discharges and transfers to a government operated health care facility such as a department of defense hospital, a veteran's administration (VA) hospital or VA hospital or a VA nursing facility; to be used whenever the destination at discharge is a federal health care facility, whether the patient lives there or not);

(19) 44 - 49 - reserved for national assignment;

(20) 50 - discharged/transferred to hospice - home;

(21) 51 - discharged/transferred to hospice - medical facility;

(22) 52 - 60 - reserved for national assignment;

(23) 61 - discharged/transferred within this institution to a hospital based medicare approved swing bed;

(24) 62 - discharged/transferred to an inpatient rehabilitation facility including distinct part units of a hospital;

(25) 63 - discharged/transferred to long term care hospitals;

(26) 64 - discharged/transferred to a nursing facility certified under medicaid but not certified under medicare;

(27) 65 - discharged/transferred to a psychiatric hospital or psychiatric distinct part unit of a hospital;

(28) 66 - discharged/transferred to a critical access hospital (CAH) (effective 03/31/2008);



(29) 67 - 69 reserved for national assignment;

(30) 70 - discharge/transfer to another type of health care institution not defined elsewhere in the code list (effective 03/31/2008);

(31) 71-99 - reserved for national assignment.

**HH. Primary payer category** means one of the following broad categories assigned by the data provider to the payment source identified in the primary payer identification name field.

(1) 1 **Medicare** is the primary payer from which the provider might expect some payment.

(2) 2 **Medicaid** is the primary payer from which the provider might expect some payment.

(3) 3 **CHAMPUS/military/VA** is the primary payer from which the provider might expect some payment.

(4) 4 **IHS/PHS** (Indian health service/public health service) is the primary payer from which the provider might expect some payment.

(5) 5 **Other government** (including corrections/research) is a government entity other than those specifically listed as the primary payer from which the provider might expect some payment.

(6) 6 **Private insurance** is the primary payer from which the provider might expect some payment.

(7) 7 **Workers compensation** is the primary payer from which the provider might expect some payment.

(8) 8 **Self pay/no insurance** means the patient (or the patient's family) is the primary payer from which the provider might expect some payment.

(9) 9 **County indigent funds** are the primary payer source from which the provider might expect some payment.

(10) 10 **Charity care** means the provider does not anticipate any payment from any source, including the patient.

(11) 88 **Unknown.**

**II. Primary payer identification name** means the name identifying the primary payer from which the provider might expect some payment for the reported service(s).

**JJ. Primary payer type** means the type of primary payer as defined below from which the provider might expect some payment for the reported service(s):

(1) 1 **HMO** - health maintenance organization;

(2) 2 **other managed care** - includes provider service networks;

(3) 3 **indemnity plan**;

(4) 88 **unknown.**

**KK. Principal diagnosis code** means the full four or five digit ICD-

9-CM code describing the principal diagnosis of the patient at discharge.

**LL. Principal procedure code** means the full three or four digit ICD-9-CM code that identifies the principal procedure performed that is most related to the principal diagnosis or the one which was performed for definitive treatment rather than one performed for diagnostic or exploratory purposes.

**MM. Principal procedure date** means the date the principal procedure reported as the principal procedure code was performed.

**NN. Provider zip code** means the zip code whose boundaries physically contain the facility where the reported service(s) were provided. Use either five or nine digits, e.g. 87501 or 875010968.

**OO. Secondary payer category** means one of the following broad categories assigned by the data provider to the payment source identified in the secondary payer identification name field.

(1) 1 - **Medicare** is the secondary payer from which the provider might expect some payment.

(2) 2 - **Medicaid** is the secondary payer from which the provider might expect some payment.

(3) 3 - **CHAMPUS/military/VA** is the secondary payer from which the provider might expect some payment.

(4) 4 - **IHS/PHS** (Indian health service/public health service) is the secondary payer from which the provider might expect some payment.

(5) 5 - **Other government** (including corrections/research) is a government entity other than those specifically listed as the secondary payer from which the provider might expect some payment.

(6) 6 - **Private insurance** is the secondary payer from which the provider might expect some payment.

(7) 7 - **Workers compensation** is the secondary payer from which the provider might expect some.

(8) 8 - **Self pay/No insurance** means the patient (or the patient's family) is the secondary payer from which the provider might expect some payment.

(9) 9 - **County indigent funds** are the secondary payer source from which the provider might expect some payment.

(10) 10 - **Charity care** means the provider does not anticipate any payment from any source, including the patient.

(11) 88 - **Unknown.**

**PP. Secondary payer identification name** means the name identifying a secondary payer from which the provider might expect some payment for the reported service(s).

**QQ. Secondary payer type** means the type of secondary payer as

defined below from which the provider might expect some payment for the reported service(s):

(1) 1 - **HMO** - health maintenance organization;

(2) 2 - **other managed care** - includes provider service networks;

(3) 3 - **indemnity plan**;

(4) 88 - **unknown.**

**RR. Sex of patient** means the sex of the patient as recorded at discharge. Enter the sex of the patient, coded as follows:

(1) female - F;

(2) male - M;

(3) unknown - U.

**SS. Source of admission** means an inpatient only code indicating the source of this admission.

(1) **Adults and pediatrics:** source of admission codes for adults and pediatrics are:

(a) 1—physician referral - the patient was admitted to this facility upon the recommendation of his or her personal physician if other than a clinic physician or a HMO physician;

(b) 2—clinic referral - the patient was admitted to this facility upon recommendation of this facility's clinic physician;

(c) 3—HMO referral - the patient was admitted to this facility upon the recommendation of a health maintenance organization physician;

(d) 4—transfer from hospital - the patient was admitted to this facility as a transfer from an acute care facility where he or she was an inpatient;

(e) 5—transfer from skilled nursing facility - the patient was admitted to this facility as a transfer from a skilled nursing facility where he or she was an inpatient;

(f) 6—transfer from another health care facility - the patient was admitted to this facility as a transfer from a health care facility other than an acute care facility or skilled nursing facility;

(g) 7—emergency room - the patient was admitted to this facility upon the recommendation of this facility's emergency room physician;

(h) 8—court/law enforcement - the patient was admitted to this facility upon the direction of a court of law, or upon a request of a law enforcement agency representative;

(i) 9—information not available - the source of admission is unknown.

(2) **Newborns:** Newborn codes must be used when the type of admission is code 4. The codes are:

(a) 1—normal birth - a baby delivered without complications;

(b) 2—premature birth - a baby delivered with time or weight factors qualifying it for premature status;

(c) 3—sick baby - a baby delivered with medical complications, other than those relating to premature status;

(d) 4—extramural - A newborn birth in a non-sterile birth environment.

TT. **Total charges** means an 11 digit number rounded to the whole dollar for the total charges for all inpatient services reported.

UU. **Traffic crash report number** means the six digit number of the traffic crash/accident report form.

VV. **Type of admission** means an Inpatient code indicating the priority of the admission. Type of admission codes are:

(1) 1—emergency - the patient requires immediate medical intervention as a result of severe, life threatening or potentially disabling conditions; generally, the patient is admitted through the emergency room;

(2) 2—urgent - the patient requires immediate medical attention for the care and treatment of a physical or mental disorder; generally, the patient is admitted to the first available and suitable accommodation;

(3) 3—elective - the patient's condition permits adequate time to schedule the availability of a suitable accommodation;

(4) 4—newborn - a baby born within this facility; use of this code necessitates the use of special source of admission codes - see source of admission;

(5) 9—information not available.

WW. **Zip code of patient's residence** means the zip code of patient's residence at the time of discharge. Use either five or nine digits, e.g. 87501 or 875010968. If unknown, leave blank. Do not use the zip code of the data source providing the reported service(s).

[7.1.4.7 NMAC - Rp, 7 NMAC 1.1.7, 03/31/2008]

**7.1.4.8 DATA:** [Reserved]

**7.1.4.9 STATUS OF DATA:** All data and health information collected from data sources shall become the property of the commission upon receipt.

[7.1.4.9 NMAC - Rp, 7 NMAC 1.1.9, 03/31/2008]

**7.1.4.10 DATA REPORTING BY LICENSED NONFEDERAL GENERAL AND SPECIALTY INPATIENT HEALTH CARE FACILITIES:**

A. **Schedule for reporting:** Beginning with the first quarter of 1998 (January 1-March 31), all licensed nonfederal general and specialty inpatient health care facilities in New Mexico shall submit to the commission on a quarterly basis the data required by this rule, in accordance with the following schedule:

dance with the following schedule:

Reporting period	Report due to commission
January 1 - March 31	June 30
April 1 - June 30	September 30
July 1 - September 30	December 31
October 1 - December 31	March 31 of the following year

B. **Data required to be reported:** All licensed nonfederal general and specialty inpatient health care facilities in New Mexico shall report to the commission the following data elements, in the record layout provided by the commission:

(1) attending physician code; or national provider identifier (NPI); after July 1, 2008, NPI only;

(2) calendar quarter ending;

(3) e-code, if the facility systematically collects the data in the ordinary course of operations as part of the facility's standard operating procedures;

(4) length of stay;

(5) medicare provider number;

(6) New Mexico state license number;

(7) operating physician code; or national provider identifier (NPI); after July 1, 2008 NPI only;

(8) patient address;

(9) patient admission date;

(10) patient control number;

(11) patient date of birth;

(12) patient diagnosis related group (DRG) code;

(13) patient 2nd diagnosis code;

(14) patient 3rd diagnosis code;

(15) patient 4th diagnosis code;

(16) patient 5th diagnosis code;

(17) patient 6th diagnosis code;

(18) patient 7th diagnosis code;

(19) patient 8th diagnosis code;

(20) patient 9th diagnosis code;

(21) patient discharge date;

(22) patient emergency medical services ambulance run, if the facility systematically collects the data in the ordinary course of operations as part of the facility's standard operating procedures;

(23) patient ethnicity/race, if the facility systematically collects the data in the ordinary course of operations as part of the facility's standard operating procedures;

(24) patient first name (do not report if medicaid is anticipated primary or secondary payer, leave data field blank);

(25) patient last name (do not report if medicaid is anticipated primary or secondary payer, leave data field blank);

(26) patient medicaid I.D. number (report only if medicaid is anticipated primary or secondary payer; otherwise do not report, leave data field blank);

(27) patient medical record number;

(28) patient middle initial (do not report if medicaid is anticipated primary or secondary payer, leave data field blank);

(29) patient New Mexico traffic crash report number, if the facility systematically collects the data in the ordinary course of operations as part of the facility's standard operating procedures;

(30) patient 2nd procedure code;

(31) patient 3rd procedure code;

(32) patient 4th procedure code;

(33) patient 5th procedure code;

(34) patient 6th procedure code;

(35) patient social security number (do not report if medicaid is anticipated primary or secondary payer, leave data field blank);

(36) patient status;

(37) primary payer category;

(38) primary payer identification name;

(39) primary payer type;

(40) principal diagnosis code;

(41) principal procedure code;

(42) principal procedure date;

(43) provider zip code;

(44) secondary payer category;  
 (45) secondary payer identification name;  
 (46) secondary payer type;  
 (47) sex of patient;  
 (48) source of admission;  
 (49) total charges;  
 (50) type of admission;  
 (51) zip code of patient's residence.

**C. Data reporting requirements when medicaid is payer:** If medicaid is the anticipated primary or secondary payer, report all elements pursuant to Subsection B of 7.1.4.10 NMAC including the patient medicaid I.D. number, but do not report:

- (1) patient first name;
- (2) patient middle initial;
- (3) patient last name; or
- (4) patient social security number.

**D. Data reporting requirements for New Mexico human services department's medicaid system:** The New Mexico human service department's medicaid system shall provide all data listed by cooperative agreement between the commission and the human services department, pursuant to the reporting schedule contained in Subsection A of 7.1.4.10 NMAC.

**E. Data reporting requirements for the medicare (part A) fiscal intermediary:** The medicare (part A) fiscal intermediary shall provide all data mutually agreed upon in accordance with law between the commission and blue cross blue shield of New Mexico or any successor fiscal intermediary, pursuant to the reporting schedule contained in Subsection A of 7.1.4.10 NMAC.

**F. Annual financial statements:** All licensed nonfederal general and specialty inpatient health care facilities shall submit annual audited financial statements to the commission. If the owners of such facilities obtain one audit covering more than one facility, combined annual audited financial statements may be submitted in compliance with this section. These reports shall be submitted no later than the end of the calendar year following the statement year.

[7.1.4.10 NMAC - Rp, 7 NMAC 1.1.10, 03/31/2008]

**7.1.4.11 ELECTRONIC REPORTING REQUIREMENTS:** As of January 1, 1999, all data providers shall submit the required quarterly discharge data by electronic media (includes computer tape, cartridge or diskette) or by direct electronic transmission, per the record layout and instruction provided by the commission.

[7.1.4.11 NMAC - Rp, 7 NMAC 1.1.11, 03/31/2008]

#### 7.1.4.12 REPORTING

**EXEMPTIONS:** Upon written application to the commission, the commission may grant a health care facility a temporary exemption, not to exceed two reporting quarters, from the schedule required by Subsection A of 7.1.4.10 NMAC. Temporary exemption from reporting does not excuse the health care facility from reporting the data from the exempted period. Upon resumption of the regular reporting schedule the health care facility shall promptly report data for the exempted period.

[7.1.4.12 NMAC - Rp, 7 NMAC 1.1.12, 03/31/2008]

#### 7.1.4.13 PENALTIES FOR

**RULE VIOLATION:** Failure to comply with any of the reporting requirements in this rule may result in injunctive relief and a civil penalty not to exceed \$1,000 per violation, as provided by the Health Information System Act, Section 24-14A-1 et seq. NMSA 1978.

[7.1.4.13 NMAC - Rp, 7 NMAC 1.1.13, 03/31/2008]

**HISTORY OF 7.1.1 NMAC:** The material in this part was derived from that previously filed with the state records center under:

HED 90-2 (OP&E), The New Mexico Health Information System Act Regulations, 2/23/1990.

HED 90-9, (OP&E) New Mexico Health Information System Act Regulations, 12/4/1990.

HPC Rule No. 94-1, Regulations Governing the State of New Mexico Health Information System Act, 12/16/1994.

#### History of Repealed Material:

7 NMAC 1.1, Data Reporting Requirements for Health Care Facilities, (filed 8/14/1997) repealed 03/31/2008.

#### Other History:

HPC Rule 94-1 New Mexico Health Information System Act Requirements (filed 12/16/1994) renumbered, reformatted and replaced by 7 NMAC 1.1, Data Reporting Requirements for Health Care Facilities, 08/15/1996.

7 NMAC 1.1, Data Reporting Requirements for Health Care Facilities, (filed 8/02/1996) replaced by 7 NMAC 1.1, Data Reporting Requirements for Health Care Facilities, effective 08/30/1997.

7 NMAC 1.1, Data Reporting Requirements for Health Care Facilities, (filed 8/14/1997) renumbered, reformatted and replaced by 7.1.4 NMAC, Data Reporting Requirements for Health Care Facilities, effective 03/31/2008.

## NEW MEXICO HEALTH POLICY COMMISSION

This is an amendment to 7.1.20 NMAC, Sections 5 and 15, effective 03/31/2008. This rule was also renumbered and reformatted to comply with current NMAC requirements.

**7.1.20.5 EFFECTIVE DATE:** August 30, 1997, unless a later date is cited at the end of a section [or paragraph]. [8/30/1997; 7.1.20.5 NMAC - Rn & A, 7 NMAC 1.20.5, 03/31/2008]

#### 7.1.20.15 FEES FOR DATA AND REPORTS:

**A. Fees for routine reports:**

(1) **Generally:** The fees for copies of available routine reports produced for public use shall be as follows:

(a) single copies of any consumer health information reports or HIS annual reports shall be provided free of charge upon request; and

(b) all other reports shall be provided for \$10.00 per report.

(2) **Data providers:** Data providers shall receive one free copy of the commission's routine reports upon request.

**B. Previously-prepared reports:** The fee for copies of available previously-prepared, non-routine reports provided to persons other than the original requestor for whom the report was prepared shall be \$20.00 per report.

**C. Fees for data and non-routine reports:** The fee for preparing data and non-routine reports that have not been previously prepared shall be charged at the hourly rate of the analyst(s) preparing the data or report, as follows:

(1) data providers shall be charged a rate of [~~\$30.00~~] \$50.00 per analyst hour;

(2) state agencies shall be charged a rate of [~~\$45.00~~] \$75.00 per analyst hour; and

(3) all others shall be charged a rate of [~~\$60.00~~] \$100.00 per analyst hour.

**D. Electronic media reports:** Fees for reports made available on computer tape or other electronic media may include charges for the cost of the magnetic tape, diskette or other electronic media, in addition to the fees required by this section.

**E. Waiver or reduction of fees:**

(1) **Standard for waiver or reduction:** The director may reduce or waive the fee for data and non-routine reports that have not been previously prepared when the director determines that the requestor's proposed use of the information

would be of value to the commission in fulfilling its statutory mandates to a degree equal to or greater than the fee reduction or waiver.

(2) **Payment upon failure to perform:** When a fee waiver or reduction has been granted and the research for which the fee was waived or reduced is not completed, or the product for which the fee was waived or reduced is not delivered to the commission, the full fee shall be assessed in accordance with Subsection C of 7.1.20.15 NMAC.

F. **Statement of fees:** The commission shall prepare a statement of the fee for requests made pursuant to Subsection C of 7.1.20.14 NMAC and provide it to the requestor with the data or report. The fee must be paid no later than 30 days after receipt of the data or report. [12/16/1994; Rn, 7 NMAC 1.1.12, 8/30/1997; A, 8/30/1997; 7.1.20.15 NMAC - Rn & A, 7 NMAC 1.20.15, 03/31/2008]

## NEW MEXICO HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.3.13 NMAC, Sections 2 and 7 effective March 31, 2008.

**5.3.13.2 SCOPE:** 5.3.13 NMAC applies to the allocation and distribution of money appropriated to the adult basic education fund by the legislature for use in a given fiscal year and further applies to the allocation and distribution of those monies made available to the state of New Mexico for basic education of adults and available for formula allocation and distribution to pay for the establishment or expansion of adult education programs to be carried out by public schools and school districts, universities, community based organizations of demonstrated effectiveness, community colleges as defined by Section 21-13-2 NMSA 1978, branch community colleges as defined by Section 21-14-1 NMSA 1978, technical and vocational institutes as defined by Section 21-16-2 NMSA 1978, learning centers established pursuant to Section 21-16A NMSA 1978, state-supported educational programs, postsecondary educational institutions operated by tribal entities, and bureau of Indian affairs controlled postsecondary schools located in New Mexico.

[5.3.13.2 NMAC - Rp, 6 NMAC 8.2.1.2, 6/30/2003; A, 12/30/2004; A, 7/31/2005; A, 3/31/2008]

**5.3.13.7 DEFINITIONS:**

A. "Adult basic education" (ABE) means adult education as defined by 20 U.S.C. Section 9202(1).

B. "Adult basic education fund" means that fund established pursuant to Section 21-1-27.5 NMSA 1978 for the purpose of funding adult basic education programs for educationally disadvantaged adults.

C. "State administrative site" means an entity submitting a proposal meeting the criteria established by the higher education department and approved for formula funding through the adult basic education fund for a given fiscal year, including public schools and school districts, universities, community based organizations of demonstrated effectiveness, community colleges as defined by Section 21-13-2 NMSA 1978, branch community colleges as defined by Section 21-14 -1 NMSA 1978, technical and vocational institutes as defined by Section 21-16-2 NMSA 1978, learning centers established pursuant to Section 21-16A NMSA 1978, state-supported educational programs, postsecondary educational institutions operated by tribal entities, and bureau of Indian affairs controlled postsecondary schools located in New Mexico.

[5.3.13.7 NMAC - Rp, 6 NMAC 8.2.1.7, 6/30/2003; A, 12/30/2004; A, 7/31/2005; A, 3/31/2008]

## NEW MEXICO REGULATION AND LICENSING DEPARTMENT PRIVATE INVESTIGATIONS ADVISORY BOARD

NMLEA B/PI Rule #1, Bureau of Private Investigators: Rules and Regulations (filed 11/04/1983 by New Mexico Law Enforcement Academy, Bureau of Private Investigators) is hereby repealed March 7, 2008.

NMPA Rule 92-1, Authority (filed 08/17/1992 by the NM Polygraph Advisory Board) emergency repeal March 7, 2008.

NMPA Rule 92-2, Definitions (filed 08/17/1992 by the NM Polygraph Advisory Board) emergency repeal March 7, 2008.

NMPA Rule 92-3, Qualification for Licensure (filed 08/17/1992 by the NM Polygraph Advisory Board) emergency repeal March 7, 2008.

NMPA Rule 92-4, Minimum Instrumentation (filed 08/17/1992 by the NM Polygraph Advisory Board) emergency repeal March 7, 2008.

NMPA Rule 92-5, Retention of Results of Polygraph Examination (filed 08/17/1992 by the NM Polygraph Advisory Board) emergency repeal March 7, 2008.

NMPA Rule 92-6, Unauthorized Practice (filed 08/17/1992 by the NM Polygraph Advisory Board) emergency repeal March 7, 2008.

NMPA Rule 92-7, Acts Inconsistent with Public Welfare (filed 08/17/1992 by the NM Polygraph Advisory Board) emergency repeal March 7, 2008.

NMPA Rule 92-8, Fee Schedule (filed 08/17/1992 by the NM Polygraph Advisory Board) emergency repeal March 7, 2008.

NMPA Rule 92-9, Continuing Education or Training (filed 08/17/1992 by the NM Polygraph Advisory Board) emergency repeal March 7, 2008.

NMPA Rule 92-10, Rules of Evidence 11-707 (filed 08/17/1992 by the NM Polygraph Advisory Board) emergency repeal March 7, 2008.

NMPA Rule 92-11, Code of Ethics and Creed of Conduct (filed 08/17/1992 by the NM Polygraph Advisory Board) emergency repeal March 7, 2008.

NMPA Rule 92-12, Disciplinary Actions (filed 08/17/1992 by the NM Polygraph Advisory Board) emergency repeal March 7, 2008.

NMPA Rule 92-13, Savings (filed 08/17/1992 by the NM Polygraph Advisory Board) emergency repeal March 7, 2008.

## NEW MEXICO REGULATION AND LICENSING DEPARTMENT PRIVATE INVESTIGATIONS ADVISORY BOARD

### TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 48 PRIVATE LAW ENFORCEMENT PRACTITIONERS PART 1 GENERAL PROVISIONS

**16.48.1.1 ISSUING AGENCY:** Regulation and Licensing Department, Private Investigations Advisory Board.

[16.48.1.1 NMAC - Rp/E, NMLEA B/PI Rule #1, Section 1 and NMPA Rule 92-1, 03/07/08]

**16.48.1.2 SCOPE:** This part applies to the board, licensees, registrants, applicants, and the general public.

[16.48.1.2 NMAC - N/E, 03/07/08]

**16.48.1.3 STATUTORY AUTHORITY:** These rules are promulgated pursuant to the Private Investigations Act, Section 61-27B-2, 61-27B-3, 61-27B-4, 61-27B-5, 61-27B-12, 61-27B-22, 61-27B-28 & 61-27B-29.

[16.48.1.3 NMAC - Rp/E, NMLEA B/PI Rule #1, Section 1 and NMPA Rule 92-1, 03/07/08]

**16.48.1.4 DURATION:** Permanent

[16.48.1.4 NMAC - N/E, 03/07/08]

**16.48.1.5 EFFECTIVE DATE:** March 7, 2008 unless a later date is cited in the history note at the end of a section.  
[16.48.1.5 NMAC - Rp/E, NMLEA B/PI Rule #1, Section 25, 03/07/08]

**16.48.1.6 OBJECTIVE:** To define terms relevant to private investigations, when a license is required, persons exempted, custody and alteration of license, transferability, display of license, notification of changes, local regulations, and professional ethical standards.  
[16.48.1.6 NMAC - N/E, 03/07/08]

**16.48.1.7 DEFINITIONS:** As used in these regulations, the following words and phrases have the following meanings, unless the context or intent clearly indicates a different meaning:

**A. "act"** means the New Mexico Private Investigations Act;

**B. "alarm company"** means a company that installs burglar or security alarms in a facility and responds with guards when the alarm is sounded;

**C. "applicant"** means any natural person who is applying for registration or licensure pursuant to the private investigations act;

**D. "armored car company"** means a company that knowingly and willingly transports money and other negotiables for a fee or other remuneration;

**E. "board"** means the New Mexico private investigations advisory board;

**F. "bodyguard"** means an individual who physically performs the mission of personal security for another individual;

**G. "branch office"** means an office of a private investigation company or a private patrol company physically located in New Mexico and managed, controlled or directed by a private investigations manager or private patrol operations manager;

**H. "charts"** means a continuous recording of the physiological changes in human respiration, cardiovascular activity and skin resistance or conductance;

**I. "client"** means an individual or legal entity having a contract that authorizes services to be provided in return for financial or other consideration;

**J. "conviction"** means any final adjudication of guilty, whether pursuant to a plea of guilty or nolo contendere or otherwise and whether or not the sentence is deferred or suspended;

**K. "department"** means the regulation and licensing department;

**L. "individual"** means a single human being;

**M. "legal business entity"** means a sole proprietorship, corporation, partnership, limited liability company, limited liability partnership or other entity formed for business purposes;

**N. "licensee"** means a person licensed pursuant to the Private Investigations Act;

**O. "polygraph examiner"** means an individual licensed by the department to engage in the practice of polygraphy;

**P. "polygraph examination"** also referred to as a psychophysiological detection of deception (PDD) means a test or series of tests designed to assess the truthfulness of an examinee to an issue or issues of concern and includes all charts, reports, allied documents and recordings generated or received regarding the testing procedures;

**Q. "polygraph instrument"** means a mechanical or digital computer instrument that, at a minimum, records simultaneously physiological changes in human respiration, skin resistance or conductance, and cardiovascular activity including relative blood pressure or volume;

**R. "polygraphy"** means the process of employing an instrument designed to graphically record simultaneously the physiological changes in human respiration, cardiovascular activity, galvanic skin resistance or reflex for the purpose of lie detection and includes the reading and interpretation of polygraphic records and results or any other device used to measure truthfulness;

**S. "private investigation company"** means a legal business entity that provides private investigation services, the location of which may be within or outside of the state, provided that the private investigation services are performed within New Mexico;

**T. "private investigator"** means an individual who is licensed by the department to engage in business or who accepts employment to conduct an investigation pursuant to the Private Investigations Act to obtain information regarding:

(1) crime or wrongs done or threatened against the United States or any state or territory of the United States;

(2) a person;

(3) the location, disposition or recovery of lost or stolen property;

(4) the cause or responsibility for fires, losses, accidents or damage or injury to persons or properties;

(5) the securing of evidence to be used before a court, administrative tribunal, board or investigating committee or for a law enforcement officer; or

(6) the scene of a motor vehicle

accident or evidence related to a motor vehicle accident;

**U. "private investigations employee"** means an individual who is registered by the department to work under the direct control and supervision of a private investigator for a private investigation company;

**V. "private investigations manager"** means an individual who:

(1) is licensed as a private investigator and is issued a license by the department as a private investigations manager;

(2) directs, controls or manages a private investigation company for the owner of the company; and

(3) is assigned to and operates from the private investigation company that the private investigations manager is licensed to manage or from a branch office of that private investigation company;

**W. "private patrol company"** means a legal business entity, the location of which may be within or outside of the state, including an independent or proprietary commercial organization that provides private patrol operator services that are performed in New Mexico and the activities of which include employment of licensed private patrol operators or security guards;

**X. "private patrol employee"** means an individual who is registered by the department to work under the direct control and supervision of a private patrol operator for a private patrol company;

**Y. "private patrol operations manager"** means an individual who:

(1) is licensed as a private patrol operator or registered as a level three security guard and is issued a license by the department as a private patrol operations manager;

(2) directs, controls or manages a private patrol company for the owner of the company; and

(3) is assigned to and operates from the private patrol company that the private patrol operations manager is licensed to manage or from a branch office of that private patrol company;

**Z. "private patrol operator"** means an individual who is licensed by the department to:

(1) conduct uniformed or nonuniformed services as a watchman, security guard or patrolman to protect property and persons on or in the property;

(2) prevent the theft, unlawful taking, loss, embezzlement, misappropriation or concealment of goods, wares, merchandise, money, bonds, stocks, notes, documents, papers or property of any kind; or

(3) perform the services required of a security guard or security dog handler

or provide security services for an armored car company;

**AA. "proprietary commercial organization"** means an organization or division of an organization that provides full- or part-time security guard services solely for itself;

**BB. "provisional license"** means a license to practice polygraphy for the probationary period that is required to determine operational competency;

**CC. "registrant"** means an individual registered as a private investigations employee, a private patrol operations employee or a security guard at any level;

**DD. "screening examination"** means any examination that is non-specific and deals with general background information;

**EE. "security dog handler"** means an individual who patrols with dogs to detect illegal substances or explosives;

**FF. "security guard"** means an individual who is registered to engage in uniformed or nonuniformed services under the direct control and supervision of a licensed private patrol operator or a private patrol operations manager to perform such security missions as watchman, fixed post guard, dog handler, patrolman or other person to protect property or prevent thefts; and

**GG. "sponsor"** means a licensed polygraph examiner;

**HH. "special event"** means a parade or other public or private event of short duration requiring security;

**II. "specific event examination"** means any examination that deals with a specific issue, crime or incident, criminal or otherwise;

**JJ. "superintendent"** means the superintendent of the regulation and licensing department;

**KK. "test data"** means the physiological data recorded or collected during a polygraph examination;

**LL. "test data analysis"** means the quantitative application of standardized scoring rules to the physiological test data and includes the use of computerized scoring programs.

[16.48.1.7 NMAC - Rp/E, NMLEA B/PI Rule #1, Section 3 and NMPA Rule 92-2, 03/07/08]

#### **16.48.1.8 CODE OF ETHICS AND CREED OF CONDUCT:**

**A.** Code of ethics for private security management. As managers of private security functions and employees, we pledge:

(1) to recognize that our principal responsibilities are, in the services of our organizations and clients, to protect life and property as well as to prevent and reduce

crime against our business, industry, or other organizations and institutions; and in the public interest, to uphold the law and to respect the constitutional rights of all persons;

(2) to be guided by a sense of integrity, honor, justice and morality in the conduct of business; in all personnel matters; in relationships with government agencies, client and employers; and in responsibilities to general public;

(3) to strive faithfully to render security services of the highest quality and to work continuously to improve our knowledge and skills and thereby improve the overall effectiveness of private security;

(4) to uphold the trust of our employers, our clients, and the public by performing our function within the law, nor ordering or condoning violations of law, and ensuring that our security personnel conduct their assigned duties lawfully and with proper regard for the rights of others;

(5) to respect the reputation and practice of others in the private security field, but to expose to the proper authorities any conduct that is unethical or unlawful;

(6) to apply uniform and equitable standards of employment in recruiting and selecting personnel regardless of race, creed, color, sex or age and in providing salaries commensurate with job responsibilities and with training, education and experience;

(7) to cooperate with recognized and responsible law enforcement and other criminal justice agencies; to comply with security licensing and registration laws and other statutory requirements that pertain to our business;

(8) to respect and protect the confidential and privileged information of employers and clients beyond the terms of our employment, except where their interests are contrary to law or to this code of ethics;

(9) to maintain a professional posture in all business relationships with employers, and clients, with others in the private security field, and with members of other professions; and to insist that our personnel adhere to the highest of professional conduct;

(10) to encourage the professional advancement of our personnel by assisting them to acquire appropriate security knowledge, education and training;

**B.** Code of ethics for private security employees. In recognition of the significant contribution of private security to crime prevention and reduction, as a private security guard, I pledge:

(1) to accept the responsibilities and fulfill the obligations of my role: protecting life and property; preventing and reducing crimes against my employer's business, or other organizations and institu-

tions to which I am assigned; upholding the law; and respecting the constitutional rights of all persons;

(2) to conduct myself with honesty and integrity and to adhere to the highest moral principles in the performance of my security duties;

(3) to be faithful, diligent and dependable in discharging my duties, and to uphold at all times the laws, policies, and procedures that protect the rights of others;

(4) to observe the precepts of truth, accuracy, and prudence without allowing personal feelings, prejudices, animosities or friendships to influence my judgments;

(5) to report to my superiors, without hesitation, any violation of the law or of my employer's or client's regulation;

(6) to respect and protect the confidential and privileged information of my employer or client beyond the term of my employment, except where their interests are contrary to law or to this code of ethics;

(7) to cooperate with all recognized and responsible law enforcement and government agencies in matters within their jurisdiction;

(8) to accept no compensation, commission, gratuity or other advantage without the knowledge and consent of my employer;

(9) to conduct myself professionally at all times, and to perform my duties in a manner that reflects upon myself, my employer, and private security;

(10) to strive to continually to improve my performance by seeking training and educational opportunities that will better prepare me for my private security duties.

**C.** Code of ethics for polygraph examiners.

(1) I shall at all times conduct myself in a manner reflecting credit to the polygraph profession.

(2) I shall deal fairly and impartially with all individuals, regardless of social, political, racial, religious, ethnic, economic or fraternal status.

(3) I shall keep all decisions free of personal or any other extraneous influence and render unbiased opinion in all decisions.

(4) I shall not publish misleading advertisements or claims concerning the polygraph profession. I shall advise each client or examinee of the infeasibility of conducting an examination where I encounter conditions or circumstances that so warrant.

(5) I shall not conduct a polygraph examination of any person I have reason to believe may be mentally or physically unfit, without first seeking an opinion of medical, psychological or psychiatric authority, as appropriate, prior to testing.

(6) I shall not include an opinion in any decision or report relating to medical, psychological, psychiatric, legal, or any other field in which I am not qualified.

(7) I shall refrain from criticizing or maligning other polygraph examiners except as required by legal proceedings.

(8) I shall not testify concerning polygraph charts of another examiner until I have satisfied the requirements of NM Rule of Evidence 11-707, NMRA 2004.

(9) I shall support the professional goals of the polygraph profession at every opportunity.

(10) I shall consider the integrity and goals of the polygraph profession above my personal desires and ambitions.

**D.** Polygraphy creed of conduct: To encourage uniformity of procedures, enhance the image of polygraphy, promote the welfare of the public, establish standards and promote an understanding among all polygraphers operating in the state of New Mexico, the following standards of principle are endorsed.

(1) The primary goal of a polygraph examination is to assess truth or deception, respecting all rights of the examinee and using proper polygraph techniques and procedures.

(2) No examinee will be compelled to take a polygraph examination except in compliance with existing law or terms of probation or parole. No force, threats, duress, coercion or promises will be made by a licensee in an effort to complete a polygraph examination.

(3) A minimum of three charts is required to reach a conclusive diagnostic opinion in any polygraph examination conducted by a licensee.

(4) Inquiries into the personal life, sexual habits, political or religious principles, or any other aspects of one's life that are not connected to, or necessary for, addressing the issue concerned will not be made.

(5) Examinations addressing secondary aspects of an unresolved direct issue will not be made merely to avoid or circumvent addressing a primary issue or to satisfy the personal desires of the examinee or client.

(6) Information concerning polygraph examinations will not be released to unauthorized persons. This does not preclude consultation with other examiners, or testimony before legal proceeding or other duly constituted authority, or information requested by the department.

(7) It is the responsibility of each examiner to promote proper polygraph procedures. Knowledge of deliberate violations of the law governing polygraphy should be brought to the attention of the department and any relevant national pro-

fessional association for consideration and action, if appropriate.

[16.48.1.8 NMAC - Rp/E, NMPA Rule 92-11, 03/07/08]

**16.48.1.9 SAVINGS CLAUSE:**

If any provision of these rules or the application thereof to any person or circumstances shall be held to be invalid or unconstitutional, the remainder of these rules and the application of such provisions to other persons or circumstances shall not be affected thereby.

[16.48.1.9 NMAC - Rp/E, NMPA Rule 92-13, 03/07/08]

**16.48.1.10 PRACTICING WITHOUT A LICENSE:** It is unlawful for an individual to:

**A.** act as a private investigator, private patrol operator, security guard, private investigations employee, private investigations manager or private patrol operations manager or to make any representation as being a licensee or registrant unless the individual is licensed by the department pursuant to the Private Investigations Act (61-27B-1 NMSA 1978);

**B.** render physical protection for remuneration as a bodyguard unless the individual is licensed as a private investigator or a private patrol operator;

**C.** continue to act as a private investigator, private patrol operator, security guard, private investigations employee, private investigations manager or private patrol operations manager if the individual's license issued pursuant to the Private Investigations Act has expired;

**D.** falsely represent that the individual is employed by a licensee; or

**E.** practice polygraphy for any remuneration without a license issued by the department in accordance with the Private Investigations Act.

[16.48.1.10 NMAC - Rp/E, NMPA Rule 92-6, 03/07/08]

**16.48.1.11 LICENSE EXEMPTIONS:**

**A.** As used in this section, "temporary" means a period of time not to exceed the duration of one private event or one school or nonprofit organization event, as described in Paragraphs (2) and (3) of Subsection B of this section.

**B.** The Private Investigations Act does not apply to:

(1) an individual employed exclusively and regularly by one employer in connection with the affairs of that employer, provided that the individual patrols or provides security only on the premises of the employer as limited by the employer;

(2) an individual employed exclusively to provide temporary security at a

private event that is not open to the public;

(3) individuals providing temporary security at athletic or other youth events and where the events occur under the auspices of a public or private school or a nonprofit organization;

(4) an attorney licensed in New Mexico conducting private investigations while engaged in the practice of law;

(5) an officer or employee of the United States or this state or a political subdivision of the United States or this state while that officer or employee is engaged in the performance of the officer's or employee's official duties;

(6) a person engaged exclusively in the business of obtaining and furnishing information concerning the financial rating of persons;

(7) a charitable philanthropic society or association duly incorporated under the laws of this state that is organized and maintained for the public good and not for private profit;

(8) a licensed collection agency or an employee of the agency while acting within the scope of employment while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or the debtor's property;

(9) admitted insurers, adjusters, agents and insurance brokers licensed by the state performing duties in connection with insurance transactions by them; or

(10) an institution subject to the jurisdiction of the director of the financial institutions division of the department or the comptroller of currency of the United States.

[16.48.1.11 NMAC - N/E, 03/07/08]

**16.48.1.12 CUSTODY AND ALTERATION OF LICENSES:**

**A.** Licenses and registrations issued by the department are at all times the property of the department, and may remain in the custody of the licensee or registrant only as long as the licensee or registrant complies with the act and department rules.

**B.** Licenses shall not be altered in any way.

**C.** Inspectors or board designees may retrieve any license which is suspended, revoked, expired, or left by a licensee who is no longer employed at an establishment.

[16.48.1.12 NMAC - N/E, 03/07/08]

**16.48.1.13 LICENSE NOT TRANSFERABLE; CHANGE IN OWNERSHIP OR MANAGEMENT; NAME CHOICE AND NAME CHANGE:**

**A.** A license or registration issued by the department pursuant to the

Private Investigations Act shall not be transferred or assigned.

**B.** A change of ownership or management of a private investigation company or private patrol company shall be filed with the department on an application form prescribed by the department, accompanied by the required fees, within thirty (30) days following any such change. Failure to file for a change of a private investigation company or private patrol company within the thirty (30) day period shall be grounds for termination of the license of a private investigation company or private patrol company.

**C.** A change in the name of a private investigation company or private patrol company shall require a name change application on a form provided by the department. A private investigation company or a private patrol company shall not conduct business under a fictitious name until the company has obtained the authorization for use of the name from the department. The department shall not authorize the use of a fictitious name that may generate public confusion with the name of a public officer or agency or the name of an existing private investigation company or private patrol company.

[16.48.1.13 NMAC - N/E, 03/07/08]

**16.48.1.14 DISPLAY OF LICENSE AND NOTIFICATION OF CHANGES:**

**A.** A license shall at all times be posted in a conspicuous place in the principal place of business in New Mexico of the licensee.

**B.** A copy of the registration of each registrant employed by a private investigation company or a private patrol company shall be maintained in the main New Mexico office of the company and in the branch office in which the registrant works.

**C.** A registration card issued by the department shall at all times be in the possession of and located on the person of a registrant when working.

**D.** A security guard shall wear the registration card on the outside of the guard's uniform so that the card is visible to others.

**E.** A licensee, including owners, officers or directors of a private investigation company or a private patrol company, or a registrant shall notify the department immediately in writing of a change in the mailing or contact address of the licensee or registrant.

**F.** Failure to notify the department within thirty days of changes required to be reported pursuant to this section or failure to carry or display a registration as required is grounds for suspension of a license or registration.

[16.48.1.14 NMAC - N/E, 03/07/08]

**16.48.1.15 LOCAL REGULATIONS:** The provisions of the Private Investigations Act (61-27B-1 NMSA 1978) shall not prevent the local authorities of a city or county by ordinance and within the exercise of the police power of the city or county from imposing local ordinances upon a street patrol special officer or on a person licensed or registered pursuant to the Private Investigations Act if the ordinances are consistent with that act.

[16.48.1.15 NMAC - Rp/E, NMLEA B/PI Rule #1, Section 2, 03/07/08]

**NEW MEXICO  
REGULATION AND  
LICENSING DEPARTMENT  
PRIVATE INVESTIGATIONS  
ADVISORY BOARD**

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL LICENSING  
CHAPTER 48 PRIVATE LAW  
ENFORCEMENT PRACTITIONERS  
PART 2 REQUIREMENTS  
FOR LICENSURE**

**16.48.2.1 ISSUING AGENCY:** Regulation and Licensing Department, Private Investigations Advisory Board.

[16.48.2.1 NMAC - Rp/E, NMLEA B/PI Rule #1, Section 1 and NMPA Rule 92-1, 03/07/08]

**16.48.2.2 SCOPE:** All individuals and business entities that apply for licensure under the Private Investigations Act.

[16.48.2.2 NMAC - N/E, 03/07/08]

**16.48.2.3 STATUTORY AUTHORITY:** These rules are promulgated pursuant to the Private Investigations Act, Section 61-27B-7, 61-27B-8, 61-27B-9, 61-27B-10, 61-27B-11, 61-27B-12, 61-27B-13, 61-27B-14, 61-27B-15, 61-27B-16, 61-27B-17, 61-27B-18, 61-27B-19, 61-27B-24, 61-27B-31 & 61-27B-35.

[16.48.2.3 NMAC - Rp/E, NMLEA B/PI Rule #1, Section 1 and NMPA Rule 92-1, 03/07/08]

**16.48.2.4 DURATION:** Permanent.

[16.48.2.4 NMAC - N/E, 03/07/08]

**16.48.2.5 EFFECTIVE DATE:** March 7, 2008 unless a later date is cited in the history note at the end of a section.

[16.48.2.5 NMAC - Rp/E, NMLEA B/PI Rule #1, Section 25, 03/07/08]

**16.48.2.6 OBJECTIVE:** To establish the procedures and outline the documents and information necessary to

complete the application process for licensure.

[16.48.2.6 NMAC - N/E, 03/07/08]

**16.48.2.7 DEFINITIONS:** Refer to 16.48.1.7 NMAC

[16.48.2.7 NMAC - N/E, 03/07/08]

**16.48.2.8 BOND AND GENERAL LIABILITY INSURANCE REQUIREMENT:**

**A.** All private investigators, private patrol operators and private investigation companies seeking to obtain or retain a license under the provisions of the Private Investigations Act shall file with the department and retain in full force and effect, a surety bond in the amount of ten thousand dollars (\$10,000) executed by a surety company authorized to do business in this state on a form prescribed by the department.

**B.** The owner or the chief executive officer of a private investigation company that provides personal protection or bodyguard services or the owner or the chief executive office of a private patrol company shall maintain a general liability certificate of insurance in the amount of not less than ten thousand dollars (\$10,000).

**C.** A surety bond in the amount of ten thousand dollars (\$10,000) or a general liability certificate of insurance executed and filed with the department pursuant to the Private Investigations Act shall remain in force until the surety company issuing the bond or the certificate has terminated future indemnity by notice to the department.

**D.** Any failure to furnish and maintain such bond in such form shall be grounds for denial or revocation of any license of a private investigator, private patrol operator, or private investigation company.

**E.** In the event a bond is offered which varies from the department form the department shall determine whether bond is in substantial conformance with the Private Investigations Act and department rules.

**F.** The duration of each bond shall, unless sooner terminated in accordance with law, be for the term of the license issued as set forth on the face thereof and thirty days thereafter.

**G.** Such bond shall also be filed and maintained for each period of renewal of license and the duration thereof shall be for the renewal period specified on the face of the license and thirty days thereafter.

**H.** Any claim filed or made against any private investigator, private patrol operator, or private investigation company shall be reported by him forthwith to his surety company.



**I.** Upon receipt of notice of any claim made against any private investigator, private patrol operator, or private investigation company the surety company bonding such private investigator, private patrol operator, or private investigation company shall forthwith report the same to the department.

**J.** All complaints filed, judgments rendered or injunctions issued, whether temporary or final, against any private investigator, private patrol operator, private investigation company or his surety company shall be reported to department, within ten days after receipt of the same by such private investigator, private patrol operator, private investigation company, surety company, or their agents, attorneys, or employees, together with the name of the court where filed and the name and address of the attorney for claimant, or the claimant if he has no attorney.

**K.** A private investigator or private patrol operator or private investigation company or licensee or registrant shall furnish the department with any information requested by the department pursuant to a claim or complaint or suit filed alleging a violation of any rule or statute governing private investigators, private patrol operators, private investigation companies, licensees or registrants when requested to do so by the department. Failure to comply with this request may result in disciplinary action. No payment may be made by a surety company pursuant to a claim or complaint filed with the department unless the department directs such payment to be made.

**L.** The failure to furnish such notice of claims or suits or such information shall be deemed sufficient to revoke or suspend any license of a private investigator, private patrol operator or private investigation company or to deem any bond for such private investigator, private patrol operator or private investigation company insufficient.

**M.** The department may determine that any claim made or suit filed against any private investigator, private patrol operator or private investigation company has reduced the amount of the bond of such investigator, patrol operator or private investigation company in full force and effect to such extent as the department shall, in its discretion, determine. Any judgment obtained against any private investigator or private patrol operator or private investigation company or his surety company shall be deemed to reduce the amount of his bond in full force and effect by the amount of the judgment. In the event the amount of the bond in full force and effect shall be so reduced, such private investigator or private patrol operator or pri-

private investigation company shall, within ten days, file a new or supplemental bond sufficient to meet the requirements of law as to the amount of bond in full force and effect.

**N.** If any claim is made or suit filed against any private investigator or private patrol operator or private investigation company for his actions, or the actions of any of his employees, and any portion of such act or acts as a private investigator or private patrol operator or private investigation company took place or occurred during the period for which a bond was in force, such surety shall be deemed liable for the whole of such claim to the extent of the total amount of the bond, provided that if more than one bond was in effect during the performance of all or any part of such acts, the liability shall be pro-rated among such sureties.

[16.48.2.8 NMAC - Rp/E, NMLEA B/PI Rule #1, Section 5, 03/07/08]

#### **16.48.2.9 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE INVESTIGATOR LICENSE:**

**A.** The department shall issue a license as a private investigator to an individual who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant has met all requirements, including that the applicant:

(1) is at least twenty-one years of age;

(2) is of good moral character;

(3) has successfully passed an examination to be administered by the department;

(4) has not been convicted of a felony offense, an offense involving dishonesty or an offense involving an intentional violent act or the illegal use or possession of a deadly weapon and has not been found to have violated professional ethical standards as defined by the department; and

(5) has at least three years' experience that has been acquired within the five years preceding the filing of the application with the department which shall consist of not less than 6,000 hours of actual work performed in:

(a) investigation for the purpose of obtaining information with reference to a crime or wrongs done or threatened against the United States;

(b) investigation of persons;

(c) the location, disposition or recovery of lost or stolen property;

(d) the cause or responsibility for fire, losses, motor vehicle or other accidents or damage or injury to persons or property; or

(e) securing evidence to be used before a court, administrative tribunal,

board or investigating committee or for a law enforcement officer.

**B.** Years of qualifying experience and the precise nature of that experience shall be substantiated by written certification from employers on a form provided by the department and shall be subject to independent verification by the department as it deems warranted. In the event of inability of applicants to supply such written certifications from employers in whole or in part, applicants may offer other written certifications from others than employers covering the same subject matter for consideration by the department. The burden of proving necessary experience is on the applicant.

[16.48.2.9 NMAC - Rp/E, NMLEA B/PI Rule #1, Section 7, 03/07/08]

#### **16.48.2.10 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE INVESTIGATION COMPANY LICENSE:**

**A.** The department shall issue a license for a private investigation company to a person that files a completed application accompanied by the required fees and that submits satisfactory evidence that the applicant:

(1) if an individual, is of good moral character; or if a legal business entity, the owners, officers or directors of the entity are of good moral character;

(2) if an individual, has not been convicted of a felony offense, an offense involving dishonesty, an offense involving an intentional violent act or the illegal use or possession of a deadly weapon and has not been found to have violated professional ethical standards; or if a legal business entity, the owners, officers or directors of the entity, either singly or collectively, have not been convicted of a felony offense or an offense involving intentional violent acts or the illegal use or possession of deadly weapons and have not been found to have violated professional ethical standards;

(3) maintains a surety bond in the amount of ten thousand dollars (\$10,000); however, private investigators who provide personal protection or bodyguard services shall maintain general liability insurance as specified in the Private Investigations Act in lieu of the surety bond required by the provisions of this paragraph; a private investigator or private patrol operator holding a certificate of deposit or surety bond prior to July 1, 2007 in the sum of two thousand dollars (\$2,000) shall be exempt from the bond provisions of the Private Investigations Act, provided that the private investigator's or private patrol operator's license remains current and the holder remains in good standing with the regulation and licensing

department;

(4) has an owner or a licensed private investigations manager who is licensed as a private investigator and who manages the daily operations of the private investigation company;

(5) maintains a physical location in New Mexico where records are maintained and made available for department inspection; and

(6) maintains a New Mexico registered agent if the applicant is a private investigation company located outside of New Mexico.

**B.** The owner or the chief executive officer of a private investigation company that provides personal protection or bodyguard services shall maintain a general liability certificate of insurance in the amount of no less than \$2,000.

**C.** The department shall suspend the license for private investigation company that fails to maintain an effective general liability certificate of insurance as required. The department shall not reinstate the license of a private investigation company that has had its license suspended pursuant to this subsection until an application is submitted to the department with the necessary fees and a copy of the private investigation company's general liability certificate of insurance in effect. The department may deny an application for reinstatement of a private investigation company's license, notwithstanding the applicant's compliance with this subsection for:

(1) a reason that would justify a denial to issue a new private investigation company license or that would be cause for a suspension or revocation of a private investigation company's license; or

(2) the performance by the applicant of an act requiring a license issued pursuant to the Private Investigations Act while the applicant's license is under suspension for failure to maintain the applicant's general liability certificate of insurance in effect. [16.48.2.10 NMAC - Rp/E, NMLEA B/PI Rule #1, Section 8, 03/07/08]

**16.48.2.11 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE INVESTIGATIONS MANAGER LICENSE:**

**A.** The department shall issue a license for a private investigations manager to an individual who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) possesses a current license in good standing as a private investigator;

(2) has successfully passed an examination to be administered by the department; and

(3) is employed by the private

investigation company that the applicant is being licensed to manage.

**B.** A private investigations manager who ceases to be employed by the private investigation company that the manager is licensed to manage, before leaving the company, shall surrender the private investigations manager's license to the owner, officer or director who is required to temporarily take over the management of the private investigation company. The owner, officer or director who temporarily takes over managing the private investigation company within thirty days of the termination from employment of the private investigations manager shall:

(1) notify the department of the termination of the employment of the private investigations manager;

(2) submit the surrendered license; and

(3) submit an application to the department naming a new private investigations manager, who shall not begin to perform the duties of a private investigations manager until and unless the department grants the applicant a private investigations manager's license.

**C.** Failure to notify the department within thirty days of the private investigations manager's termination from employment subjects the license of the private investigation company to suspension or revocation by the department.

**D.** Reinstatement of the private investigation company's license may occur only upon the filing of an application for reinstatement and payment of the reinstatement fee.

[16.48.2.11 NMAC - Rp/E, NMLEA B/PI Rule #1, Section 9, 03/07/08]

**16.48.2.12 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE INVESTIGATIONS EMPLOYEE LICENSE:**

**A.** On or after July 1, 2007, every individual who seeks employment or is currently employed as a private investigations employee or who provides services on a contract basis to a private investigation company shall file an application for registration as a private investigations employee with the department.

**B.** The department shall issue a registration for a private investigations employee to an individual who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) is at least twenty-one years of age;

(2) is of good moral character;

(3) possesses a high school diploma or its equivalent;

(4) has successfully completed an

examination to be administered by the board;

(5) has not been convicted of a felony involving an intentional violent act or the illegal use or possession of a deadly weapon and has not been found to have violated professional ethical standards; and

(6) shall be employed by, or shall contract with a private investigation company to provide investigation services for, a private investigation company, under the direct control and supervision of a private investigator.

**C.** If the contract or employment of a private investigations employee with a private investigation company terminates for any reason, the registration of the individual as a private investigations employee immediately terminates. The private investigations employee shall turn over the employee's registration to the private investigation company upon ceasing employment with that company.

**D.** A private investigation company shall notify the department within thirty days from the date of termination of employment of a private investigations employee of the employment termination and return the employee's registration to the department.

[16.48.2.12 NMAC - Rp/E, NMLEA B/PI Rule #1, Section 10, 03/07/08]

**16.48.2.13 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE PATROL OPERATOR LICENSE:**

**A.** The department shall issue a license for a private patrol operator to an individual who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) is at least twenty-one years of age;

(2) is of good moral character;

(3) has successfully passed an examination to be administered by the department;

(4) has not been convicted of a felony offense, an offense involving dishonesty, an offense involving an intentional violent act or the illegal use or possession of a deadly weapon and has not been found to have violated professional ethical standards;

(5) has at least three years' experience of actual work performed as a security guard consisting of not less than 4,000 hours of actual work performed as a guard, watchman, or patrolman or an equivalent position, one year of which shall have been in a supervisory capacity; the experience shall have been acquired within five years preceding the filing of the application with the department; years of qualifying experience and the precise nature of that experi-

ence shall be substantiated by written certification from the applicant's employers and shall be subject to independent verification by the department as it determines is warranted; the burden of proving necessary experience is on the applicant; and

(6) is firearm certified, if the position will require being armed with a firearm.

**B.** A private patrol operator may not investigate acts except those that are incidental to a theft, embezzlement, loss, misappropriation or concealment of property or other item that the private patrol operator has been engaged or hired to protect, guard or watch.

[16.48.2.13 NMAC - Rp/E, NMLEA B/PI Rule #1, Section 6, 03/07/08]

**16.48.2.14 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE PATROL COMPANY LICENSE:**

**A.** The department shall issue a license for a private patrol company to a person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) if an individual, is of good moral character; or if a legal business entity, the owners, officers or directors of the entity are of good moral character;

(2) if an individual, has not been convicted of a felony offense, an offense involving dishonesty, an offense involving an intentional violent act or the illegal use or possession of a deadly weapon and has not been found to have violated professional ethical standards, or if a legal business entity, the owners, officers or directors of the entity, either singly or collectively, have not been convicted of a felony offense, an offense involving dishonesty or an offense involving an intentional violent act or the illegal use or possession of a deadly weapon and have not been found to have violated professional ethical standards;

(3) has an owner or a licensed private patrol operations manager who manages the daily operations of the private patrol company;

(4) maintains a physical location in New Mexico where records are maintained and made available for department inspection; and

(5) maintains a New Mexico registered agent if the applicant is a private patrol company located outside of New Mexico.

**B.** The owner or the chief executive officer of a private patrol company shall maintain a general liability certificate of insurance in an amount not less than ten thousand dollars (\$10,000).

**C.** The department shall

suspend the license issued pursuant to this section of a private patrol company that fails to maintain an effective general liability certificate of insurance as required. The department shall not reinstate the license of a private patrol company that has had its license suspended pursuant to this subsection until an application is submitted to the department with the necessary fees and a copy of the private patrol company's general liability certificate of insurance newly in effect. The department may deny an application for reinstatement of a private patrol company's license, notwithstanding the applicant's compliance with this subsection for:

(1) a reason that would justify a denial to issue a new private patrol company license or that would be cause for a suspension or revocation of a private patrol company's license; or

(2) the performance by the applicant of an act requiring a license issued pursuant to the Private Investigations Act while the applicant's license is under suspension for failure to maintain the applicant's general liability certificate of insurance in effect. [16.48.2.14 NMAC - Rp/E, NMLEA B/PI Rule #1, Section 6, 03/07/08]

**16.48.2.15 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE PATROL OPERATIONS MANAGER LICENSE:**

**A.** The department shall issue a license for a private patrol operations manager to an individual who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) possesses a current license in good standing as a private patrol operator or a registration as a level three security guard;

(2) has successfully passed an examination to be administered by the department; and

(3) is employed by the private patrol company that the applicant is being licensed to manage.

**B.** A private patrol operations manager who ceases to be employed by the private patrol company that the manager is licensed to manage, before leaving the company, shall surrender the private patrol operations manager's license to the owner, officer or director who is required to temporarily take over the management of the private patrol company. The owner, officer or director who temporarily takes over managing the private patrol company within thirty days of the termination from employment of the private patrol operations manager shall:

(1) notify the department of the termination of the employment of the pri-

vate patrol operations manager;

(2) submit the surrendered license; and

(3) submit an application to the department naming a new private patrol operations manager, who shall not begin to perform the duties of a private patrol operations manager until the department grants the applicant a private patrol operations manager's license.

**C.** Failure to notify the department within thirty days of the private patrol operations manager's termination from employment subjects the license of the private patrol company to suspension or revocation by the department.

**D.** Reinstatement of the private patrol company's license may occur only upon the filing of an application for reinstatement and payment of the reinstatement fee.

[16.48.2.15 NMAC - Rp/E, NMLEA B/PI Rule #1, Section 6, 03/07/08]

**16.48.2.16 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A POLYGRAPH EXAMINER LICENSE:**

**A.** The department shall issue a license as a polygraph examiner to an individual who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) is at least eighteen years of age;

(2) is of good moral character;

(3) possesses a high school diploma or its equivalent;

(4) has not been convicted of a felony involving an intentional violent act or the illegal use or possession of a deadly weapon and has not been found to have violated professional ethical standards;

(5) has graduated from an accredited polygraph examiners course approved by the department; and

(6) has:

(a) completed a probationary operational competency period and passed an examination of ability approved by the department to practice polygraphy; or

(b) submitted proof of holding, for a minimum of two years immediately preceding the date of application, a current license to practice polygraphy in another jurisdiction whose standards are equal to or greater than those in New Mexico.

**B.** No person, including a city, county or state employee, shall administer polygraph examinations utilizing instrumentation for the purpose of detecting deception or verifying truth of statements, or attempt to hold himself out as a polygraph examiner, or refer to himself by any other title which may cause members of the

public to believe that he is qualified to apply polygraph techniques or equipment to detect deception or to verify the truth of statements, unless such person is licensed under the act.

[16.48.2.16 NMAC - Rp/E, NMPA Rule 92-3, 03/07/08]

**16.48.2.17 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A SECURITY GUARD REGISTRATION: LEVEL ONE:**

**A.** On or after July 1, 2007, every individual seeking employment or employed as a level one security guard shall file an application for registration with the department. The application shall include two passport type photos taken with the prior six months.

**B.** The department shall issue a registration for a level one security guard to an individual who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) is at least eighteen years of age;

(2) is of good moral character;

(3) has successfully completed an examination to be administered by the department;

(4) has not been convicted of a felony or an offense involving dishonesty, an offense involving an intentional violent act or the illegal use or possession of a deadly weapon and has not been found to have violated professional ethical standards;

(5) has completed department approved training program as defined in Subsection D of 16.48.2.17 NMAC prior to being placed on a guard post for the first time as a level one security guard; that training may be provided by:

(a) a public educational institution in New Mexico or an educational institution licensed by the higher education department pursuant to the Post-Secondary Educational Institution Act (21-23-1 NMSA 1978);

(b) an in-house training program provided by a licensed private patrol company using a curriculum approved by the department; or

(c) any other department-approved educational institution using a curriculum approved by the department and complying with department standards set forth in department rules; and

(6) is employed by a private patrol company under the direct supervision of a licensed private patrol operator, a level three security guard or a private patrol operations manager.

**C.** Both the security guard and the private patrol company shall notify

the department of employment termination of a level one security guard.

**D.** The following twenty four hour curriculum is the minimum training required and must be completed within twelve months prior to application for security guard level one licensing:

(1) role of the security guard - one (1) hour;

(2) basic first aid and CPR training - eight (8) hours;

(3) investigations - three (3) hours;

(4) interview skills - two (2) hours;

(5) preservation of evidence - two (2) hours;

(6) asset protection - one (1) hour;

(7) chain of command - one (1) hour;

(8) report writing - two (2) hours;

(9) testifying in court - one (1) hour;

(10) ethics and professionalism - three (3) hours.

[16.48.2.17 NMAC - N/E, 03/07/08]

**16.48.2.18 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A SECURITY GUARD REGISTRATION: LEVEL TWO:**

**A.** On or after July 1, 2007, every individual seeking employment or employed as a level two security guard shall file an application for registration with the department. The application shall include two passport type photos taken with the prior six months.

**B.** The department shall issue a registration for a level two security guard to an individual who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) meets the requirements to be granted registration as a level one security guard and maintains in good standing a current registration as a level one security guard;

(2) has successfully completed an examination to be administered by the department;

(3) possesses a high school diploma or its equivalent;

(4) in addition to the training required to be registered as a level one security guard, has completed a department approved training program as defined in Subsection D of 16.48.2.18 NMAC for level two security guard training prior to being placed on a guard post for the first time as a level two security guard; that training may be provided by:

(a) a public educational institution in New Mexico or an educational institution licensed by the higher education

department pursuant to the Post-Secondary Educational Institution Act (21-23-1 NMSA 1978);

(b) an in-house training program provided by a licensed private patrol company using a curriculum approved by the department;

(c) the New Mexico law enforcement academy; or

(d) any other department-approved educational institution using a curriculum approved by the department and complying with department standards set forth in department rules; and

(5) is employed by a private patrol company under the direct supervision of a licensed private patrol operator, a level three security guard or a private patrol operations manager.

**C.** Both the security guard and the private patrol company shall notify the department of employment termination of a level two security guard.

**D.** The following twenty four hour curriculum is the minimum training required and must be completed within twelve months prior to application for security guard level two registration:

(1) use of force - three (3) hours;

(2) self defense weapons and techniques - eight (8) hours;

(3) side handle batons - four (4) hours;

(4) handcuffing - four (4) hours;

(5) use of tasers - five (5) hours.

[16.48.2.18 NMAC - Rp/E, 03/07/08]

**16.48.2.19 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A SECURITY GUARD REGISTRATION: LEVEL THREE:**

**A.** On or after July 1, 2007, every individual seeking employment or employed as a level three security guard shall file an application for registration with the department. The application shall include two passport type photos taken with the prior six months.

**B.** The department shall issue a registration for a level three security guard to an individual who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) is at least twenty-one years of age;

(2) meets the requirements to be granted registration as a level two security guard and maintains in good standing a current registration as a level two security guard;

(3) has successfully completed an examination to be administered by the department;

(4) possesses a high school diploma or its equivalent;

(5) in addition to the training required to be registered as a level two security guard and before the applicant shall be placed for the first time at a guard post as a level three security guard, has completed a department approved training program as defined in Subsection D of 16.48.2.19 NMAC consisting of the minimum training for firearm certification provided that the additional training is provided by:

(a) a public educational institution in New Mexico or an educational institution licensed by the higher education department pursuant to the Post-Secondary Educational Institution Act;

(b) an in-house training program provided by a licensed private patrol company using a curriculum approved by the department;

(c) the New Mexico law enforcement academy; or

(d) any other department-approved educational institution using a curriculum approved by the department and complying with department standards set forth in department rules;

(6) is firearm certified by the New Mexico law enforcement academy or the national rifle association;

(7) is employed by a private patrol company under the direct supervision of a licensed private patrol operator, another level three security guard or a private patrol operations manager; and

(8) beginning on July 1, 2009, has successfully passed a psychological evaluation as prescribed by the department to determine suitability for carrying firearms.

C. Both the security guard and the private patrol company shall notify the department of employment termination of a level three security guard.

D. The following eleven hour curriculum and twenty four hours of firearm training is the minimum training required and must be completed within twelve months prior to application for security guard level three registration:

(1) fire protection and life safety - four (4) hours

(2) threat assessment - two (2) hours

(3) safety awareness - one (1) hours

(4) environment/hazardous materials - four (4) hours

(5) firearms training - twenty four (24) hours

[16.48.2.19 NMAC - N/E, 03/07/08]

**16.48.2.20 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A SPECIAL EVENT PERMIT:**

A. A private patrol company employing a nonresident security guard

temporarily for a special event shall apply to the department for and may be issued a special event permit for each nonresident security guard qualified to be employed at the special event.

B. A special event permit is issued for a specific nonresident security guard and a specific special event and shall not be transferred to another security guard or used for a special event other than for the special event for which the permit is issued.

C. To be issued a special event permit, a private patrol company shall provide the department with a description of the special event, its location and the dates on which the temporary nonresident security guard will be employed to provide services at the special event. A special event permit shall bear the name of the private patrol company and contact information, the name of the nonresident security guard, the name of the special event for which it is issued, the dates of the special event and other pertinent information required by the department.

D. A special event permit shall be issued only to an individual who qualifies for a level one or higher security guard registration and who:

(1) is not a resident of New Mexico;

(2) does not hold a registration as a security guard in New Mexico; and

(3) meets other requirements specified by the department.

E. A special event permit requiring a security guard to carry a firearm shall only be issued to an individual who is qualified to be registered as a level three security guard.

F. It is a violation of the Private Investigations Act (61-27B-1 NMSA 1978) for a private patrol company to circumvent the registration process for permanent or long-term part-time employment of security guards through use of the provisions of this section.

[16.48.2.20 NMAC - N/E, 03/07/08]

**16.48.2.21 CESSATION OF LICENSE BUSINESS:**

A. A registrant or licensee subject to the Private Investigations Act who ceases to do business as a registrant or licensee before the registration or license expiration date shall submit written notice of cancellation of his license to the department within thirty days of cessation of such business.

B. He shall also, within thirty days of cessation of such business, provide the department with a list of all employees registered under his license which shall include name, address, registration number and date of registration of each employee.

[16.48.2.21 NMAC - Rp/E, NMLEA B/PI Rule #1, Section 19, 03/07/08]

**16.48.2.22 GENERAL QUALIFICATIONS FOR REGISTRATION AND LICENSE OF APPLICANTS:**

A. Must be a citizen of the United States.

B. Cannot have been convicted of a felony or other crime involving moral turpitude.

C. Must have reached the age of majority (18 years).

[16.48.2.22 NMAC - N/E, NMLEA B/PI Rule #1, Section 22, 03/07/08]

**NEW MEXICO  
REGULATION AND  
LICENSING DEPARTMENT  
PRIVATE INVESTIGATIONS  
ADVISORY BOARD**

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL LICENSING  
CHAPTER 48 PRIVATE LAW  
ENFORCEMENT PRACTITIONERS  
PART 3 STANDARDS OF  
PRACTICE**

**16.48.3.1 ISSUING AGENCY:** Regulation and Licensing Department, Private Investigations Advisory Board.

[16.48.3.1 NMAC - Rp/E, NMLEA B/PI Rule #1, Section 1 and NMPA Rule 92-1, 03/07/08]

**16.48.3.2 SCOPE:** All individuals and business entities registered and licensed under the Private Investigations Act.

[16.48.3.2 NMAC - N/E, 03/07/08]

**16.48.3.3 STATUTORY AUTHORITY:** These rules are promulgated pursuant to the Private Investigations Act, Section 61-27B-5,

[16.48.3.3 NMAC - Rp/E, NMLEA B/PI Rule #1, Section 1 and NMPA Rule 92-1, 03/07/08]

**16.48.3.4 DURATION:** Permanent

[16.48.3.4 NMAC - N/E, NMAC, 03/07/08]

**16.48.3.5 EFFECTIVE DATE:** March 7, 2008 unless a later date is cited in the history note at the end of a section.

[16.48.3.5 NMAC - Rp/E, NMLEA B/PI Rule #1, Section 25, 03/07/08]

**16.48.3.6 OBJECTIVE:** To establish uniform standards of practice.

[16.48.3.6 NMAC - N/E, NMAC, 03/07/08]

**16.48.3.7 DEFINITIONS:** Refer

to 16.48.1.7 NMAC

[16.48.3.7 NMAC - N/E, NMAC, 03/07/08]

**16.48.3.8 INTERVIEW OF APPLICANTS:** At the discretion of the department, any applicant for license or registration may be required to present himself for interview prior to approval of his application.

[16.48.3.8 NMAC - Rp/E, NMLEA B/PI Rule #1, Section 14, 03/07/08]

**16.48.3.9 ALCOHOLIC BEVERAGES:**

**A.** Any uniformed registrant or licensee shall not consume alcoholic beverages or controlled substances while on duty.

**B.** When not in uniform, any registrant or licensee, while on duty, shall not consume alcoholic beverages or any controlled substance in such a manner as to adversely affect his performance under the capacity for which license or registration is issued.

[16.48.3.9 NMAC - Rp/E, NMLEA B/PI Rule #1, Section 16, 03/07/08]

**16.48.3.10 DEPUTY SHERIFF COMMISSIONS:**

**A.** No licensee subject to the Private Investigators Act shall require any employee, as a condition or requirement of the employee's hiring or continued employment, to obtain a deputy sheriff's commission from any county sheriff, or to obtain a similar commission from any federal, state or local law enforcement agency.

**B.** No licensee subject to the Private Investigators Act nor any of his employees shall, during the pursuit of his licensed activities, display any deputy sheriff's or similar commission or badge issued pursuant to that commission in a manner likely to cause confusion between the licensed business and any city, local, federal or state police organization, or any branch of the United States military.

[16.48.3.10 NMAC - Rp/E, NMLEA B/PI Rule #1, Section 18, 03/07/08]

**16.48.3.11 FICTITIOUS NAMES AND TITLES:**

**A.** Fictitious names under which licensees conduct businesses shall not contain words which may foster confusion with city, local, state or federal law enforcement agencies, such as "police".

**B.** The terms, "police", "sheriff", "peace officer", or "law enforcement", shall not be used as part of any business name and shall not be displayed or used on business cards, stationary, advertisements, badges, uniforms, emblems, insignia or identification. No person licensed or required to be licensed under this Act shall in any way give the impres-

sion that he is connected with the federal government, state government or any political subdivision of a state government.

[16.48.3.11 NMAC - Rp/E, NMLEA B/PI Rule #1, Section 13, 03/07/08]

**16.48.3.12 UNIFORMS, INSIGNIA, AND BADGES:**

**A.** Uniforms worn by a registrant or licensee shall be of such design as not to be confused with uniforms worn by city, local or state police, or by any branch of the United States military. Insignia attached to the uniform of any registrant or licensee shall be of such design and placed in such manner as not to be confused with insignia attached to uniforms worn by city, local or state police, or by any branch of the United States military. A badge may be worn by a registrant or licensee only while such individual is in uniform and on duty.

**B.** A patch, at least 2 1/2" x 1/2", entitled "SECURITY" will be worn on the left upper sleeve.

**C.** An identifiable plate showing the name of the individual and the company will be worn by all uniformed personnel. Such identification will be placed on the individual's outermost garment and be clearly visible at all times.

**D.** All private patrol operators and company licensees shall furnish the department a complete description of their uniform and shall furnish full length color photographs of the front and each side view of the uniform. All photographs must be clear and legible and shall accurately depict the uniform. A printed form, furnished by the department, shall be submitted describing those features deemed pertinent.

[16.48.3.12 NMAC - Rp/E, NMLEA B/PI Rule #1, Section 12, 03/07/08]

**NEW MEXICO  
REGULATION AND  
LICENSING DEPARTMENT  
PRIVATE INVESTIGATIONS  
ADVISORY BOARD**

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL LICENSING  
CHAPTER 48 PRIVATE LAW  
ENFORCEMENT PRACTITIONERS  
PART 4 MANDATORY  
FIREARMS TRAINING**

**16.48.4.1 ISSUING AGENCY:** Regulation and Licensing Department, Private Investigations Advisory Board.

[16.48.4.1 NMAC - Rp/E, NMLEA B/PI Rule #1, Section 1 and NMPA Rule 92-1, 03/07/08]

**16.48.4.2 SCOPE:** All individuals that apply for licensure and are authorized to carry a firearm under the Private Investigations Act.

[16.48.4.2 NMAC - N/E, 03/07/08]

**16.48.4.3 STATUTORY AUTHORITY:** These rules are promulgated pursuant to the Private Investigations Act, Section 61-27B-31.

[16.48.3.3 NMAC - Rp/E, NMLEA B/PI Rule #1, Section 1 and NMPA Rule 92-1, 03/07/08]

**16.48.4.4 DURATION:** Permanent.

[16.48.4.4 NMAC - N/E, 03/07/08]

**16.48.4.5 EFFECTIVE DATE:** March 7, 2008 unless a later date is cited in the history note at the end of a section.

[16.48.4.5 NMAC - Rp/E, NMLEA B/PI Rule #1, Section 25, 03/07/08]

**16.48.4.6 OBJECTIVE:** To establish the firearms training requirements necessary to apply for licensure.

[16.48.4.6 NMAC - N/E, 03/07/08]

**16.48.4.7 DEFINITIONS:** Refer to 16.48.1.7 NMAC

[16.48.4.7 NMAC - N/E, 03/07/08]

**16.48.4.8 MANDATORY FIREARMS TRAINING:**

**A.** After July 1, 2007, any private investigator, a private patrol operator, a private investigations employee, a level three security guard or a private patrol operations employee may carry a firearm upon successful completion of the mandatory firearm training required by the department. Any licensee who carries a firearm on duty shall be required to qualify through a certified national rifle association firearms instructor or a firearms course certified through the law enforcement academy prior to carrying a weapon on duty, and annually thereafter.

**B.** The licensee will be required to qualify with the same type of weapon and caliber he will be carrying while on duty.

**C.** The initial qualification course established by the department shall not be less than twenty (20) hours.

**D.** All individuals who will be armed with a shotgun must successfully complete the shotgun qualification course as established by the department.

**E.** Once a licensee has completed the initial qualifications course, he is eligible to complete the requalification course as established by the department, consisting of at least ten (10) hours on an annual basis.

**F.** No firearm shall be

used which caliber is less than .38. The weapon carried by a security officer must also be one of the same type and caliber used for firearms qualification.

**G.** Minimum twenty (20) hour firearms training shall include:

(1) four hours classroom instruction in the following subjects:

(a) legal aspects of deadly force - one hour;

(b) range safety rules - one hour;

(c) practical exercise - one hour;

(d) revolver maintenance - one hour;

(2) sixteen hours of range training under supervision of a certified firearms instructor.

**H.** Specific course requirements and verification of completion forms will be posted on the board website and available on request from the board office.

[16.48.4.8 NMAC - Rp/E, NMLEA B/PI Rule #1, Section 21, 03/07/08]

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**NEW MEXICO  
REGULATION AND  
LICENSING DEPARTMENT  
PRIVATE INVESTIGATIONS  
ADVISORY BOARD**

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL LICENSING  
CHAPTER 48 PRIVATE LAW  
ENFORCEMENT PRACTITIONERS  
PART 5 FEES**

**16.48.5.1 ISSUING AGENCY:** Regulation and Licensing Department, Private Investigations Advisory Board.

[16.48.5.1 NMAC - Rp/E, NMLEA B/PI Rule #1, Section 1 and NMPA Rule 92-1, 03/07/08]

**16.48.5.2 SCOPE:** All individuals and business registered and licensed under the Private Investigations Act.

[16.48.5.2 NMAC - N/E, 03/07/08]

**16.48.5.3 STATUTORY AUTHORITY:** These rules are promulgated pursuant to the Private Investigations Act, Section 61-27B-20 NMSA 1978.

[16.48.5.3 NMAC - Rp/E, NMLEA B/PI Rule #1, Section 1 and NMPA Rule 92-1, 03/07/08]

**16.48.5.4 DURATION:** Permanent.

[16.48.5.4 NMAC - N/E, 03/07/08]

**16.48.5.5 EFFECTIVE DATE:** March 7, 2008 unless a later date is cited in the history note at the end of a section.

[16.48.5.5 NMAC - Rp/E, NMLEA B/PI Rule #1, Section 25, 03/07/08]

**16.48.5.6 OBJECTIVE:** To establish fees to generate revenue adequate to fund the cost of program administration as authorized under 61-27B-20.

[16.48.5.6 NMAC - N/E, 03/07/08]

**16.48.5.7 DEFINITIONS:** [RESERVED]

[Refer to 16.48.1.7 NMAC]

**16.48.5.8 FEE SCHEDULE:**

**A.** All fees payable to the board are non-refundable.

**B.** Application fees:

(1) private investigator license  
\$200.00

(2) private investigation company license  
\$200.00

(3) private investigations manager license  
\$75.00

(4) private investigations employee registration  
\$35.00

(5) private patrol operator license  
\$200.00

(6) private patrol company license  
\$200.00

(7) private patrol operations manager license  
\$75.00

(8) polygraph examiner license  
\$200.00

(9) security guard level one  
\$15.00

(10) security guard level two  
\$15.00

(11) security guard level three  
\$15.00

(12) special event permit  
\$200.00

(13) branch office certificate  
\$50.00

(14) inspection of public records request: regulation and licensing department standard rate;

(15) examination  
\$100.00.

[16.48.5.8 NMAC - Rp/E, NMLEA B/PI Rule 1, Section 11 & NMPA Rule 92-8, 03/07/08]

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**End of Adopted Rules Section**

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## SUBMITTAL DEADLINES AND PUBLICATION DATES

2008

<b>Volume XIX</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
Issue Number 1	January 2	January 15
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