

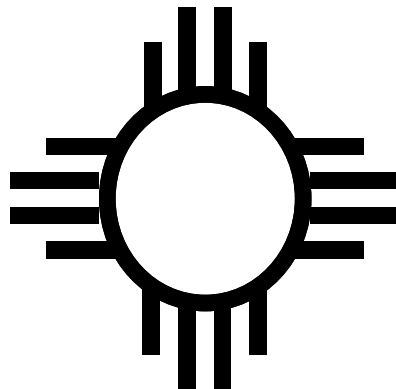
**NEW
MEXICO
REGISTER**



Volume XIX
Issue Number 11
June 16, 2008

New Mexico Register

**Volume XIX, Issue Number 11
June 16, 2008**



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

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New Mexico Register

Volume XIX, Number 11

June 16, 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 CHILDREN, YOUTH AND FAMILIES DEPARTMENT JUVENILE JUSTICE DIVISION

Notice of Public Hearing

The Children, Youth and Families Department, Juvenile Justice Services, will hold a formal public hearing on July 9 from 1:00 to 3:00 p.m. in Room 565 on the 5th floor of the PERA building located at 1120 Paseo de Peralta, Santa Fe, New Mexico to receive public comments regarding a proposed amendment of regulations 8.14.4 NMAC and 8.14.5 NMAC, governing Facility Medical and Behavioral Health Services and Facility Operations.

The proposed changes to the regulations may be obtained by contacting Patricia Ruiz at 505-827-7632. Interested persons may testify at the hearing or submit written comments no later than 3:30 p.m. on June 25, 2008. Written comments will be given the same consideration as oral testimony given at the hearing. Written comments should be addressed to Patricia Ruiz, Juvenile Justice Services, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160, Fax Number 505-827-8408.

If you are a person with a disability and you require this information in an alternative format or require special accommodations to participate in the public hearing, please contact Patricia Ruiz at 505-827-7632. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION BOARD OF FINANCE

NEW MEXICO
DEPARTMENT OF FINANCE AND
ADMINISTRATION

STATE BOARD OF FINANCE

NOTICE OF BOARD OF FINANCE
RULE

The State Board of Finance is in the process of introducing a new NMAC rule: Gross Receipt Tax Increment Dedication. Copies of the proposed rule are available in room 181, Bataan Memorial building, Santa Fe NM 87501 and on the board of finance website, <http://board.nmdfa.state.nm.us>. The

board will consider adopting the proposed rule at its July 22, 2008 meeting, which takes place at 9:30 in the Governor's Cabinet Room, State Capitol building. Please mail or deliver written comments on the proposed rule to Olivia Padilla-Jackson, 181 Bataan Memorial building, Santa Fe, NM 87501 by July 16, 2008.

NEW MEXICO HUMAN SERVICES DEPARTMENT CHILD SUPPORT ENFORCEMENT DIVISION

NOTICE OF PUBLIC HEARING

The New Mexico Human Services Department, Child Support Enforcement Division (CSED), will hold a public hearing on Wednesday, July 16, 2008 from 9:30 to 10:30 a.m., in the Law Library, in the Pollon Plaza Building, located at 2009 South Pacheco Street, Santa Fe, New Mexico 87505. The law library is located on the first floor.

The purpose of the meeting is to present amendments and additions to the CSED state rules regarding the Fees, Payments and Distributions of support obligations for public comment. The amendments and additions are to clarify the rules for fees, payments and distributions of support obligations.

A copy of the Human Services Register containing the proposed rules can be obtained at the Human Services Department, Child Support Enforcement Division, Director's Office, Room 327, 2009 South Pacheco Street, Santa Fe, New Mexico or by contacting Amanda V. Francia at 505-476-7203.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter or any other form of auxiliary aid or services to attend or participate in the Public Hearing, please contact the Human Services Department at 505-476-7203 or through the New Mexico Relay System, Toll Free at 1-800-659-8331. The department requests at least a ten day notice to provide requested alternative formats and/or special accommodations.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 p.m. on the date of the hearing. All written and oral testimony will be considered prior to issuance of the final regulation. Please send comments to:

Pam S. Hyde, J.D. Secretary
Human Services Department
P.O. Box 2348 Pollon Plaza
Santa Fe, N.M. 87504-2348

You may send comments electronically to: amanda.francia@state.nm.us or via fax to (505) 827-7285

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NOTICE OF HEARING AND PROPOSED RULES

The New Mexico Taxation and Revenue Department proposes to repeal the following regulations:

Corporate Income and Franchise Tax Act

3.4.9.10 NMAC Section 7-2A-9.1 NMSA 1978
(*Estimated Tax; Reasonable Expectation*)

Special Fuels Supplier Tax Act

3.16.107.7 NMAC Section 7-16A-8 NMSA 1978
(*Definitions*)

3.16.107.8 NMAC Section 7-16A-8 NMSA 1978
(*Delivery Into Special Bulk Storage*)

3.16.107.9 NMAC Section 7-16A-8 NMSA 1978
(*Special Bulk Storage Containers to be Labeled*)

- 3.16.107.10 NMAC Section 7-16A-8 NMSA 1978
 (*“Allowable Motor Vehicles” List to be Maintained*)
 3.16.107.11 NMAC Section 7-16A-8 NMSA 1978
 (*Special Bulk Storage User Permit*)
 3.16.107.12 NMAC Section 7-16A-8 NMSA 1978
 (*Taxability of Deliveries Into Special Bulk Storage*)
 3.16.107.13 NMAC Section 7-16A-8 NMSA 1978
 (*Suspension of Special Bulk Storage User Permit*)

The New Mexico Taxation and Revenue Department proposes to adopt the following regulations:

Special Fuels Supplier Tax Act

- 3.16.109.8 NMAC Section 7-16A-10 NMSA 1978
 (*Calculation of Special Fuel Excise Tax Liability*)
 3.16.109.9 NMAC Section 7-16A-10 NMSA 1978
 (*Proof Satisfactory to the Department*)
 3.16.109.10 NMAC Section 7-16A-10 NMSA 1978
 (*Deduction - Sales to Other Suppliers*)
 3.16.109.11 NMAC Section 7-16A-10 NMSA 1978
 (*Indirect Sales to the United States, The State of New Mexico, Indian Nations, Tribes or Pueblos or for Export*)
 3.16.109.12 NMAC Section 7-16A-10 NMSA 1978
 (*Deduction - Sales to a Non-United States Signatory of the North Atlantic Treaty*)
 3.16.109.13 NMAC Section 7-16A-10 NMSA 1978
 (*Special Fuel Used in School Buses*)

These proposals were placed on file in the Office of the Secretary on June 2, 2008. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of the proposals, if filed, will be filed as required by law on or about August 14, 2008.

A public hearing will be held on the proposals on Thursday, July 24, 2008, at 9:30 a.m. in the Secretary's Conference Room No. 3002/3137 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before July 24, 2008.

3.4.9.10 [ESTIMATED TAX; REASONABLE EXPECTATION

A. Any corporation filing separately or any group of corporations filing on a combined or consolidated basis that has a liability of \$6,000 or more under the corporate income tax in either of the two immediately preceding taxable years is presumed to reasonably expect to have a corporate income tax liability of \$5,000 or more for the taxable year. The taxpayer may rebut the presumption by showing that liability in the two immediately preceding taxable years exceeded \$6,000 because of extraordinary events.

B. Any corporation or group of corporations filing on a combined or consolidated basis which has a corporate income tax liability exceeding \$5,000 for a taxable year is presumed to have reasonably expected to owe estimated tax, unless the taxpayer demonstrates that the corporate income tax liability was the result of an extraordinary event or series of events which could not have been anticipated in the ordinary course of business planning. The fact that the taxpayer's normal business was more profitable than planned is not such an extraordinary event or series of events.

C. Example 1: Corporation A, a calendar year filer, estimates at the beginning of a taxable year a taxable income of \$90,000 for the year, based on past experience and current revenue projections. This would generate a corporate income tax liability of \$4,320. Accordingly, A makes no estimated corporate income tax payments during the year. In December, the taxpayer liquidates a substantial portion of its assets in order to take advantage of a business opportunity unanticipated at the beginning of the year. As a result, the taxpayer realizes a capital gain and reports a total taxable income of \$140,000 and liability of \$6,720 on its corporate income tax return for the year. The taxpayer does not owe penalties or interest for failure to make estimated payments.

D. Example 2: Taxpayer B, a calendar year filer, estimates at the beginning of a taxable year a taxable income of \$90,000 for the year, based on past experience and current revenue projections. This would generate a corporate income tax liability of \$4,320. Accordingly, B makes no estimated corporate income tax payments during the year. B's

~~Christmas season sales are higher than forecast, resulting in a taxable income of \$140,000 and liability of \$6,720 for the taxable year. B owes penalty and interest for failure to make estimated payments. An increase in normal business activity is not an extraordinary event.~~ [RESERVED]
 [1/15/98; 3.4.9.10 NMAC - Rn, 3 NMAC 4.9.10, 12/14/00; Repealed, XXX]

3.16.107.7 [DEFINITIONS:
 “Bulk storage” means the storage of special fuel in any tank or receptacle, other than a supply tank of a motor vehicle, from which a user entitled to own, operate, utilize or maintain bulk storage may place special fuel into the supply tank of an allowable motor vehicle registered, owned or operated by that user. A tank or receptacle used for bulk storage may be above ground or below ground, may be stationary or mobile, and must have a minimum capacity of thirty five (35) gallons of special fuel.] [RESERVED]
 [2/1/93, 12/31/96; 3.16.107.7 NMAC - Rn, 3 NMAC 20.8.7, 6/14/01; Repealed, XXX]

3.16.107.8 [DELIVERY INTO SPECIAL BULK STORAGE:

A. Any delivery of special fuel into a tank or receptacle with a capacity of less than thirty five (35) gallons is not delivery into special bulk storage. Even if the purchaser of the special fuel has a special bulk storage user permit and has presented the permit to the supplier or dealer, the provisions of Section 7-16A-8 NMSA 1978 do not apply and special fuel excise tax is due.

B. Any delivery of less than thirty five (35) gallons of special fuel into a tank or receptacle with a minimum capacity of thirty five (35) gallons is a delivery into special bulk storage, provided the purchaser of the special fuel has a special bulk storage user permit and has presented the permit to the supplier or dealer.] [RESERVED]
 [2/1/93, 12/31/96; 3.16.107.8 NMAC - Rn, 3 NMAC 20.8.8 & A, 6/14/01; Repealed, XXX]

3.16.107.9 [SPECIAL BULK STORAGE CONTAINERS TO BE LABELED:

A. Special fuel purchased under the provisions of Section 7-16A-8 NMSA 1978 shall be placed in containers which are labeled with the words “NON-HIGHWAY USE ONLY” in letters at least two (2) inches high. The label shall be permanently attached to the container and maintained so as to be clearly legible. If the container is underground, the required label must be displayed above ground at the point where special fuel is placed into the con-

tainer and removed from the container, or if special fuel is placed into the container at one point and removed from the container at a different point, such a label must be placed at each point.

~~B. Special bulk storage containers so labeled may not be used for any purpose other than special bulk storage.~~

~~C. Any penalty imposed by the department for any violation of Section 3.16.107.9 NMAC will be presumed to apply both to the permittee and to the person filling the container.] [RESERVED] [2/1/93, 12/31/96; 3.16.107.9 NMAC - Rn, 3 NMAC 20.8.9 & A, 6/14/01; Repealed, XXX]~~

3.16.107.10 [“**ALLOWABLE MOTOR VEHICLES**” LIST TO BE MAINTAINED:

~~A. As part of the application for a special bulk storage user permit, each applicant is required to certify that the applicant will maintain a true and correct listing of all allowable motor vehicles which will consume special fuel from special bulk storage. The description, year, make, model and motor number, serial number or vehicle identification number of each allowable motor vehicle shall be included on the list.~~

~~B. The list must be maintained in a manner that will allow verification by authorized employees of the Department that special fuel is consumed from special bulk storage only by allowable vehicles.~~

~~C. Upon notice and after a hearing as described in Section 3.16.107.13 NMAC, the department may suspend the special bulk storage user permit of any person who fails to maintain an allowable motor vehicle list.] [RESERVED] [2/1/93, 12/31/96; 3.16.107.10 NMAC - Rn, 3 NMAC 20.8.10 & A, 6/14/01; Repealed, XXX]~~

3.16.107.11 ~~{**SPECIAL BULK STORAGE USER PERMIT:**~~

~~A. Any person who desires to purchase special fuel for bulk storage in accordance with Section 7-16A-8 NMSA 1978 shall apply for and obtain a permit from the department. An application for such a permit shall be on a form provided by the department, shall provide such statements and information as required and shall specify the maximum number of locations at which the applicant proposes to maintain special bulk storage.~~

~~B. All applications for a special bulk storage user permit shall be signed by the permittee in the case of an individual, a partner in the case of a part-~~

~~nership or an officer or authorized agent in the case of a corporation.] [RESERVED] [2/1/93, 12/31/96; 3.16.107.11 NMAC - Rn, 3 NMAC 20.8.11 & A, 6/14/01; Repealed, XXX]~~

3.16.107.12 ~~[**TAXABILITY OF DELIVERIES INTO SPECIAL BULK STORAGE:** Notwithstanding any other provision of the Special Fuels Supplier Tax Act, all special fuel delivered into bulk storage under a special bulk storage user permit is subject to gross receipts tax. Should any special fuel be delivered from special bulk storage into the supply tank of an allowable motor vehicle, and that allowable motor vehicle is operated on the highways of this state, the special bulk storage user permit holder shall report that use on the report required under Section 7-16A-11 NMSA 1978 and pay any special fuel excise tax due.] [RESERVED] [2/1/93, 12/31/96; 3.16.107.12 NMAC - Rn, 3 NMAC 20.8.12 & A, 6/14/01; Repealed, XXX]~~

3.16.107.13 ~~[**SUSPENSION OF SPECIAL BULK STORAGE USER PERMIT:**~~

~~A. Whenever the department has reason to believe any person has violated any provision of the Special Fuels Supplier Tax Act or the regulations promulgated thereunder, the department shall schedule a hearing pursuant to the provisions of Section 7-1-24 NMSA 1978 of the Tax Administration Act to determine whether or not the person's special bulk storage user permit should be suspended.~~

~~B. The person shall be notified of the hearing. Notification shall inform the permittee of suspected violations of particular provisions of the Special Fuels Supplier Tax Act and shall briefly advise the permittee of the procedures employed in hearings and of remedies subsequent to the hearing if the permit is suspended. At the end of the hearing or within thirty (30) days thereafter, the department shall enter a written decision and order.~~

~~C. The department may schedule an informal conference with the person before holding the hearing.] [RESERVED] [2/1/93, 12/31/96; 3.16.107.13 NMAC - Rn, 3 NMAC 20.8.13 & A, 6/14/01; Repealed, XXX]~~

3.16.109.8 **CALCULATION OF SPECIAL FUEL EXCISE TAX LIABILITY:** In computing the special fuel excise tax due, a special fuel excise tax taxpayer, in addition to the deductions provided in Section 7-16A-10 NMSA 1978, may deduct from the total amount of special fuel received in New Mexico during the tax peri-

od, the amount of special fuel sold or delivered when the receipt or use of the special fuel is subject to gross receipts tax under the provisions of 3.16.102.9 NMAC.

[2/1/93, 12/31/96, 12/31/97; 3.16.109.8 NMAC - Rn, 3 NMAC 20.10.8 & A, 6/14/01; Repealed, 10/31/07; 3.16.109.8 NMAC - N, XXX]

3.16.109.9 **PROOF SATISFACTORY TO THE DEPARTMENT:**

A. For exports on or after June 1, 1997, proof satisfactory to the department of the export of special fuel consists of a manifest or bill of lading showing the amount of special fuel, the name and address of the person to whom the special fuel is sold and delivered and the destination outside New Mexico. The person exporting special fuel must also comply with the requirements of Subsection A of Section 7-16A-10 NMSA 1978.

B. Proof satisfactory to the department of sale to the United States or any agency or instrumentality thereof, a NATO force, the state of New Mexico (including its agencies, instrumentalities and political subdivisions), or an Indian nation, tribe or pueblo or any agency or instrumentality thereof shall be furnished to the department on request. Proof includes contracts covering the gallons purchased, the federal contract number, purchase orders and invoices showing that the purchaser was the United States, a NATO force, the state of New Mexico, or an Indian nation, tribe or pueblo or an agency or instrumentality thereof and copies of warrants issued in payment and other documentation determined by the secretary to constitute proof of payment.

C. Receipts from sales of special fuel placed in the supply tank of United States, state of New Mexico or Indian nation, tribe or pueblo government vehicles are deductible from the distributor's special fuel excise tax when paid for by a credit or procurement card issued to the United States government, the state of New Mexico or an Indian government.

D. Copies of all documents supporting deductible sales must be retained for at least three years from the end of the calendar year in which the special fuel was sold.

[2/1/93, 12/31/96, 12/31/97; 3.16.109.9 NMAC - Rn, 3 NMAC 20.10.9 & A, 6/14/01; Repealed, 10/31/07; 3.16.109.9 NMAC - N, XXX]

3.16.109.10 **DEDUCTION - SALES TO OTHER SUPPLIERS:**

A. Special fuel received by one supplier and sold to another supplier may not be deducted from the amount of special fuel received in New Mexico, even

though the second supplier is registered, because the second supplier did not "receive" special fuel within the meaning of the act.

B. Example: A, a registered special fuel supplier in New Mexico, received one thousand (1,000) gallons of special fuel in June, 20xx. B, also a registered special fuel supplier, needed one thousand (1,000) gallons of special fuel and arranged to purchase the one thousand (1,000) gallons from A immediately after A had received the fuel. A may not deduct the one thousand (1,000) gallons from the amount of special fuel A received in June 20xx. B is not liable for tax on this special fuel because B did not receive it.

[2/1/93, 12/31/96; 3.16.109.10 NMAC - Rn, 3 NMAC 20.10.10 & A, 6/14/01; Repealed, 10/31/07; 3.16.109.10 NMAC - N, XXX]

3.16.109.11 **INDIRECT SALES TO THE UNITED STATES, THE STATE OF NEW MEXICO, INDIAN NATIONS, TRIBES OR PUEBLOS OR FOR EXPORT:**

A. The tax consequences of sales of special fuel to the United States, the state of New Mexico, or Indian nations, tribes or pueblos or for export are illustrated by the following examples. These examples concern only the liability of the parties to the department and do not affect the obligation of any party to pay the price for the special fuel to the seller. The fact that the price may include an amount corresponding to the tax does not make that amount a tax on the purchaser or change the legal incidence of tax.

B. Example 1. X, a supplier, received one thousand (1000) gallons of special fuel in May 20xx, reported the special fuel excise tax and resold the special fuel to Y, a wholesaler. Y sold the special fuel to the United States. If Y furnishes proof satisfactory to the department to X, X may either deduct the one thousand (1000) gallons from the amount of special fuel received in May, elect to take the deduction as a prior period adjustment in a subsequent reporting month in which special fuel excise tax is otherwise due, or if no special fuel excise tax is due, may claim a refund of the tax paid. Proof satisfactory to the department of Y's sale to the government is required to be retained by both X and Y for at least three years from the end of the calendar year in which the special fuel was sold to the United States.

C. Example 2. X, a supplier, received and reported one thousand (1000) gallons of special fuel in May, 20xx, and sold the special fuel to Y, a retailer. Y sold twenty (20) gallons to a United States government vehicle using a government credit card. In May, 20xx, Y reports to X that this amount of special fuel has been

sold to the United States government. If Y furnishes proof satisfactory to the department to X, X may deduct twenty (20) gallons from the amount of special fuel received in May, elect to take the deduction as a prior period adjustment in a subsequent reporting month in which special fuel excise tax is otherwise due, or if no special fuel excise tax is due, may claim a refund of the tax paid. Proof satisfactory to the department of Y's sale to the United States government is required to be retained by X and Y for at least three years from the end of the calendar year in which the special fuel was sold.

D. Example 3: X, a supplier, received and reported five thousand (5,000) gallons of special fuel in May 20xx and resold the special fuel to Y, another New Mexico supplier. Y delivers the five thousand (5,000) gallons of special fuel to a customer in another state. If Y furnishes proof satisfactory to the department to X, X may deduct five thousand (5,000) gallons from the amount of special fuel received in May, elect to take the deduction as a prior period adjustment in a subsequent reporting month in which special fuel excise tax is otherwise due, or if no special fuel excise tax is due, may claim a refund of the tax paid. Proof satisfactory to the department of Y's export is required to be retained by both X and Y for at least three years from the end of the calendar year in which the sale was made.

[2/1/93, 12/31/96; 3.16.109.11 NMAC - Rn, 3 NMAC 20.10.11 & A, 6/14/01; Repealed, 10/31/07; 3.16.109.11 NMAC - N, XXX]

3.16.109.12 **DEDUCTION - SALES TO A NON-UNITED STATES SIGNATORY OF THE NORTH ATLANTIC TREATY:**

A. For purposes of 3.16.109.12 NMAC:

(1) "NATO signatory" means a nation, other than the United States, that is a contracting party to the north Atlantic treaty;

(2) "NATO force" means any NATO signatory's military unit or force or civilian component thereof present in New Mexico in accordance with the north Atlantic treaty; and

(3) "member of a NATO force" means the military and civilian personnel of the NATO force and their dependents.

B. Pursuant to Article XI, Section 11 of the north Atlantic treaty, special fuel sold to a NATO force may be deducted from the total amount of special fuel received in New Mexico.

C. Pursuant to Article IX, Section 8 of the north Atlantic treaty, special fuel sold to a member of a NATO force for the private use of that member and not for the use of the NATO force are not

deductible and are subject to the special fuel excise tax.

D. 3.16.109.12 NMAC is retroactively applicable to sales on or after July 1, 1995.

[12/22/95, 12/31/96; 3.16.109.12 NMAC - Rn, 3 NMAC 20.10.12 & A, 6/14/01; Repealed, 10/31/07; 3.16.109.12 NMAC - N, XXX]

3.16.109.13 **SPECIAL FUEL USED IN SCHOOL BUSES:** Receipts from the sale of special fuel dyed in accordance with federal regulations for use in school buses is subject to gross receipts tax and not the special fuel excise tax.

[3.16.109.13 NMAC - N, 10/15/02; Repealed, 10/31/07; 3.16.109.13 NMAC - N, XXX]

**End of Notices and
Proposed Rules Section**

Adopted Rules

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

TITLE 5 POST-SECONDARY EDUCATION CHAPTER 5 POST-SECONDARY EDUCATIONAL PROGRAMS PART 51 DEVELOPMENT EMPLOYMENT FUNDING FOR FILM AND MULTIMEDIA PRODUCTION COMPANIES

5.5.51.1 ISSUING AGENCY:
New Mexico Economic Development
Department
[5.5.51.1 NMAC - N, 6-16-2008]

5.5.51.2 SCOPE: Film and
multimedia production companies and New
Mexico residents in film and multimedia
crew professions.
[5.5.51.2 NMAC - N, 6-16-2008]

**5.5.51.3 S T A T U T O R Y
AUTHORITY:** Section 21-19-7.1 NMSA
1978, established in 2003, directs the indus-
trial training board, also referred to as the
job training incentive program (JTIP)
board, to consult with the New Mexico film
division of the economic development
department to create and adopt rules for
development funding for film and multime-
dia production companies. The program is
administered by the New Mexico film divi-
sion of the economic development depart-
ment and the training reimbursement of
fifty percent (50%) of salaries (wages) of
qualified participants shall be made by the
New Mexico film division without further
action or approval of the industrial training
board.
[5.5.51.3 NMAC - N, 6-16-2008]

5.5.51.4 D U R A T I O N :
Permanent.
[5.5.51.4 NMAC - N, 6-16-2008]

5.5.51.5 EFFECTIVE DATE:
June 16, 2008
[5.5.51.5 NMAC - N, 6-16-2008]

5.5.51.6 OBJECTIVE: The
object of this rule is to establish standards
for an on-the-job development training pro-
gram for film and multimedia production
companies and New Mexican crew mem-
bers. This program entitled the film crew
advancement program (FCAP) is one pro-
gram of the job training incentive program
for film and multimedia production compa-
nies. It is intended to assist the develop-
ment of New Mexico's economy by provid-

ing reimbursement funds to film and multi-
media production companies for the train-
ing of New Mexico residents working pri-
marily in below-the-line job positions for
the preparation of continual employment in
the industry. FCAP also serves as an incen-
tive for production companies to create job
opportunities for New Mexican film and tel-
evision crew professionals. To the extent
possible, training will be customized to
meet the particular production's needs, pro-
vide New Mexican residents with improved
economic status through employment, and
provide measurable growth to economic
base of New Mexico.

[5.5.51.6 NMAC - N, 6-16-2008]

5.5.51.7 DEFINITIONS: For
use in this part, the following definitions
apply.

A. "Above-the-line" is a
film and television industry term derived
from where the money is budgeted for cre-
ative talent, writers, directors and produc-
ers. This term means job positions that are
associated with the creative or financial
control of a film or multimedia project, not
the technical aspects.

B. "Below-the-line" is a
film and television industry term derived
from where the money is budgeted for tech-
nical crew that shall work on a film or mul-
timedia project as well as for costs related
to the studio, equipment, travel, and loca-
tion. In regards to job positions, this term
means technical crew working in temporary
positions and these individuals do not have
creative or financial control of the project
nor receive residuals.

C. "Company" means a
temporary film or multimedia production
company that was created to produce a film
or multimedia project and who is the con-
tractor for the FCAP.

D. "Craft" means the spe-
cialized area or department in which a film
technician works.

E. "Crew" means the
employees hired by a company to complete
a film or multimedia project.

F. "Deal memo" means
the film industry contract that defines the
exact terms of a crew members employment
including but not limited to position title
and pay rate.

G. "FCAP" means film
crew advancement program.

**H. "Film or television
credit"** in this program means work on a
film or television production for more than
one week which was **not** a student film,
internship, unpaid position, documentary,
commercial, nor on a project where the
budget was under one million dollars and

the company did not participate in this pro-
gram.

I. "Film technician"
means a crew member working in a below-
the-line job position who often is a member
of an international alliance of theater and
stage employee (IATSE) film union or
guild.

**J. "General safety certi-
fied"** means a crew member has completed
a class or course that meets OSHA stan-
dards for general safety associated with
working on a film and multimedia project.

K. "JTIP" means job
training incentive program.

L. "Non-union" means
the job position is not in the contractual
jurisdiction of a film union or film guild.

M. "Mentor" means the
go-to person for questions or the supervisor
of a program participant with a lower skill
set or fewer film credits than the mentor in
relation to the job position in which that
participant was hired.

N. "NM" means New
Mexican.

O. "Open hours" means a
trainee that qualified for FCAP during a
production did not use all 1040 hours avail-
able. Hours that remain are considered
"open" and may be used for that job posi-
tion on another production upon qualifica-
tion.

P. "Payroll report"
means the report generated from a payroll
company hired by the production company
to act as the crew's payment agent for the
film and multimedia project.

**Q. "Principal photogra-
phy"** means the cameras have started film-
ing and the majority of preparation for a
film and multimedia project has been com-
pleted; call sheets are now issued to crew
members and production reports are com-
pleted daily.

R. "Production" means
the film or multimedia project preparation,
principal photography and set break down
periods while creating a film or television
project.

S. "Resident" means an
individual who is domiciled in New
Mexico. This domicile is the individual's
permanent home; it is a place to which the
individual intends to return after any tempo-
rary absence. An individual shall have only
one domicile. A change in domicile is
established only by establishing a physical
presence in a new location with intent to
abandon the old domicile and make a home
in the new location permanently or indefi-
nitely.

T. "SAG" means screen
actors' guild.

U. "Salaries" means wages or the hourly pay rate for hours physically worked by trainee during a production.

V. "Trainee" means the crew member that shall be learning a new skill set or graduating to a higher job classification through the FCAP and is synonymous with the terms program participant or applicant.

W. "Wages" means the hourly pay rate for hours physically worked by trainee during a production. It does not include film payments to trainees such as kit rental, holiday pay, travel time, mileage reimbursements, or any payment to employee due to penalties incurred by company during production of the project. Applicable gross shall include SAG stunt adjustment wages up to \$500 per each trainee per production.

[5.5.51.7 NMAC - N, 6-16-2008]

5.5.51.8 PROGRAM JOB POSITIONS:

A. Each trainee qualifies for a maximum of 1040 hours. As the trainee works for a specific production company, the hours shall be deducted accordingly. Any unused hours may be applied to future on-the-job training work opportunities in the specified job position until the 1040 hours are exhausted. Unused training hours in a lower level position are forfeited once a trainee moves to a higher level within that skill set and that department.

B. The following are the standard industry job positions available for qualifying FCAP participants and the recommended job position of the mentor as listed in the New Mexico film division FCAP job titles list:

(1) New Mexican (NM) construction foreman mentored by NM construction coordinator;

(2) NM construction gangboss mentored by NM construction coordinator or foreman;

(3) NM construction tool-person mentored by NM construction coordinator or foreman;

(4) NM scenic foreperson mentored by NM head painter or NM key scenic artist;

(5) NM scenic artist mentored by NM head painter or NM key scenic artist;

(6) NM paint gangboss mentored by NM head painter or NM key scenic artist or NM scenic foreperson;

(7) NM greens foreman or first greens person mentored by NM head or key greens;

(8) NM art director mentored by NM production designer;

(9) NM set decorator mentored by NM production designer or NM art director with set decorating film or television cred-

its;

(10) NM lead person mentored by NM set decorator or NM production designer with set decorating film or television credits or NM art director with set decorating film or television credits;

(11) NM on-set dresser mentored by NM lead person or NM set decorator;

(12) NM set dresser mentored by NM lead person or NM set decorator;

(13) NM shopper buyer mentored by NM lead person or NM set decorator;

(14) NM props master mentored by NM production designer or NM art director with prop master film or television credits;

(15) NM assistant props master mentored by NM props master;

(16) NM certified armorer mentored by NM special effects coordinator with or NM special effects foreman with or props master with armorer film or television credits;

(17) NM special effects foreman mentored by NM special effects coordinator;

(18) NM best boy electric or chief lighting technician mentored by NM gaffer;

(19) NM rigging gaffer mentored by NM gaffer or NM best boy electric with rigging gaffer credits;

(20) NM best boy rigging mentored by NM rigging gaffer or NM gaffer with or NM best boy electric with rigging gaffer credits;

(21) NM best boy grip mentored by NM key grip;

(22) NM dolly grip mentored by NM key grip or NM camera operator;

(23) NM key rigging grip mentored by NM key grip or best boy grip with key rigging grip film or television credits;

(24) NM best boy rigging grip mentored by NM key rigging grip;

(25) NM boom operator mentored by NM sound mixer;

(26) NM cable person or utility sound mentored by NM sound mixer;

(27) NM video assist mentored by NM director of photography with or sound mixer with video assist film or television credits;

(28) NM best boy craft service or assistant craft service mentored by NM key craft service;

(29) NM key hair mentored by NM department head of hair and make-up;

(30) NM assistant hair mentored by NM key hair;

(31) NM key make-up mentored by NM department head of hair and make-up;

(32) NM assistant make-up mentored by NM key make-up;

(33) NM wardrobe supervisor mentored by NM costume designer;

(34) NM key set costumer men-

tored by NM wardrobe supervisor of NM costume designer;

(35) NM key costumer mentored by NM wardrobe supervisor of NM costume designer;

(36) NM costumer or set costumer mentored by NM key costumer or NM key set costumer;

(37) NM production office coordinator mentored by NM unit production manager or NM line producer;

(38) NM assistant production office coordinator mentored by NM production office coordinator;

(39) NM production secretary or key office production assistant mentored by NM production office coordinator or NM assistant office coordinator;

(40) NM travel coordinator mentored by NM production office coordinator or NM assistant office coordinator;

(41) NM head production accountant mentored by NM unit production manager or NM line producer;

(42) NM first assistant production accountant mentored by NM head production accountant;

(43) NM second assistant production accountant mentored by NM head production accountant or NM first production accountant;

(44) NM payroll accountant mentored by NM head production accountant;

(45) NM accounting clerk mentored by NM first production accountant;

(46) NM assistant locations manager mentored by NM locations manager;

(47) NM locations production assistant mentored by NM locations manager or NM assistant locations manager;

(48) NM transportation coordinator mentored by NM unit production manager or NM line producer;

(49) NM transportation captain mentored by NM transportation coordinator;

(50) NM casting director mentored by NM director;

(51) NM casting associate or casting assistant mentored by NM casting director;

(52) NM extras casting director mentored by NM casting director;

(53) NM extras casting associate or extras casting assistant mentored by NM extras casting director;

(54) NM key set production assistant mentored by NM first or second assistant director;

(55) NM camera operator mentored by NM director of photography;

(56) NM first assistant camera (any unit) mentored by NM camera operator or NM director of photography;

(57) NM second assistant camera (any unit) mentored by NM first assistant camera or NM camera operator;

(58) NM second unit script supervisor mentored by NM first unit script supervisor;

(59) NM (senior) editor mentored by NM director;

(60) NM assistant editor mentored by NM (senior) editor;

(61) NM music supervisor mentored by NM editor;

(62) NM assistant music supervisor mentored by NM music supervisor;

(63) NM stunt person mentored by NM stunt coordinator or NM stunt person with advanced stunt credits.

C. Qualifying trainees shall only work one position during the production at a given time and the responsibilities for the qualifying position meet the industry standards for that position; and

D. Trainee's pay rate shall be consistent with trainee's job position per crew member's deal memo and per union contractual agreements where applicable. Film technician trainee's pay rate shall be higher than the positions in the lower tier of positions under trainee or per union contractual agreement where applicable.

E. Trainee positions that are under the jurisdiction of a film union or guild shall supply copy of their membership card. If they do not have a copy of their card, verification shall be requested by an officer of that union or guild of their membership status for the training position.

F. No more than two film technician trainees and non-union trainees shall qualify per production department on a given production and these trainees shall not hold the same job position and job title. Exceptions may be made with approval by the New Mexico film division prior to the commencement of principal photography when, as an example, a production department has more than ten crew members.

G. Film technician trainees shall work at least 80 hours for a company in their hired position in order to qualify. (This does not apply to stunt persons.)

H. Film technician trainee may qualify for an additional 1040 hours if the training received through this program is used to progress from their current job to a higher job classification and shall forfeit any remaining hours in the former position within the department.

I. Trainee may qualify for an additional 1040 hours to move laterally into a new skill set and the individual meets program qualifications.

J. Any requests for additional crew job positions or different mentors to be permitted in program shall be submitted in writing to the New Mexico film division for consideration prior to the seventh day of the crew member's employment or the start of principal photography

whichever date comes first. Emails are accepted for a written request. (Above-the-line job positions and stunt coordinators shall not qualify.)

[5.5.51.8 NMAC - N, 6-16-2008]

5.5.51.9 TRAINEE ELIGIBILITY AND QUALIFICATIONS:

A. A crew member that participates in the program shall meet qualifications to be certified as a trainee in the development training program referred to as the FCAP:

(1) trainee applicants shall be a New Mexico resident; and

(2) the participating crew member shall enter into a formal agreement with the production company and the New Mexico film division, acknowledging that they are an on-the-job trainee being supervised by a qualified mentor as accepted by the New Mexico film division; and

(3) trainee applicants shall raise their crew position to a higher classification or be adding a completely new skill set; and

(4) trainee applicant shall have previous experience in the department in which an advanced position is held; and

(5) all training applicants shall not have a film or television credit in a higher position in that department to qualify for 1040 training hours for that position; and

(6) film technicians and non-union or non-guild crew members applying to be a trainee, shall have a maximum one previous film or television credit in the hired position as defined by this program on a contracted film or television project; and

(7) if only one additional contracted film or television credit as defined by this program is obtained after opening hours for the hired position, and the trainee did not participate in the program during the production on which the film or television credit was earned, and the trainee still does not have a higher film or television credit in the department in which he or she was hired, then the trainee shall participate in the program on the condition that 300 hours are subtracted from the current number of available open hours in the program; and

(8) if a crew member has a previous film or television credit(s) that is more than five years old in the hired position and they do not have a film or television credit in a higher position within that department, they may apply for FCAP; and

(9) a trainee shall not be a mentor simultaneously on a production; and

B. If the resume of a trainee or mentor is not available, the union or guild with the jurisdiction of a position shall be contacted by the New Mexico film division to verify participant's qualifications for said job position.

C. Crew members are rec-

ommended to be general safety certified for film union or guild contracted positions.

D. Training applicants shall be certified as a film and multimedia trainee by the New Mexico film division.

[5.5.51.9 NMAC - N, 6-16-2008]

5.5.51.10 MENTOR ELIGIBILITY AND QUALIFICATIONS:

A. Mentors of trainees shall be a New Mexico resident.

B. Film technician mentors shall not train more than two film technician trainees or non-union trainees during a production. An exception may be made with approval from the New Mexico film division prior to the commencement of principal photography.

C. A mentor shall not be a trainee simultaneously during a production.

D. Mentor shall have more than one film or television credit as defined by this program in the job position of the trainees that they supervise for this program.

E. Mentor shall work in the same or directly related department with the trainees that they supervise for this program.

F. Mentors shall be certified as a film and multimedia mentor by the New Mexico film division.

[5.5.51.10 NMAC - N, 6-16-2008]

5.5.51.11 COMPANY ELIGIBILITY AND ADMINISTRATIVE REQUIREMENTS:

A. All film production and multimedia companies qualify provided they are willing to hire those individuals that meet the trainee and mentor eligibility and qualifications and are willing to comply with the following requirements:

(1) the company shall submit completed request form for FCAP paperwork entitled JTIP for film & multimedia application part one for FCAP available online at www.nmfilm.com or company may call 505-476-5600; and

(2) the company shall enter into a contract as outlined by the New Mexico economic development department; the term of the contract shall be based on a time period which shall allow the contractor (company) to complete its obligation to hire and provide on-the-job training opportunities for the qualified individuals and complete paperwork involved; and

(3) the company shall have a local office where claims and paperwork shall be processed or a designee shall be available to conduct the appropriate paperwork; and

(4) the company entering into a contractual agreement with economic development department shall return the program contractual agreement and pro-

gram application to the New Mexico film division prior to the start of principal photography in New Mexico; and

(5) the approval of this contractual agreement from the New Mexico film division and the chairperson of the job training incentive program (JTIP) board shall grant funding to the contractor for the purpose of conducting this training; and

(6) all completed trainee applications shall be faxed or delivered to the New Mexico film division by the last day of principal photography in New Mexico for the trainee to be considered for this program; and

(7) each project is subject to compliance reviews throughout the term of the contract; the compliance review shall consist of program and fiscal surveys; and

(8) company shall submit time records and reimbursement invoices as established by the economic development division to the New Mexico economic development department, which is the payment agent.

B. The participating company shall submit forms and reports as established by the New Mexico film division of the New Mexico economic development department:

(1) JTIP for film & multimedia application part one for FCAP; and

(2) department of finance and administration (DFA) tax information form; and

(3) JTIP for film & multimedia application part two for FCAP; and

(4) two originally signed JTIP for film & multimedia agreement for FCAP; and

(5) FCAP participants applications; and

(6) state of New Mexico declaration of residency forms; and

(7) copies of identification per the state of New Mexico declaration of residency form; and

(8) the production's final crew list; and

(9) a minimum of one call sheet or production report from principal photography; and

(10) payroll reports for each qualified trainee that verify hours worked and all rates per hours; and

(11) notarized invoice or claim which includes:

(a) company name and address per tax information form; and

(b) trainees' last names, then first names and hired positions; and

(c) mentors' last names, then first names and hired positions; and

(d) trainees' work dates; and

(e) number of hours worked by each trainee; and

(f) applicable gross wages per

trainee; and

(g) fifty percent (50%) of applicable gross wages per trainee; and

(h) audit fee if applicable; and

(i) total reimbursement requested; and

(j) company official original signature; date of signature; and notarized signature.

C. All paperwork and forms shall be submitted to the development training program administrator of the New Mexico film division of the economic development department at 418 Montezuma Avenue, Santa Fe, New Mexico, 87501, 505-476-5600.

D. The company shall make arrangements to have a final audit at the end of the contract that may be facilitated by and completed at the New Mexico film division. The audit shall be performed by an independent accounting firm registered with the New Mexico regulation and licensing department, board of accountancy in which case the cost of the audit is added to the contract and funded by the program; or the audit shall be performed by a representative of the New Mexico film division or by an accountant contracted by the New Mexico film division for companies had no more than ten qualifying trainees participating in the FCAP.

E. Companies that fail to comply with all established operating requirements and closeout procedures are not eligible for funding and may not be eligible to apply for future participation. [5.5.51.11 NMAC - N, 6-16-2008]

5.5.51.12 REIMBURSEMENT OF TRAINING COSTS:

A. Reimbursement shall be made to the participating company in accordance with the terms of JTIP for film & multimedia agreement for FCAP.

B. Failure to fully and accurately complete administrative requirements may require sending the invoice back to company for correction and this process shall delay reimbursement payment.

C. The invoice or claim for reimbursement may be submitted during the contract period, when trainees complete the number of contracted hours.

D. Trainee wages shall be reimbursed upon completion of the training project (not to exceed 1040 hours) and the conclusion of the production in New Mexico.

E. Reimbursement from the state shall be based on the negotiated contractual agreement that includes a wage range outlined in JTIP for film & multimedia application part two for FCAP to meet any wage adjustments during the training period.

F. Reimbursements shall

be based upon the number of trainees who have qualified for the training program.

G. Reimbursement shall not exceed fifty percent (50%) of the trainees' rates multiplied by the hours trained. SAG stunt adjustment wages for qualifying stunt persons may not exceed fifty percent (50%) of a maximum of \$500 paid to each trainee per production.

H. Training costs shall be reimbursed to the company based on the number of qualified employees, their wages from hours physically worked, and the estimated production time as written in the contract.

I. The contract amount established in the contract shall remain the same for the length of the agreement.

J. Trainee wages shall be reimbursed upon completion of training on the production which shall not exceed 1040 hours per trainee at the conclusion of production in New Mexico and when company qualifications and requirements have been met.

[5.5.51.12 NMAC - N, 6-16-2008]

5.5.51.13 OTHER PROGRAM INFORMATION:

A. The film crew advancement program (FCAP) of JTIP for film and multimedia was created by the New Mexico film division of the economic development department of state of New Mexico.

B. Public or private entities outside the state of New Mexico shall contact the New Mexico film division of the New Mexico economic development department at 505-476-5600 for consideration to obtain permission to use any part of this program content.

[5.5.51.13 NMAC - N, 6-16-2008]

HISTORY OF 5.51.51 NMAC:
[RESERVED]

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

TITLE 5 POST-SECONDARY EDUCATION

CHAPTER 5 POST-SECONDARY EDUCATIONAL PROGRAMS

PART 52 DEVELOPMENT PRE-EMPLOYMENT TRAINING FOR FILM AND MULTIMEDIA PRODUCTION COMPANIES

5.5.52.1 ISSUING AGENCY:
New Mexico Economic Development Department

[5.5.52.1 NMAC - N, 6-16-2008]

5.5.52.2 SCOPE: New Mexico

residents pursuing film and multimedia professions.

[5.5.52.2 NMAC - N, 6-16-2008]

5.5.52.3 STATUTORY AUTHORITY:

Section 21-19-7.1.B NMSA 1978, established in 2003, directs the New Mexico film division of the economic development department to establish a film and multimedia pre-employment training program to furnish qualified manpower resources for the film and multimedia industry. The New Mexico film division has adopted rules implementing the pre-employment training program.

[5.5.52.3 NMAC - N, 6-16-2008]

5.5.52.4 DURATION:

Permanent.

[5.5.52.4 NMAC - N, 6-16-2008]

5.5.52.5 EFFECTIVE DATE:

June 16, 2008

[5.5.52.5 NMAC - N, 6-16-2008]

5.5.52.6 OBJECTIVE: The object of this rule is to establish standards for pre-employment development training for New Mexican residents through the job training incentive program (JTIP) for film and multimedia production companies. Pre-employment training program (PETP) is intended to furnish qualified manpower resources for the film and multimedia industry. The intention of PETP **class training** is to assist the development of New Mexico's economy by providing reimbursement funds to contractors facilitating short-term intensive courses, workshops or lectures that primarily relate to below-the-line film and television job positions. The intention of PETP **project training** is to assist the development of New Mexico's economy by providing reimbursement funds to contractors directly related to a production company's project for training in and exposure to primarily above-the-line film and television job positions. This program shall increase the hirability of New Mexico crew on film and television projects, increase economic status upon employment, and increase crew availability to productions. The PETP shall pertain to industry and production needs as determined by the New Mexico film division. Training shall provide measurable growth of the economic base of New Mexico

[5.5.52.6 NMAC - N, 6-16-2008]

5.5.52.7 DEFINITIONS: For use in this part, the following definitions apply.

A. "Above-the-line" is a film and television industry term derived from where the money is budgeted for creative talent, writers, directors and produc-

ers. This term means job positions that are associated with the creative or financial control of a film or multimedia project, not the technical aspects.

B. "Below-the-line" is a film and television industry term derived from where the money is budgeted for technical crew that shall work on a film or multimedia project as well as for costs related to the studio, equipment, travel, and location. In regards to job positions, this term means technical crew working in temporary positions and these individuals do not have creative or financial control of the project nor receive residuals.

C. "Craft" means the specialized area or department in which a film technician works.

D. "Credit" means the employee hired by a production company is officially acknowledged by name by the company either on a final list of employees (crew list) or on the actual screen as having worked in the hired position on their film or multimedia project.

E. "Film technician" means a crew member working in a below-the-line job position who often is a member of an international alliance of theater and stage employee (IATSE) film union or guild.

F. "JTIP" means job training incentive program.

G. "PETP" means pre-employment training program.

H. "Production company" means the entity creating a film or television project, which includes film or multimedia project preparation, principal photography and set break down periods.

I. "Resident" means an individual who is domiciled in New Mexico. This domicile is the individual's permanent home; it is a place to which the individual intends to return after any temporary absence. An individual shall have only one domicile. A change in domicile is established only by establishing a physical presence in a new location with intent to abandon the old domicile and make a home in the new location permanently or indefinitely.

J. "Trainee" means the class, course, workshop, lecture or project attendee participating in this program and who will be learning a new skill set or graduating to a higher job classification.

K. "Turn-around-time" means the time between leaving a project and returning to a project to continue training.

[5.5.52.7 NMAC - N, 6-16-2008]

5.5.52.8 PRE-EMPLOYMENT CLASS TRAINING:

A. The New Mexico film

division of the economic development department shall contract a qualified contractor to provide venues, staff, equipment and materials to conduct short-term, intensive training New Mexicans in primarily below-the-line film and television crafts and that shall increase the employment opportunities of New Mexican crew on film and television projects.

B. Training course shall not exceed six days total. Exceptions may be made for certification courses directly related to a approved film craft as determined by the New Mexico film division.

C. Training course shall not exceed 10 hours in one day including a one hour break for lunch.

D. The potential contractor shall provide an outline of each training course, qualifications of instructors, and all relevant details, certificates and costs per the program application.

E. The approved contractor ensures that all trainees shall either be training in a new classification or are in need of additional training in this classification and that the trainee wage once employed shall be based upon this category.

F. Contractor requirements: Contractor shall meet the following requirements and submit this information to the New Mexico film division of the economic development department:

(1) upon approval of the New Mexico film division, contractor shall enter into an agreement as outlined by the New Mexico economic development department and shall return the contractual agreement to the department within 15 business days from the issue date; the approval from the New Mexico film division and the chairperson of the job training incentive program (JTIP) board shall grant funding to the contractor for the purpose of conducting this training; and

(2) the contractor agrees to provide the department with the W-9 specific to the state of New Mexico and shall include a copy of their CRS-1 business certificate as filed with the state of New Mexico taxation and revenue department or the contractor's federal employer identification number or the contractor's social security number; and

(3) the contractor ensures that all trainees are New Mexico residents and that trainees have completed a declaration of residency form (RPD-41271) and attached copies of their proof of residency; and

(4) the contractor shall provide the department with a completed trainee certification form for each trainee as of the commencement of training; and

(5) the contractor shall provide a copy of liability insurance; and

(6) the contractor shall provide a roster of all trainees who completed and

passed training; and

(7) the contractor shall provide completed class evaluation forms to the New Mexico film division from all participating trainees.

G. The contractor is subject to compliance visits and program surveys at any time during the training class.

H. The contractors that fail to comply with all established operating requirements and closeout procedures are not eligible to apply for future participation.

I. Trainees qualifications and requirements: Class attendees shall meet the following qualifications to attend PETP class training:

(1) every trainee shall be a New Mexico resident in order to attend a class, workshop, course or lecture through PETP class training; and

(2) trainee shall attend, complete and pass the entire training course or their name shall not appear on the final roster; and

(3) trainee shall meet one of the following criteria to participate in this class:

(a) trainee is a member of a film industry union or guild; or

(b) trainee has completed work on a minimum of three commercials, shorts or documentaries pertaining to this pre-employment training class; and trainee has the intent to refine their skills in their primary craft to either work on features film and television productions or in a New Mexico film industry related business; or

(c) trainee has completed, passed and received a certification or degree from educational institution with a film concentration pertaining to this pre-employment training course or a related craft as determined by the New Mexico film division; or

(d) trainee has passed and completed one semester of the film technicians' training program (FTTP) with the intent to pursue the craft taught in this pre-employment training course and has a letter of recommendation from the FTTP head instructor; or

(e) trainee has worked or currently works for a film related industry or company as determined by the New Mexico film division for at least three months in a position that directly relates to this pre-employment training class thus having experience that would directly transfer onto a film production in conjunction with this course; and

(4) trainee shall be at least 18 years of age.

J. Instructors requirements: Instructors shall meet the following criteria and be certified as PETP instructor by the New Mexico film division:

(1) head instructors shall have worked within the film industry for a minimum of five years or have taught class sub-

ject for a minimum of five years; and

(2) head instructors that do not have a film vendor business shall have a minimum of five screen credits on feature films and five additional credits from film or television productions; therefore, head instructors shall have ten screen and film or television credits total in an advanced craft position relating to class subject; and

(3) head instructors shall specialize in advanced skill sets for film crafts; and

(4) assistants to head instructors shall have worked within the film industry for a minimum of two years and have a minimum of five credits on feature films or television productions in the craft department or craft departments related to class; and

(5) additional assistants may work as production assistants to help facilitate class and shall not instruct class; and these assistants shall be a New Mexico resident and they shall have worked in a film related business or be enrolled in a film technicians' training program class as administered by post secondary educational institutions in New Mexico.

K. Eligible costs for reimbursement:

(1) tuition and registration fees: tuition courses that meet the needs of training course in the most cost efficient manner; registration fees for annual meeting, conferences, or seminars are not eligible for funding; and

(2) certification and licensing fees for trainees are applicable when a copy of the certificate earned or license required is submitted with the final invoice; and

(3) instructional material such as training manuals, overheads, and photocopies; and

(4) supplies which include paper, pencils, highlighters, and expendable training materials apply however this program does not fund non-expendable property such as training equipment, tools, computer hardware, software, etc.; and

(5) instructor fees and their travel expenses where applicable where the instructor is not an employee of the contractor's business; and

(6) the cost of the facility where the training takes place and equipment rental may be reimbursed; and

(7) travel expenses for instructors which include transportation, lodging and meals per diem rules (DFA rule 95-1, department of finance and administrative regulations governing Per Diem and Mileage Act).

L. Total course cost shall not exceed twenty thousand dollars (\$20,000.00) regardless of the number of contractors.

M. Trainees may be required to pay a nominal fee to the contractor for supplies per the application and

approval of the New Mexico film division.

N. Mandatory or regulatory training is allowed if required for employment on a film and approved by the New Mexico film division of the economic development department.

O. The term of the contract shall be based on a time period, which shall allow the contractor to complete its obligation to facilitate and provide training classes for the qualified individuals and complete the paper-work involved.

P. Reimbursement of training costs: Reimbursement amount shall be made to the participating contractor in accordance with the terms of the training contract. Funds from the state shall be based on the negotiated contractual agreement as outlined in the contract:

(1) funds shall be based upon the costs to facilitate the training course(s) and to pay additional instructors when applicable; and

(2) the rate established in the contract shall remain the same for the length of the agreement; and

(3) the invoice shall include contractor name, address, and phone contact; and one original signature of contractor is preferred; and

(4) the invoice shall include all costs accepted and stated in the contract.

Q. Reporting: The following established records, reports, forms and agreements shall be submitted to the New Mexico film division are subject to review during compliance visits and program surveys:

(1) original proposal of class; and

(2) New Mexico tax information form; and

(3) film and multimedia pre-employment training application and supporting documents noted within; and

(4) film and multimedia pre-employment agreement; and

(5) trainee certification form for each trainee prior to class commencement; and

(6) declaration of residency forms for each trainee (with a copy of the proof of residency); and

(7) copy of liability insurance and any other applicable insurance; and

(8) final roster of trainees that have passed the course with individual's contact information; and

(9) instructor class evaluation forms; and

(10) receipts for pre-approved rentals; and

(11) proof of instructor payments; and

(12) a dated invoice:

(a) contractor name and address, state vendor number; and

(b) course title and dates; and

(c) names of additional instructors their hours and costs; and

(d) name and cost of facility and locations used for training; and

(e) number of trainees and payment by trainees when applicable; and

(f) receipts for pre-approved rentals; and

(g) contractor rate and costs per application and agreement; and

(h) total amount requested; and

(13) the mailing address to submit paperwork including the invoice is to the development training program administrator, New Mexico film division of the economic development department, 418 Montezuma Avenue, Santa Fe, New Mexico, 87501, 505-476-5600.

[5.5.52.8 NMAC - N, 6-16-2008]

5.5.52.9 PRE - E M P L O Y - M E N T PROJECT TRAINING:

A. Project training shall assist the development of New Mexico's economy by providing reimbursement funds to contractors directly related to a production company's project for training in and exposure to primarily above-the-line film and television job positions. This program shall increase the hirability of New Mexico crew on film and television projects, increase economic status upon employment, and increase crew availability to productions. Pre-employment project training shall pertain to industry and production needs as determined by the New Mexico film division of the economic development department.

B. Production company qualifications and requirements:

(1) the production company shall provide an outline of each training concept with the NMFO proposal form to be considered for approval; and

(2) the production company shall be required to provide qualifications of instructors and mentors, all relevant details, certificates and costs per the program application; and upon approval of the New Mexico film division shall enter into the film and multimedia pre-employment project training agreement as outlined by the New Mexico film division of the economic development department; and the approval from the New Mexico film division shall grant training funds to the production company for the purpose of conducting this training; and

(3) the production company entering into a contractual agreement with New Mexico economic development department shall return the contractual agreement to the department within 15 business days from the issue date or commencement of project whichever date comes first; and

(4) the production company ensures that all trainees shall receive specialized training to work in the film industry; and

(5) the production company agrees to provide the department with a W-9 specific to New Mexico and include either a copy of its CRS-1 business certificate as filed with the state of New Mexico taxation and revenue department or production company's federal employer identification number; and

(6) the production company ensures that all trainees are New Mexico residents and that trainees have completed a declaration of residency form (RPD-41271) and have attached copies of their proof of residency; and

(7) the production company shall provide the New Mexico film division with a completed project trainee certification form for each trainee by the commencement of training; and

(8) the production company shall provide a copy of production's liability insurance and the trainee shall be covered under production insurance; and

(9) the production company shall provide a roster of all trainees who completed and passed the training; and

(10) the production company shall provide completed evaluation forms to the New Mexico film division; and

(11) the production company is subject to compliance visits and program surveys at any time during the training; and

(12) the production company shall only interview and consider trainees endorsed by the New Mexico above-the-line mentorship panel (NM AMP) for this training; and

(13) the production company shall not train more than eight participants at one time; however, exceptions may be made by the NMFO when a request is submitted in writing to the director of the New Mexico film division; and

(14) the production company shall not have more than two trainees per mentor or instructor; and

(15) breaks and meals per film industry standards shall apply to participants training on production project; and

(16) a minimum turn-around-time of eight hours shall apply to all training participants.

C. The production company that fail to comply with all established operating requirements and close-out procedures are not eligible to apply for future participation and may not receive the training reimbursement.

D. Trainee qualifications:

(1) trainee shall be a New Mexico resident; and,

(2) trainee shall complete all training or their name shall not appear on the final roster or crew list; and

(3) trainee has been endorsed by the New Mexico above-the-line mentorship panel (NM AMP) and shall provide the production company with a copy of their endorsement; and

(4) trainee shall be at least 18 years of age.

E. Instructors and mentor qualifications:

(1) instructors and mentors shall have worked in the film industry for a minimum of five consecutive years; and

(2) instructors and mentors shall have a minimum of five screen credits on films that had a budget over one million dollars and five additional credits from film or television productions; therefore they shall have ten screen and film or television credits total in an advanced craft position relating to this training; and

(3) instructors and mentors shall specialize in advanced skill sets for film crafts.

F. Eligible costs:

(1) percentage of the mentor rate for each day of training as explained in next section; and

(2) a maximum of 60 days on a given production company's project per trainee; however, exceptions may be made by the director of the New Mexico film division when a request is submitted in writing to this director.

G. Funds shall not be used to purchase equipment, software, non-expendable supplies.

H. Reimbursement:

(1) total training cost shall equate to twenty-five percent (25%) of daily compensation for director, producer and writer mentors; and

(2) total training cost shall equate to fifty percent (50%) of daily compensation for mentors in specialized crafts including but not limited to production designer, sound looping, editor, script supervisor, unit production manager, production supervisor, casting director, and story board artist.

I. Mandatory or regulatory training is allowed if required for employment on a film and approved by the New Mexico film division of economic development department.

J. Duration of contract: the term of the contract shall be based on a time period, which shall allow the production company to complete its obligation to facilitate and provide training classes for the qualified individuals and complete the paper-work involved.

K. Reimbursement of training costs shall be made to the participating production company in accordance

with the terms of the training contract. Funds shall be based upon the costs to facilitate training. The rate established in the contract shall remain the same for the length of the agreement.

L. The invoice shall include production company's name, address, representative's name and contact, one original signature of production company official representative. The invoice shall include all costs accepted and stated in the contract.

M. The mailing address to submit the invoice and all required information is development training program administrator of the New Mexico film division of the economic development department, 418 Montezuma Avenue, Santa Fe, New Mexico, 87501, 505-476-5600.

N. Funds from the state shall be based on the negotiated contractual agreement as outlined in the contract.

O. Required forms and reporting:

(1) original proposal for pre-employment project trainees; and

(2) New Mexico tax information form; and

(3) film and multimedia pre-employment project training application and supporting documents noted within; and

(4) film and multimedia pre-employment project agreement; and

(5) project trainee certification form for each trainee prior to commencement of training and supporting documentation noted within; and

(6) declaration of residency form for each trainee (with a copy of the proof of residency); and

(7) copy of production insurance and any other applicable insurance; and

(8) final roster of trainees that have completed the training with individual's contact information; and

(9) call sheet or equivalent documentation as determined by the New Mexico film division for each day of training; and

(10) time cards or equivalent documentation as determined by the New Mexico film division from each week participant was trained on a production company's project; and

(11) evaluation forms provided by the New Mexico film division; and

(12) invoice:

(a) production company name, address, contact number and state vendor number; and

(b) production title and dates of training; and

(c) list of mentors and instructors and their contact information; and

(d) facility and locations used for training; and

(e) total number of trainees and their training dates; and

(f) production company costs per application and agreement; and

(g) total reimbursement amount requested.

P. All records shall be submitted to the New Mexico film division of the economic development department and they are subject to review during compliance visits and program surveys. [5.5.52.9 NMAC - N, 6-16-2008]

5.5.52.10 OTHER PROGRAM INFORMATION:

A. The pre-employment training program through the job training incentive program for film and multimedia was created by the New Mexico film division of the economic development department of state of New Mexico.

B. Public or private entities outside the state of New Mexico shall contact the New Mexico film division of the economic development department for consideration to obtain permission to use any part of this program content at 505-476-5600. [5.5.52.10 NMAC - N, 6-16-2008]

HISTORY OF 5.5.52 NMAC: [RESERVED]

**NEW MEXICO ENERGY,
MINERALS AND NATURAL
RESOURCES
DEPARTMENT
OIL CONSERVATION DIVISION**

**TITLE 19 N A T U R A L
RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 17 PITS, CLOSED-
LOOP SYSTEMS, BELOW-GRADE
TANKS AND SUMPS**

19.15.17.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division. [19.15.17.1 NMAC - N, 6/16/08]

19.15.17.2 SCOPE: 19.15.17 NMAC applies to persons engaged in oil and gas development and production within New Mexico. [19.15.17.2 NMAC - N, 6/16/08]

**19.15.17.3 S T A T U T O R Y
AUTHORITY:** 19.15.17 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11 and Section 70-2-12. [19.15.17.3 NMAC - N, 6/16/08]

19.15.17.4 D U R A T I O N : Permanent. [19.15.17.4 NMAC - N, 6/16/08]

19.15.17.5 EFFECTIVE DATE: June 16, 2008, unless a later date is cited at the end of a section. [19.15.17.5 NMAC - N, 6/16/08]

19.15.17.6 OBJECTIVE: To regulate pits, closed-loop systems, below-grade tanks and sumps used in connection with oil and gas operations for the protection of public health, welfare and the environment. [19.15.17.6 NMAC - N, 6/16/08]

19.15.17.7 DEFINITIONS:

A. "Alluvium" means detrital material that water or other erosional forces have transported and deposited at points along a watercourse's flood plain. It typically is composed of sands, silts and gravels; exhibits high porosity and permeability; and generally carries fresh water.

B. "Closed-loop system" means a system that uses above ground steel tanks for the management of drilling or workover fluids without using below-grade tanks or pits.

C. "Division-approved facility" means a division-permitted surface waste management or injection facility, a facility permitted pursuant to 20.6.2 NMAC, a facility approved pursuant to 19.15.9.712 NMAC or other facility that the division specifically approves for the particular purpose. The division shall not approve any facility not otherwise permitted unless it finds that the facility's use for the specified purpose will protect fresh water, public health and the environment and comply with other applicable federal or state statutes, federal regulations, state rules and local ordinances.

D. "Emergency pit" means a pit that is constructed as a precautionary matter to contain a spill in the event of a release.

E. "Permanent pit" means a pit, including a pit used for collection, retention or storage of produced water or brine that is constructed with the conditions and for the duration provided in its permit, and is not a temporary pit.

F. "Restore" means to return a site to its former condition, in the manner and to the extent required by applicable provisions of 19.15.17 NMAC.

G. "Significant watercourse" means a watercourse with a defined bed and bank either named on a USGS 7.5 minute quadrangle map or a first order tributary of such watercourse.

H. "Sump" means an impermeable vessel, or a collection device incorporated within a secondary contain-

ment system, with a capacity less than 500 gallons, which remains predominantly empty, serves as a drain or receptacle for de minimis releases on an intermittent basis and is not used to store, treat, dispose of or evaporate products or wastes.

I. "Temporary pit" means a pit, including a drilling or workover pit, which is constructed with the intent that the pit will hold liquids for less than six months and will be closed in less than one year. [19.15.17.7 NMAC - N, 6/16/08]

19.15.17.8 PERMIT REQUIRED:

A. A person shall not construct or use a pit or below-grade tank except in accordance with a division-issued permit. Only an operator may apply for a division-issued permit. Facilities permitted pursuant to 19.15.36 NMAC or WQCC rules are exempt from 19.15.17 NMAC. After June 16, 2008, an unlined permanent pit is prohibited and the division shall not issue a permit for an unlined permanent pit.

B. In lieu of using a pit or below-grade tank in accordance with 19.15.17 NMAC, an operator may use a closed-loop system or other division-approved alternative method. However, an operator may not conduct operations using a closed-loop system or proposed alternative method except in accordance with a division-issued permit. An operator requesting a permit for a closed-loop system that uses a temporary pit shall comply with the requirements for temporary pits specified in 19.15.17 NMAC.

C. The division may issue a single permit for all pits, below-grade tanks, closed-loop systems or division-approved alternative methods associated with a single application for permit to drill. [19.15.17.8 NMAC - Rn, 19.15.2.50 NMAC & A, 6/16/08]

19.15.17.9 PERMIT APPLICATION:

A. An operator shall use form C-144 to apply to the division for a permit to construct or use a pit, closed-loop system, below-grade tank or proposed alternative method to which 19.15.17 NMAC applies. The operator shall submit the form C-144 either separately or as an attachment to a permit application for a facility with which the pit, closed-loop system, below-grade tank or proposed alternative method will be associated. For upstream facilities, the operator may submit form C-144 separately or as an attachment to an application for a well permit (form C-101 or C-103).

B. The permit application shall include a detailed plan as follows.

(1) Permanent pits. A registered professional engineer shall certify engineer-

ing, design and construction specifications as contained in the plan for permanent pits. The plan shall include:

(a) a quality control/quality assurance construction and installation plan;

(b) operating and maintenance procedures;

(c) a closure plan;

(d) a hydrogeologic report that provides sufficient information and detail on the site's topography, soils, geology, surface hydrology and ground water hydrology to enable the environmental bureau in the division's Santa Fe office to evaluate the actual and potential effects on soils, surface water and ground water;

(e) detailed information on dike protection and structural integrity; and leak detection, including an adequate fluid collection and removal system;

(f) liner specifications and compatibility;

(g) freeboard and overtopping prevention;

(h) prevention of nuisance or hazardous odors, including H₂S;

(i) an emergency response plan, unless the permanent pit is part of a facility that has an integrated contingency plan;

(j) type of oil field waste stream;

(k) climatological factors, including freeze-thaw cycles;

(l) a monitoring and inspection plan;

(m) erosion control; and

(n) other pertinent information the environmental bureau in the division's Santa Fe office requests.

(2) Temporary pits. The plan for a temporary pit shall use appropriate engineering principles and practices and follow applicable liner manufacturers' requirements. The plan shall include operating and maintenance procedures, a closure plan and hydrogeologic data that provides sufficient information and detail on the site's topography, soils, geology, surface hydrology and ground water hydrology to enable the appropriate division district office to evaluate the actual and potential effects on soils, surface water and ground water and compliance with the siting criteria of 19.15.17.10 NMAC. The plan for a temporary pit may incorporate by reference a standard design for multiple temporary pits that the operator files with the application or has previously filed with the appropriate division district office.

(3) Closed-loop systems. The plan for a closed-loop system shall use appropriate engineering principles and practices and follow applicable manufacturers' requirements. The plan shall include operating and maintenance procedures and a closure plan. The plan for a closed-loop system may incorporate by reference a stan-

dard design for multiple projects that the operator files with the application or has previously filed with the appropriate division district office. If the operator proposes to bury the contents of a drying pad associated with a closed-loop system in an on-site trench, the operator shall provide sufficient information and detail on the site's topography, soils, geology, surface hydrology and ground water hydrology to enable the appropriate division district office to evaluate the actual and potential effects on soils, surface water and ground water and compliance with the siting criteria of 19.15.17.10 NMAC.

(4) Below-grade tanks. The plan for a below-grade tank shall use appropriate engineering principles and practices and follow applicable manufacturers' requirements. The plan shall include operating and maintenance procedures, a closure plan and a hydrogeologic report that provides sufficient information and detail on the site's topography, soils, geology, surface hydrology and ground water hydrology to enable the appropriate division district office to evaluate the actual and potential effects on soils, surface water and ground water and compliance with the siting criteria of 19.15.17.10 NMAC. The plan for a below-grade tank may incorporate by reference a standard design for multiple below-grade tanks that the operator files with the application or has previously filed with the appropriate division district office.

C. Closure plans. A closure plan that an operator submits in a plan required in Subsection B of 19.15.17.9 NMAC, or any other closure plan required pursuant to 19.15.17 NMAC, shall describe the proposed closure method and the proposed procedures and protocols to implement and complete the closure.

(1) If the operator proposes an on-site closure method, the operator shall also propose other methods to be used if the initial method does not satisfy the on-site closure standards specified in Subsection F of 19.15.17.13 NMAC or, if applicable, other on-site closure standards that the environmental bureau in the division's Santa Fe office approves.

(2) An operator of an existing unlined permanent pit that is permitted by or registered with the division, or an existing, lined or unlined, permanent pit not permitted by or registered with the division, identified under Paragraphs (1) or (2) of Subsection A of 19.15.17.13 NMAC, shall submit the respective closure plan required under the transitional provisions of Subsection B of 19.15.17.17 NMAC to the environmental bureau in the division's Santa Fe office.

(3) An operator of an existing unlined, temporary pit or an existing below-

grade tank, identified under Paragraphs (3) or (4) of Subsection A of 19.15.17.13 NMAC, shall submit the respective closure plan required under the transitional provisions of Subsection B of 19.15.17.17 NMAC to the appropriate division district office.

D. Filing of permit application.

(1) Permanent pits and exceptions requested pursuant to 19.15.17.15 NMAC. An operator shall file an application, form C-144, and all required attachments with the environmental bureau in the division's Santa Fe office to request approval to use or construct a permanent pit or request an exception pursuant to 19.15.17.15 NMAC and shall provide a copy to the appropriate division district office.

(2) Temporary pits, closed-loop systems and below-grade tanks. To request approval to use or construct a temporary pit, closed-loop system or below-grade tank, an operator shall file an application, form C-144, and all required attachments with the appropriate division district office. If the operator plans to use a temporary pit, the operator shall provide the proposed pit location on form C-102.

[19.15.17.9 NMAC - Rn, 19.15.2.50 NMAC & A, 6/16/08]

19.15.17.10 SITING REQUIREMENTS:

A. Except as otherwise provided in 19.15.17 NMAC.

(1) An operator shall not locate a temporary pit or below-grade tank:

(a) where ground water is less than 50 feet below the bottom of the temporary pit or below-grade tank, unless the operator is using a pit solely to cavitate a coal bed methane well and the appropriate division district office finds based upon the operator's demonstration that the operator's proposed operation will protect ground water during the temporary pit's use;

(b) within 300 feet of a continuously flowing watercourse, or 200 feet of any other significant watercourse or lakebed, sinkhole or playa lake (measured from the ordinary high-water mark), unless the appropriate division district office approves an alternative distance based upon the operator's demonstration that surface and ground water will be protected;

(c) within 300 feet from a permanent residence, school, hospital, institution or church in existence at the time of initial application;

(d) within 500 feet of a private, domestic fresh water well or spring used by less than five households for domestic or stock watering purposes, or within 1000 feet of any other fresh water well or spring, in existence at the time of initial application;

(e) within incorporated municipal boundaries or within a defined municipal fresh water well field covered under a municipal ordinance adopted pursuant to NMSA 1978, Section 3-27-3, as amended, unless the municipality specifically approves;

(f) within 500 feet of a wetland;

(g) within the area overlying a subsurface mine, unless the appropriate division district office specifically approves the proposed location based upon the operator's demonstration that the temporary pit's or below-grade tank's construction and use will not compromise the subsurface integrity;

(h) within an unstable area, unless the operator demonstrates that it has incorporated engineering measures into the design to ensure that the temporary pit's or below-grade tank's integrity is not compromised; or

(i) within a 100-year floodplain.

(2) An operator shall not locate a permanent pit:

(a) where ground water is less than 50 feet below the bottom of the permanent pit;

(b) within 300 feet of a continuously flowing watercourse, or 200 feet of any other significant watercourse or lakebed, sinkhole or playa lake (measured from the ordinary high-water mark), unless the environmental bureau in the division's Santa Fe office approves an alternative distance based upon the operator's demonstration that surface and ground water will be protected;

(c) within 1000 feet from a permanent residence, school, hospital, institution or church in existence at the time of initial application;

(d) within 500 feet of a private, domestic fresh water well or spring used by less than five households for domestic or stock watering purposes, or within 1000 feet of any other fresh water well or spring, in existence at the time of initial application;

(e) within incorporated municipal boundaries or within a defined municipal fresh water well field covered under a municipal ordinance adopted pursuant to NMSA 1978, Section 3-27-3, as amended, unless the municipality specifically approves;

(f) within 500 feet of a wetland;

(g) within the area overlying a subsurface mine, unless the environmental bureau in the division's Santa Fe office specifically approves the proposed location based upon the operator's demonstration that the permanent pit's construction and use will not compromise subsurface integrity;

(h) within an unstable area, unless the operator demonstrates that it has incor-

porated engineering measures into the design to ensure that the permanent pit's integrity is not compromised; or

(i) within a 100-year floodplain.

(3) An operator shall not locate material excavated from the pit's construction:

(a) within 300 feet of a continuously flowing watercourse, or 200 feet of any other significant watercourse or lakebed, sinkhole or playa lake (measured from the ordinary high-water mark), unless the division approves an alternative distance based upon the operator's demonstration that surface and ground water will be protected;

(b) within 500 feet of a wetland; or

(c) within a 100-year floodplain.

B. An emergency pit is exempt from the siting criteria of 19.15.17 NMAC.

C. An operator shall not implement an on-site closure method:

(1) where ground water is less than 50 feet below the bottom of the buried waste;

(2) where ground water is between 50 and 100 feet below the bottom of the buried waste, unless the operator buries the waste in-place and the treated or stabilized waste, which shall not be combined with soil or other material at a mixing ratio of more than 3:1 soil or other material to waste, does not exceed the criteria in Subparagraph (c) of Paragraph (2) of Subsection F of 19.15.17.13 NMAC;

(3) where ground water is more than 100 feet below the bottom of the buried waste, unless the operator buries the waste in-place and the treated or stabilized waste, which shall not be combined with soil or other material at a mixing ratio of more than 3:1 soil or other material to waste, does not exceed the criteria in Subparagraph (d) of Paragraph (2) of Subsection F of 19.15.17.13 NMAC;

(4) where ground water is more than 100 feet below the bottom of the buried waste, unless the operator buries the waste in a trench and the treated or stabilized waste, which shall not be combined with soil or other material at a mixing ratio of more than 3:1 soil or other material to waste, does not exceed the criteria listed in Subparagraph (c) of Paragraph (3) of Subsection F of 19.15.17.13 NMAC;

(5) within 300 feet of a continuously flowing watercourse, or 200 feet of any other significant watercourse or lakebed, sinkhole or playa lake (measured from the ordinary high-water mark), unless the division approves an alternative distance based upon the operator's demonstration that surface and ground water will be protected;

(6) within 300 feet from a perma-

nent residence, school, hospital, institution or church in existence at the time of initial application;

(7) within 500 feet of a private, domestic fresh water well or spring used by less than five households for domestic or stock watering purposes or within 1000 feet of any other fresh water well or spring, existing at the time the operator files the application for exception;

(8) within incorporated municipal boundaries or within a defined municipal fresh water well field covered under a municipal ordinance adopted pursuant to NMSA 1978, Section 3-27-3, as amended, unless the municipality specifically approves;

(9) within 500 feet of a wetland;

(10) within the area overlying a subsurface mine, unless the division specifically approves the proposed location based upon the operator's demonstration that subsurface integrity will not be compromised;

(11) within an unstable area, unless the operator demonstrates that it has incorporated engineering measures into the design to ensure that the on-site closure method will prevent contamination of fresh water and protect public health and the environment; or

(12) within a 100-year floodplain. [19.15.17.10 NMAC - Rn, 19.15.2.50 NMAC & A, 6/16/08]

19.15.17.11 DESIGN AND CONSTRUCTION SPECIFICATIONS:

A. General specifications.

An operator shall design and construct a pit, closed-loop system, below-grade tank or sump to contain liquids and solids and prevent contamination of fresh water and protect public health and the environment.

B. Stockpiling of topsoil. Prior to constructing a pit or closed-looped system, except a pit constructed in an emergency, the operator shall strip and stockpile the topsoil for use as the final cover or fill at the time of closure.

C. Signs. The operator shall post an upright sign not less than 12 inches by 24 inches with lettering not less than two inches in height in a conspicuous place on the fence surrounding the pit, closed-loop system or below-grade tank, unless the pit, closed-loop system or below-grade tank is located on a site where there is an existing well, signed in compliance with 19.15.3.103 NMAC, that is operated by the same operator. The operator shall post the sign in a manner and location such that a person can easily read the legend. The sign shall provide the following information: the operator's name; the location of the site by quarter-quarter or unit letter, section, township and range; and emergency telephone numbers.

D. Fencing.

(1) The operator shall fence or enclose a pit or below-grade tank in a manner that prevents unauthorized access and shall maintain the fences in good repair. Fences are not required if there is an adequate surrounding perimeter fence that prevents unauthorized access to the well site or facility, including the pit or below-grade tank. During drilling or workover operations, the operator is not required to fence the edge of the pit adjacent to the drilling or workover rig.

(2) The operator shall fence or enclose a pit or below-grade tank located within 1000 feet of a permanent residence, school, hospital, institution or church with a chain link security fence, at least six feet in height with at least two strands of barbed wire at the top. The operator shall ensure that all gates associated with the fence are closed and locked when responsible personnel are not on-site. During drilling or workover operations, the operator is not required to fence the edge of the temporary pit adjacent to the drilling or workover rig.

(3) The operator shall fence any other pit or below-grade tank to exclude livestock with a four foot fence that has at least four strands of barbed wire evenly spaced in the interval between one foot and four feet above ground level. The appropriate division district office may approve an alternative to this requirement if the operator demonstrates that an alternative provides equivalent or better protection. The appropriate division district office may impose additional fencing requirements for protection of wildlife in particular areas.

E. Netting. The operator shall ensure that a permanent pit or a permanent open top tank is screened, netted or otherwise rendered non-hazardous to wildlife, including migratory birds. Where netting or screening is not feasible, the operator shall on a monthly basis inspect for, and within 30 days of discovery, report discovery of dead migratory birds or other wildlife to the appropriate wildlife agency and to the appropriate division district office in order to facilitate assessment and implementation of measures to prevent incidents from reoccurring.

F. Temporary pits. The operator shall design and construct a temporary pit in accordance with the following requirements.

(1) The operator shall design and construct a temporary pit to ensure the confinement of liquids to prevent unauthorized releases.

(2) A temporary pit shall have a properly constructed foundation and interior slopes consisting of a firm, unyielding base, smooth and free of rocks, debris, sharp edges or irregularities to prevent the

liner's rupture or tear. The operator shall construct a temporary pit so that the slopes are no steeper than two horizontal feet to one vertical foot (2H:1V). The appropriate division district office may approve an alternative to the slope requirement if the operator demonstrates that it can construct and operate the temporary pit in a safe manner to prevent contamination of fresh water and protect public health and the environment.

(3) The operator shall design and construct a temporary pit with a geomembrane liner. The geomembrane liner shall consist of 20-mil string reinforced LLDPE or equivalent liner material that the appropriate division district office approves. The geomembrane liner shall be composed of an impervious, synthetic material that is resistant to petroleum hydrocarbons, salts and acidic and alkaline solutions. The liner material shall be resistant to ultraviolet light. Liner compatibility shall comply with EPA SW-846 method 9090A.

(4) The operator shall minimize liner seams and orient them up and down, not across a slope. The operator shall use factory welded seams where possible. Prior to field seaming, the operator shall overlap liners four to six inches and orient seams parallel to the line of maximum slope, *i.e.*, oriented along, not across, the slope. The operator shall minimize the number of field seams in corners and irregularly shaped areas. Qualified personnel shall perform field seaming. The operator shall weld field liner seams.

(5) Construction shall avoid excessive stress-strain on the liner.

(6) Geotextile is required under the liner where needed to reduce localized stress-strain or protuberances that may otherwise compromise the liner's integrity.

(7) The operator shall anchor the edges of all liners in the bottom of a compacted earth-filled trench. The anchor trench shall be at least 18 inches deep.

(8) The operator shall ensure that the liner is protected from any fluid force or mechanical damage at any point of discharge into or suction from the lined temporary pit.

(9) The operator shall design and construct a temporary pit to prevent run-on of surface water. A berm, ditch, proper sloping or other diversion shall surround a temporary pit to prevent run-on of surface water. During drilling operations, the edge of the temporary pit adjacent to the drilling or workover rig is not required to have run-on protection if the operator is using the temporary pit to collect liquids escaping from the drilling or workover rig and run-on will not result in a breach of the temporary pit.

(10) The volume of a temporary

pit shall not exceed 10 acre-feet, including freeboard.

(11) The part of a temporary pit used to vent or flare gas during a drilling or workover operation that is designed to allow liquids to drain to a separate temporary pit does not require a liner, unless the appropriate division district office requires an alternative design in order to protect surface water, ground water and the environment. The operator shall not allow free-standing liquids to remain on the unlined portion of a temporary pit used to vent or flare gas.

G. Permanent pits. The operator shall design and construct a permanent pit in accordance with the following requirements.

(1) Each permanent pit shall have a properly constructed foundation consisting of a firm, unyielding base, smooth and free of rocks, debris, sharp edges or irregularities to prevent the liner's rupture or tear. The operator shall construct a permanent pit so that the inside grade of the levee is no steeper than two horizontal feet to one vertical foot (2H:1V). The levee shall have an outside grade no steeper than three horizontal feet to one vertical foot (3H:1V). The levee's top shall be wide enough to install an anchor trench and provide adequate room for inspection and maintenance.

(2) Each permanent pit shall contain, at a minimum, a primary (upper) liner and a secondary (lower) liner with a leak detection system appropriate to the site's conditions. The edges of all liners shall be anchored in the bottom of a compacted earth-filled trench. The anchor trench shall be at least 18 inches deep.

(3) The primary (upper) liner and secondary (lower) liner shall be geomembrane liners. The geomembrane liner shall consist of 30-mil flexible PVC or 60-mil HDPE liner, or an equivalent liner material the environmental bureau in the division's Santa Fe office approves. The geomembrane liner shall have a hydraulic conductivity no greater than 1×10^{-9} cm/sec. The geomembrane liner shall be composed of an impervious, synthetic material that is resistant to petroleum hydrocarbons, salts and acidic and alkaline solutions. The liner material shall be resistant to ultraviolet light. Liner compatibility shall comply with EPA SW-846 method 9090A.

(4) The environmental bureau in the division's Santa Fe office may approve other liner media if the operator demonstrates to the satisfaction of the environmental bureau in the division's Santa Fe office that the alternative liner protects fresh water, public health, safety and the environment as effectively as the specified media.

(5) The operator shall minimize liner seams and orient them up and down, not across a slope. The operator shall use

factory welded seams where possible. The operator shall ensure field seams in geosynthetic material are thermally seamed (hot wedge) with a double track weld to create an air pocket for non-destructive air channel testing. The operator shall test a seam by establishing an air pressure between 33 and 37 psi in the pocket and monitoring that the pressure does not change by more than one percent during five minutes after the pressure source is shut off from the pocket. Prior to field seaming, the operator shall overlap liners four to six inches and orient seams parallel to the line of maximum slope, *i.e.*, oriented along, not across, the slope. The operator shall minimize the number of field seams in corners and irregularly shaped areas. There shall be no horizontal seams within five feet of the slope's toe. Qualified personnel shall perform field seaming.

(6) At a point of discharge into or suction from the lined permanent pit, the operator shall ensure that the liner is protected from excessive hydrostatic force or mechanical damage. External discharge or suction lines shall not penetrate the liner.

(7) The operator shall place a leak detection system between the upper and lower geomembrane liners that consists of two feet of compacted soil with a saturated hydraulic conductivity of 1×10^{-5} cm/sec or greater to facilitate drainage. The leak detection system shall consist of a properly designed drainage and collection and removal system placed above the lower geomembrane liner in depressions and sloped to facilitate the earliest possible leak detection. Piping used shall be designed to withstand chemical attack from oil field waste or leachate; structural loading from stresses and disturbances from overlying oil field waste, cover materials, equipment operation or expansion or contraction; and to facilitate clean-out maintenance. The material the operator places between the pipes and laterals shall be sufficiently permeable to allow the transport of fluids to the drainage pipe. The slope of the interior subgrade and of drainage lines and laterals shall be at least a two percent grade, *i.e.*, two feet vertical drop per 100 horizontal feet. The piping collection system shall be comprised of solid and perforated pipe having a minimum diameter of four inches and a minimum wall thickness of schedule 80. The operator shall seal a solid sidewall riser pipe to convey collected fluids to a collection, observation and disposal system located outside the permanent pit's perimeter. The operator may install alternative methods that the environmental bureau in the division's Santa Fe office approves.

(8) The operator shall notify the environmental bureau in the division's Santa Fe office at least 72 hours prior to the primary liner's installation so that a repre-

sentative of the environmental bureau in the division's Santa Fe office may inspect the leak detection system before it is covered.

(9) The operator shall construct a permanent pit in a manner that prevents overtopping due to wave action or rainfall and maintain a three foot freeboard at all times.

(10) The volume of a permanent pit shall not exceed 10 acre-feet, including freeboard.

(11) The operator shall maintain a permanent pit to prevent run-on of surface water. A permanent pit shall be surrounded by a berm, ditch or other diversion to prevent run-on of surface water.

H. Closed-loop systems.

(1) The operator shall design and construct a closed-loop system to ensure the confinement of oil, gas or water to prevent uncontrolled releases.

(2) An operator of a closed-loop system that uses temporary pits for solids management shall comply with the requirements for temporary pits specified in 19.15.17 NMAC.

(3) An operator of a closed-loop system with drying pads shall design and construct the drying pads to include the following:

(a) appropriate liners that prevent the contamination of fresh water and protect public health and the environment;

(b) sumps to facilitate the collection of liquids derived from drill cuttings; and

(c) berms that prevent run-on of surface water or fluids.

I. Below-grade tanks.

The operator shall design and construct a below-grade tank in accordance with the following requirements, as applicable.

(1) The operator shall ensure that a below-grade tank is constructed of materials resistant to the below-grade tank's particular contents and resistant to damage from sunlight.

(2) A below-grade tank system shall have a properly constructed foundation consisting of a level base free of rocks, debris, sharp edges or irregularities to prevent punctures, cracks or indentations of the liner or tank bottom.

(3) The operator shall construct a below-grade tank to prevent overflow and the collection of surface water run-on.

(4) An operator shall construct a below-grade tank in accordance with one of the following designs.

(a) An operator may construct and use a below-grade tank that does not have double walls provided that the below-grade tank's side walls are open for visual inspection for leaks, the below-grade tank's bottom is elevated a minimum of six inches above the underlying ground surface and the below-grade tank is underlain with a

geomembrane liner, which may be covered with gravel, to divert leaked liquid to a location that can be visually inspected. The operator shall equip below-grade tanks designed in this manner with a properly operating automatic high-level shut-off control device and manual controls to prevent overflows. The geomembrane liner shall consist of 30-mil flexible PVC or 60-mil HDPE liner, or an equivalent liner material that the appropriate division district office approves. The geomembrane liner shall have a hydraulic conductivity no greater than 1×10^{-9} cm/sec. The geomembrane liner shall be composed of an impervious, synthetic material that is resistant to petroleum hydrocarbons, salts and acidic and alkaline solutions. The liner material shall be resistant to ultraviolet light. Liner compatibility shall comply with EPA SW-846 method 9090A.

(b) All other below-grade tanks, in which the side walls are not open for visible inspection for leaks shall be double walled with leak detection capability.

(c) An operator may construct a below-grade tank according to an alternative system that the appropriate district office approves based upon the operator's demonstration that the alternative provides equivalent or better protection.

(5) The operator of a below-grade tank constructed and installed prior to June 16, 2008 that has the side walls open for visual inspection and is placed upon a geomembrane liner but does not meet all the requirements in Paragraphs (1) through (4) of Subsection I of 19.15.17.11 NMAC is not required to equip or retrofit the below-grade tank to comply with Paragraphs (1) through (4) of Subsection I of 19.15.17.11 NMAC so long as it demonstrates integrity. If the existing below-grade tank does not demonstrate integrity, the operator shall promptly remove that below-grade tank and install a below-grade tank that complies with Paragraphs (1) through (4) of Subsection I of 19.15.17.11 NMAC.

(6) The operator of a below-grade tank constructed and installed prior to June 16, 2008 that does not comply with Paragraph (1) through (4) of Subsection I of 19.15.17.11 NMAC or that does not comply with Paragraph (5) of Subsection I of 19.15.17.11 NMAC shall equip or retrofit the below-grade tank to comply with Paragraphs (1) through (4) of Subsection I of 19.15.17.11 NMAC, or close it, within five years after June 16, 2008. If the existing below-grade tank does not demonstrate integrity, the operator shall promptly remove that below-grade tank and install a below-grade tank that complies with Paragraphs (1) through (4) of Subsection I of 19.15.17.11 NMAC.

J. On-site trenches for

closure. The operator shall design and construct an on-site trench for closure, specified in Paragraph (2) of Subsection B of 19.15.17.13 NMAC or Paragraph (2) of Subsection D of 19.15.17.13 NMAC, in accordance with the following requirements.

(1) The operator shall locate the trench to satisfy the siting criteria specified in Subsection C of 19.15.17.10 NMAC and Subparagraph (d) of Paragraph (3) of Subsection F of 19.15.17.13 NMAC and excavate to an appropriate depth that allows for the installation of the geomembrane bottom liner, geomembrane liner cover and the division-prescribed soil cover required pursuant to Subsection H of 19.15.17.13 NMAC.

(2) An on-site trench shall have a properly constructed foundation and side walls consisting of a firm, unyielding base, smooth and free of rocks, debris, sharp edges or irregularities to prevent the liner's rupture or tear.

(3) Geotextile is required under the liner where needed to reduce localized stress-strain or protuberances that may otherwise compromise the liner's integrity.

(4) An on-site trench shall be constructed with a geomembrane liner. The geomembrane shall consist of a 20-mil string reinforced LLDPE liner or equivalent liner that the appropriate division district office approves. The geomembrane liner shall be composed of an impervious, synthetic material that is resistant to petroleum hydrocarbons, salts and acidic and alkaline solutions. The liner material shall be resistant to ultraviolet light. Liner compatibility shall comply with EPA SW-846 method 9090A.

(5) The operator shall minimize liner seams and orient them up and down, not across a slope. The operator shall use factory welded seams where possible. Prior to field seaming, the operator shall overlap liners four to six inches and orient liner seams parallel to the line of maximum slope, *i.e.*, oriented along, not across, the slope. The operator shall minimize the number of field seams in corners and irregularly shaped areas. Qualified personnel shall perform field seaming. The operator shall weld field liner seams.

(6) The operator shall install sufficient liner material to reduce stress-strain on the liner.

(7) The operator shall ensure that the outer edges of all liners are secured for the placement of the excavated waste material into the trench.

(8) The operator shall fold the outer edges of the trench liner to overlap the waste material in the trench prior to the installation of the geomembrane cover.

(9) The operator shall install a

geomembrane cover over the waste material in the lined trench. The operator shall install the geomembrane cover in a manner that prevents the collection of infiltration water in the lined trench and on the geomembrane cover after the soil cover is in place.

(10) The geomembrane cover shall consist of a 20-mil string reinforced LLDPE liner or equivalent cover that the appropriate division district office approves. The geomembrane cover shall be composed of an impervious, synthetic material that is resistant to petroleum hydrocarbons, salts and acidic and alkaline solutions. Cover compatibility shall comply with EPA SW-846 method 9090A.

[19.15.17.11 NMAC - Rn, 19.15.2.50 NMAC & A, 6/16/08]

19.15.17.12 OPERATIONAL REQUIREMENTS:

A. General specifications. An operator shall maintain and operate a pit, closed-loop system, below-grade tank or sump in accordance with the following requirements.

(1) The operator shall operate and maintain a pit, closed-loop system, below-grade tank or sump to contain liquids and solids and maintain the integrity of the liner, liner system or secondary containment system, prevent contamination of fresh water and protect public health and the environment.

(2) The operator shall recycle, reuse or reclaim or dispose of all drilling fluids in a manner, approved by division rules, that prevents the contamination of fresh water and protects public health and the environment.

(3) The operator shall not discharge into or store any hazardous waste in a pit, closed-loop system, below-grade tank or sump.

(4) If any pit liner's integrity is compromised, or if any penetration of the liner occurs above the liquid's surface, then the operator shall notify the appropriate division district office within 48 hours of the discovery and repair the damage or replace the liner.

(5) If a pit, below-grade tank, closed-loop system or sump develops a leak, or if any penetration of the pit liner, below-grade tank, closed-loop system or sump occurs below the liquid's surface, then the operator shall remove all liquid above the damage or leak line within 48 hours, notify the appropriate division district office within 48 hours of the discovery and repair the damage or replace the pit liner, below-grade tank, closed-loop system or sump.

(6) The injection or withdrawal of liquids from a pit shall be accomplished

through a header, diverter or other hardware that prevents damage to the liner by erosion, fluid jets or impact from installation and removal of hoses or pipes.

(7) The operator shall operate and install a pit, below-grade tank or sump to prevent the collection of surface water run-on.

(8) The operator shall install, or maintain on site, an oil absorbent boom or other device to contain and remove oil from a pit's surface.

B. Temporary pits. An operator shall maintain and operate a temporary pit in accordance with the following additional requirements.

(1) Only fluids used or generated during the drilling or workover process may be discharged into a temporary pit. The operator shall maintain a temporary pit free of miscellaneous solid waste or debris. The operator shall use a tank made of steel or other material, which the appropriate division district office approves, to contain hydrocarbon-based drilling fluids. Immediately after cessation of a drilling or workover operation, the operator shall remove any visible or measurable layer of oil from the surface of a drilling or workover pit.

(2) The operator shall maintain at least two feet of freeboard for a temporary pit.

(3) The operator shall inspect a temporary pit containing drilling fluids at least daily while the drilling or workover rig is on-site. Thereafter, the operator shall inspect the temporary pit weekly so long as liquids remain in the temporary pit. The operator shall maintain a log of such inspections and make the log available for the appropriate division district office's review upon request. The operator shall file a copy of the log with the appropriate division district office when the operator closes the temporary pit.

(4) The operator shall remove all free liquids from a temporary pit within 30 days from the date that the operator releases the drilling or workover rig. The operator shall note the date of the drilling or workover rig's release on form C-105 or C-103 upon well or workover completion. The appropriate division district office may grant an extension of up to three months.

(5) The operator shall remove any liquids from the temporary pit used for cavitation within 48 hours after completing cavitation. The operator may request and receive additional time to remove the liquids from the temporary pit used for cavitation if the operator demonstrates to the appropriate division district office's satisfaction that it is not feasible to access the location within 48 hours.

C. Permanent pits. An operator shall maintain and operate a per-

manent pit in accordance with the following additional requirements.

(1) The operator shall maintain at least three feet of freeboard for a permanent pit; the operator shall permanently mark such level on the permanent pit.

(2) No oil or floating hydrocarbon shall be present in a permanent pit.

D. Below-grade tanks. An operator shall maintain and operate a below-grade tank in accordance with the following additional requirements.

(1) The operator shall not allow a below-grade tank to overflow or allow surface water run-on to enter the below-grade tank.

(2) The operator shall remove any visible or measurable layer of oil from the fluid surface of a below-grade tank.

(3) The operator shall inspect the below-grade tank at least monthly and maintain a written record of each inspection for five years.

(4) The operator shall maintain adequate freeboard to prevent overtopping of the below-grade tank.

E. Sumps. The operator shall maintain and operate a sump in accordance with the following additional requirements.

(1) The operator shall visually inspect a sump's integrity annually and promptly repair or replace a sump that fails the inspection.

(2) The operator shall maintain records of sump inspection and make the records available for the appropriate division district office's review upon request.

[19.15.17.12 NMAC - Rn, 19.15.2.50 NMAC & A, 6/16/08]

19.15.17.13 C L O S U R E REQUIREMENTS:

A. Time requirements for closure. An operator shall close a pit, closed-loop system or below-grade tank within the time periods provided in 19.15.17.13 NMAC, or by an earlier date that the division requires because of imminent danger to fresh water, public health or the environment.

(1) An operator shall cease discharging into an existing unlined permanent pit that is permitted by or registered with the division within two years after June 16, 2008. An operator shall close an existing unlined permanent pit that is permitted by or registered with the division within three years after June 16, 2008.

(2) An operator shall cease discharging into an existing, lined or unlined, permanent pit that is not permitted by or registered with the division on or by June 16, 2008. An operator shall close an existing, lined or unlined, permanent pit that is not permitted by or registered with the division within six months after June 16, 2008.

(3) An operator shall close an existing unlined temporary pit within three months after June 16, 2008.

(4) An operator shall close an existing below-grade tank that does not meet the requirements of Paragraphs (1) through (4) of Subsection I of 19.15.17.11 NMAC or is not included in Paragraph (5) of Subsection I of 19.15.17.11 NMAC within five years after June 16, 2008, if not retrofitted to comply with Paragraphs (1) through (4) of Subsection I of 19.15.17.11 NMAC.

(5) An operator shall close any other permitted permanent pit within 60 days of cessation of operation of the permanent pit in accordance with a closure plan that the environmental bureau in the division's Santa Fe office approves.

(6) An operator shall close any other permitted temporary pit within six months from the date that the operator releases the drilling or workover rig. The appropriate division district office may grant an extension not to exceed three months.

(7) An operator shall close a drying pad used for a closed-loop system permitted under 19.15.17 NMAC or in operation on June 16, 2008, within six months from the date that the operator releases the drilling or workover rig. The operator shall note the date of the drilling or workover rig's release on form C-105 or C-103, filed with the division, upon the well's or workover's completion. The appropriate division district office may grant an extension not to exceed six months.

(8) An operator shall close a permitted below-grade tank within 60 days of cessation of the below-grade tank's operation or as required by the transitional provisions of Subsection B of 19.15.17.17 NMAC in accordance with a closure plan that the appropriate division district office approves.

B. Closure methods for temporary pits. The operator of a temporary pit shall remove all liquids from the temporary pit prior to closure and dispose of the liquids in a division-approved facility or recycle, reuse or reclaim the liquids in a manner that the appropriate division district office approves. The operator shall close the temporary pit by one of the following methods.

(1) Waste excavation and removal.

(a) The operator shall close the temporary pit by excavating all contents and, if applicable, synthetic pit liners and transferring those materials to a division-approved facility.

(b) The operator shall test the soils beneath the temporary pit to determine whether a release has occurred.

(i) For temporary pits

where ground water is between 50 and 100 feet below the bottom of the temporary pit or for cavitation pits allowed pursuant to Subparagraph (a) of Paragraph (1) of Subsection A of 19.15.17.10 NMAC, the operator shall collect, at a minimum, a five point, composite sample; collect individual grab samples from any area that is wet, discolored or showing other evidence of a release; and analyze for benzene, total BTEX, TPH, the GRO and DRO combined fraction and chlorides to demonstrate that benzene, as determined by EPA SW-846 method 8021B or 8260B or other EPA method that the division approves, does not exceed 0.2 mg/kg; total BTEX, as determined by EPA SW-846 method 8021B or 8260B or other EPA method that the division approves, does not exceed 50 mg/kg; TPH, as determined by EPA SW-846 method 418.1 or other EPA method that the division approves, does not exceed 2500 mg/kg; the GRO and DRO combined fraction, as determined by EPA SW-846 method 8015M, does not exceed 500 mg/kg; and chlorides, as determined by EPA method 300.1, do not exceed 500 mg/kg or the background concentration, whichever is greater. The operator shall notify the division of its results on form C-141. The division may require additional delineation upon review of the results.

(ii) For temporary pits where ground water is more than 100 feet below the bottom of the temporary pit, the operator shall collect, at a minimum, a five point, composite sample; collect individual grab samples from any area that is wet, discolored or showing other evidence of a release; and analyze for benzene, total BTEX, TPH, the GRO and DRO combined fraction and chlorides to demonstrate that benzene, as determined by EPA SW-846 method 8021B or 8260B or other EPA method that the division approves, does not exceed 0.2 mg/kg; total BTEX, as determined by EPA SW-846 method 8021B or 8260B or other method that the division approves, does not exceed 50 mg/kg; the GRO and DRO combined fraction, as determined by EPA SW-846 method 8015M, does not exceed 500 mg/kg; the TPH, as determined by EPA method 418.1 or other EPA method that the division approves, does not exceed 2500 mg/kg; and chlorides, as determined by EPA method 300.1, do not exceed 1000 mg/kg or the background concentration, whichever is greater. The operator shall notify the division of its results on form C-141. The division may require additional delineation upon review of the results.

(c) If the operator or the division determines that a release has occurred, then the operator shall comply with 19.15.3.116 NMAC and 19.15.1.19 NMAC, as appro-

priate.

(d) If the sampling program demonstrates that a release has not occurred or that any release does not exceed the concentrations specified in Subparagraph (b) of Paragraph (1) of Subsection B of 19.15.17.13 NMAC, then the operator shall backfill the temporary pit excavation with compacted, non-waste containing, earthen material; construct a division-prescribed soil cover; recontour and re-vegetate the site. The division-prescribed soil cover, recontouring and re-vegetation requirements shall comply with Subsections G, H and I of 19.15.17.13 NMAC.

(2) On-site burial. The operator shall demonstrate and comply with the siting requirements in Subsection C of 19.15.17.10 NMAC and the closure requirements and standards of Subsection F of 19.15.17.13 NMAC if the proposed closure method of a temporary pit involves on-site burial.

(3) Alternative closure methods. If the environmental bureau in the division's Santa Fe office grants an exception approving a closure method for a specific temporary pit other than as specified in Paragraphs (1) or (2) of Subsection B of 19.15.17.13 NMAC, then the operator shall close that temporary pit by the method that the environmental bureau in the division's Santa Fe office approves.

C. Closure method for permanent pits.

(1) The operator shall remove all liquids and BS&W from the permanent pit prior to implementing a closure method and shall dispose of the liquids and BS&W in a division-approved facility.

(2) The operator shall remove the pit liner system, if applicable, and dispose of it in a division-approved facility. If there is on-site equipment associated with permanent pit, the operator shall remove the equipment, unless the equipment is required for some other purpose.

(3) The operator shall test the soils beneath the permanent pit to determine whether a release has occurred. The operator shall collect, at a minimum, a five point, composite sample; collect individual grab samples from any area that is wet, discolored or showing other evidence of a release; and analyze for BTEX, TPH and chlorides to demonstrate that the benzene concentration, as determined by EPA SW-846 methods 8021B or 8260B or other EPA method that the division approves, does not exceed 0.2 mg/kg; total BTEX concentration, as determined by EPA SW-846 methods 8021B or 8260B or other EPA method that the division approves, does not exceed 50 mg/kg; the TPH concentration, as determined by EPA method 418.1 or other EPA method that the division approves, does not

exceed 100 mg/kg; and the chloride concentration, as determined by EPA method 300.1 or other EPA method that the division approves, does not exceed 250 mg/kg, or the background concentration, whichever is greater. The operator shall notify the division of its results on form C-141. The division may require additional delineation upon review of the results.

(4) If the operator or the division determines that a release has occurred, then the operator shall comply with 19.15.3.116 NMAC and 19.15.1.19 NMAC, as appropriate.

(5) If the sampling program demonstrates that a release has not occurred or that any release does not exceed the concentrations specified in Paragraph (3) of Subsection C of 19.15.17.13 NMAC, then the operator shall backfill the excavation with compacted, non-waste containing, earthen material; construct a division-prescribed soil cover; recontour and re-vegetate the site. The division-prescribed soil cover, recontouring and re-vegetation requirements shall comply with Subsections G, H and I of 19.15.17.13 NMAC.

D. Closure methods for closed-loop systems. An operator of a closed-loop system that uses a temporary pit, in lieu of a drying pad, shall comply with the closure requirements for temporary pits specified in Subsection B of 19.15.17.13 NMAC. The operator of a closed-loop system that uses a drying pad shall close the system by one of the following methods.

(1) Waste removal.

(a) The operator shall transfer the waste and the drying pad liner to a division-approved facility.

(b) The operator shall substantially restore and re-vegetate the impacted area's surface in accordance with Subsections G, H and I of 19.15.17.13 NMAC.

(2) On-site burial. The operator shall demonstrate and comply with the siting requirements of Subsection C of 19.15.17.10 NMAC and the closure requirements and standards of Subsection F of 19.15.17.13 NMAC if the proposed closure method of a drying pad associated with a closed-loop system involves on-site burial.

(3) Alternative closure methods. If the environmental bureau in the division's Santa Fe office grants an exception approving a closure method for a specific closed-loop system other than as specified in Paragraphs (1) or (2) of Subsection D of 19.15.17.13 NMAC, then the operator shall close that drying pad associated with a closed-loop system by the method the environmental bureau in the division's Santa Fe office approves.

E. Closure method for

below-grade tanks.

(1) The operator shall remove liquids and sludge from a below-grade tank prior to implementing a closure method and shall dispose of the liquids and sludge in a division-approved facility.

(2) The operator shall remove the below-grade tank and dispose of it in a division-approved facility or recycle, reuse, or reclaim it in a manner that the appropriate division district office approves.

(3) If there is any on-site equipment associated with a below-grade tank, then the operator shall remove the equipment, unless the equipment is required for some other purpose.

(4) The operator shall test the soils beneath the below-grade tank to determine whether a release has occurred. The operator shall collect, at a minimum, a five point, composite sample; collect individual grab samples from any area that is wet, discolored or showing other evidence of a release; and analyze for BTEX, TPH and chlorides to demonstrate that the benzene concentration, as determined by EPA SW-846 methods 8021B or 8260B or other EPA method that the division approves, does not exceed 0.2 mg/kg; total BTEX concentration, as determined by EPA SW-846 methods 8021B or 8260B or other EPA method that the division approves, does not exceed 50 mg/kg; the TPH concentration, as determined by EPA method 418.1 or other EPA method that the division approves, does not exceed 100 mg/kg; and the chloride concentration, as determined by EPA method 300.1 or other EPA method that the division approves, does not exceed 250 mg/kg, or the background concentration, whichever is greater. The operator shall notify the division of its results on form C-141. The division may require additional delineation upon review of the results.

(5) If the operator or the division determines that a release has occurred, then the operator shall comply with 19.15.3.116 NMAC and 19.15.1.19 NMAC, as appropriate.

(6) If the sampling program demonstrates that a release has not occurred or that any release does not exceed the concentrations specified in Paragraph (4) of Subsection E of 19.15.17.13 NMAC, then the operator shall backfill the excavation with compacted, non-waste containing, earthen material; construct a division-prescribed soil cover; recontour and re-vegetate the site. The division-prescribed soil cover, recontouring and re-vegetation requirements shall comply with Subsections G, H and I of 19.15.17.13 NMAC.

F. On-site closure methods. The following closure requirements and standards apply if the operator proposes a closure method for a drying pad associated with a closed-loop system or a tempo-

rary pit pursuant to Paragraph (2) of Subsection D of 19.15.17.13 NMAC or Paragraph (2) of Subsection B of 19.15.17.13 NMAC that involves on-site burial, or an alternative closure method pursuant to Paragraph (3) of Subsection D of 19.15.17.13 NMAC or Paragraph (3) of Subsection B of 19.15.17.13 NMAC and Subsection B of 19.15.17.15 NMAC.

(1) General requirements.

(a) Any proposed on-site closure method shall comply with the siting criteria specified in Subsection C of 19.15.17.10 NMAC.

(b) The operator shall provide the surface owner notice of the operator's proposal of an on-site closure method. The operator shall attach the proof of notice to the permit application.

(c) The operator shall comply with the closure requirements and standards of Paragraphs (2) and (3), as applicable, of Subsection F of 19.15.17.13 NMAC if the proposed closure method for a drying pad associated with a closed-loop system or for a temporary pit involves on-site burial pursuant to Paragraph (2) of Subsection D of 19.15.17.13 NMAC or Paragraph (2) of Subsection B of 19.15.17.13 NMAC, or involves an alternative closure method pursuant to Paragraph (3) of Subsection D of 19.15.17.13 NMAC or Paragraph (3) of Subsection B of 19.15.17.13 NMAC and Subsection B of 19.15.17.15 NMAC.

(d) The operator shall place a steel marker at the center of an on-site burial. The steel marker shall be not less than four inches in diameter and shall be cemented in a three-foot deep hole at a minimum. The steel marker shall extend at least four feet above mean ground level and at least three feet below ground level. The operator name, lease name and well number and location, including unit letter, section, township and range, and that the marker designates an on-site burial location shall be welded, stamped or otherwise permanently engraved into the metal of the steel marker. A person shall not build permanent structures over an on-site burial without the appropriate division district office's written approval. A person shall not remove an on-site burial marker without the division's written permission.

(e) The operator shall report the exact location of the on-site burial on form C-105 filed with the division.

(f) The operator shall file a deed notice identifying the exact location of the on-site burial with the county clerk in the county where the on-site burial occurs.

(2) In-place burial.

(a) Where the operator meets the siting criteria specified in Paragraphs (2) or (3) of Subsection C of 19.15.17.10 NMAC and the applicable waste criteria specified in Subparagraphs (c) or (d) of Paragraph (2) of

Subsection F of 19.15.17.13 NMAC, an operator may use in-place burial (burial in the existing temporary pit) for closure of a temporary pit or bury the contents of a drying pad associated with a closed-loop system in a temporary pit that the operator constructs in accordance with Paragraphs (1) through (6) and (10) of Subsection F of 19.15.17.11 NMAC for closure of a drying pad associated with a closed loop system.

(b) Prior to closing an existing temporary pit or to placing the contents from a drying pad associated with a closed-loop system into a temporary pit that the operator constructs for disposal, the operator shall stabilize or solidify the contents to a bearing capacity sufficient to support the temporary pit's final cover. The operator shall not mix the contents with soil or other material at a mixing ratio of greater than 3:1, soil or other material to contents.

(c) Where ground water will be between 50 and 100 feet below the bottom of the buried waste, the operator shall collect at a minimum, a five point, composite sample of the contents of the drying pad associated with a closed-loop system or the contents of a temporary pit after treatment or stabilization, if treatment or stabilization is required, to demonstrate that benzene, as determined by EPA SW-846 method 8021 B or 8260B, does not exceed 0.2 mg/kg; total BTEX, as determined by EPA SW-846 method 8021 B or 8260B, does not exceed 50 mg/kg; TPH, as determined by EPA SW-846 method 418.1 or other EPA method approved that the division approves, does not exceed 2500 mg/kg; the GRO and DRO combined fraction, as determined by EPA SW-846 method 8015M, does not exceed 500 mg/kg; and chlorides, as determined by EPA method 300.1, do not exceed 500 mg/kg or the background concentration, whichever is greater. The operator may collect the composite sample prior to treatment or stabilization to demonstrate that the contents do not exceed these concentrations. However, if the contents collected prior to treatment or stabilization exceed the specified concentrations the operator shall collect a second five point, composite sample of the contents after treatment or stabilization to demonstrate that the contents do not exceed these concentrations.

(d) Where the ground water will be more than 100 feet below the bottom of the buried waste, the operator shall collect at a minimum, a five point, composite sample of the contents of the drying pad associated with a closed-loop system or the contents of a temporary pit after treatment or stabilization, if treatment or stabilization is required, to demonstrate that benzene, as determined by EPA SW-846 method 8021B or 8260B, does not exceed 0.2 mg/kg; total BTEX, as determined by EPA SW-846 method 8021B or 8260B, does not exceed

50 mg/kg; the GRO and DRO combined fraction, as determined by EPA SW-846 method 8015M, does not exceed 500 mg/kg; TPH, as determined by EPA method 418.1 or other EPA method that the division approves, does not exceed 2500 mg/kg; and chlorides, as determined by EPA method 300.1, do not exceed 1000 mg/kg or the background concentration, whichever is greater. The operator may collect the composite sample prior to treatment or stabilization to demonstrate that the contents do not exceed these concentrations. However, if the contents collected prior to treatment or stabilization exceed the specified concentrations the operator shall collect a second five point, composite sample of the contents after treatment or stabilization to demonstrate that the contents do not exceed these concentrations.

(e) Upon closure of a temporary pit, or closure of a temporary pit that the operator constructs for burial of the contents of a drying pad associated with a closed-loop system, the operator shall cover the geomembrane lined, filled, temporary pit with compacted, non-waste containing, earthen material; construct a division-prescribed soil cover; recontour and re-vegetate the site. The division-prescribed soil cover, recontouring and re-vegetation shall comply with Subsections G, H and I of 19.15.17.13 NMAC.

(f) For burial of the contents from a drying pad associated with a closed-loop system, the operator shall construct a temporary pit, in accordance with Paragraphs (1) through (6) and (10) of Subsection F of 19.15.17.10 NMAC, within 100 feet of the drying pad associated with a closed-loop system, unless the appropriate division district office approves an alternative distance and location. The operator shall use a separate temporary pit for closure of each drying pad associated with a closed-loop system.

(3) On-site trench burial.

(a) Where the operator meets the siting criteria in Paragraph (4) of Subsection C of 19.15.17.10 NMAC, an operator may use on-site trench burial for closure of a drying pad associated with a closed loop system or for closure of a temporary pit when the waste meets the criteria in Subparagraph (c) of Paragraph (3) of Subsection F of 19.15.17.13 NMAC. The operator shall use a separate on-site trench for closure of each drying pad associated with a closed-loop system or each temporary pit.

(b) Prior to placing the contents from a drying pad associated with a closed-loop system or from a temporary pit into the trench, the operator shall stabilize or solidify the contents to a bearing capacity sufficient to support the final cover of the trench burial. The operator shall not mix the con-

tents with soil or other material at a mixing ratio of greater than 3:1, soil or other material to contents.

(c) The operator shall collect at a minimum, a five point, composite sample of the contents of the drying pad associated with a closed-loop system or temporary pit to demonstrate that the TPH concentration, as determined by EPA method 418.1 or other EPA method that the division approves, does not exceed 2500 mg/kg. Using EPA SW-846 method 1312 or other EPA leaching procedure that the division approves, the operator shall demonstrate that the chloride concentration, as determined by EPA method 300.1 or other EPA method that the division approves, does not exceed 250 mg/l and that the concentrations of the water contaminants specified in Subsection A of 20.6.2.3103 NMAC as determined by appropriate EPA methods do not exceed the standards specified in Subsection A of 20.6.2.3103 NMAC, unless otherwise specified above. The operator may collect the composite sample prior to treatment or stabilization to demonstrate that the contents do not exceed these concentrations. However, if the contents collected prior to treatment or stabilization exceed the specified concentrations the operator shall collect a second five point, composite sample of the contents after treatment or stabilization to demonstrate that the contents do not exceed these concentrations.

(d) If the contents from a drying pad associated with a closed-loop system or from a temporary pit do not exceed the criteria in Subparagraph (c) of Paragraph (3) of Subsection F of 19.15.17.13 NMAC, the operator shall construct a trench lined with a geomembrane liner located within 100 feet of the drying pad associated with a closed-loop system or temporary pit, unless the appropriate division district office approves an alternative distance and location. The operator shall design and construct the lined trench in accordance with the design and construction requirements specified in Paragraphs (1) through (8) of Subsection J of 19.15.17.11 NMAC.

(e) The operator shall close each drying pad associated with a closed-loop system or temporary pit by excavating and transferring all contents and synthetic pit liners or liner material associated with a closed-loop system or temporary pit to a lined trench. The excavated materials shall pass the paint filter liquids test (EPA SW-846, method 9095) and the closure standards specified in Subparagraph (c) of Paragraph (3) of Subsection F of 19.15.17.13 NMAC.

(f) The operator shall test the soils beneath the temporary pit after excavation to determine whether a release has

occurred.

(i) Where ground water is between 50 and 100 feet below the bottom of the temporary pit, the operator shall collect, at a minimum, a five point, composite sample; collect individual grab samples from any area that is wet, discolored or showing other evidence of a release; and analyze for BTEX, TPH, benzene, GRO and DRO combined fraction and chlorides to demonstrate that benzene, as determined by EPA SW-846 method 8021B or 8260B, does not exceed 0.2 mg/kg; total BTEX, as determined by EPA SW-846 method 8021B or 8260B, does not exceed 50 mg/kg; TPH, as determined by EPA SW-846 method 418.1 or other EPA method approved that the division approves, does not exceed 2500 mg/kg; the GRO and DRO combined fraction, as determined by EPA SW-846 method 8015M, does not exceed 500 mg/kg; and chlorides, as determined by EPA method 300.1, do not exceed 500 mg/kg or the background concentration, whichever is greater. The operator shall notify the division of its results on form C-141. The division may require additional delineation upon review of the results. The operator shall notify the division of its results on form C-141.

(ii) Where ground water is more than 100 feet below the bottom of the temporary pit, the operator shall collect at a minimum, a five point, composite sample; collect individual grab samples from any area that is wet, discolored or showing other evidence of a release; and analyze for BTEX, TPH, benzene, GRO and DRO combined fraction and chlorides to demonstrate that benzene, as determined by EPA SW-846 method 8021B or 8260B, does not exceed 0.2 mg/kg; total BTEX, as determined by EPA SW-846 method 8021B or 8260B, does not exceed 50 mg/kg; the GRO and DRO combined fraction, as determined by EPA SW-846 method 8015M, does not exceed 500 mg/kg; TPH, as determined by EPA method 418.1 or other EPA method that the division approves, does not exceed 2500 mg/kg; and chlorides, as determined by EPA method 300.1, do not exceed 1000 mg/kg or the background concentration, whichever is greater. The operator shall notify the division of its results on form C-141. The division may require additional delineation upon review of the results.

(g) If the sampling program demonstrates that a release has not occurred or that any release does not exceed the concentrations specified in Subparagraph (c) of Paragraph (3) of Subsection F of 19.15.17.13 NMAC, then the operator shall backfill the excavation with compacted, non-waste containing earthen material; construct a division-prescribed soil cover;

recontour and re-vegetate the site. The division-prescribed soil cover, recontouring and re-vegetation shall comply with Subsections G, H and I of 19.15.17.13 NMAC.

(h) If the operator or the division determines that a release has occurred, then the operator shall comply with 19.15.3.116 NMAC and 19.15.1.19 NMAC, as appropriate. The operator may propose to transfer the excavated, contaminated soil into the lined trench.

(i) The operator shall install a geomembrane cover over the excavated material in the lined trench. The operator shall design and construct the geomembrane cover in accordance with the requirements specified in Paragraphs (9) and (10) of Subsection J of 19.15.17.11 NMAC.

(j) The operator shall cover the geomembrane lined and covered, filled, trench with compacted, non-waste containing, earthen material; construct a division-prescribed soil cover; recontour and re-vegetate the site. The division-prescribed soil cover, recontouring and re-vegetation shall comply with Subsections G, H and I of 19.15.17.13 NMAC.

G. Reclamation of pit locations, on-site burial locations and drying pad locations.

(1) Once the operator has closed a pit or trench or is no longer using a drying pad, below-grade tank or an area associated with a closed-loop system, pit, trench or below-grade tank, the operator shall reclaim the pit location, drying pad location, below-grade tank location or trench location and all areas associated with the closed-loop system, pit, trench or below-grade tank including associated access roads to a safe and stable condition that blends with the surrounding undisturbed area. The operator shall substantially restore the impacted surface area to the condition that existed prior to oil and gas operations by placement of the soil cover as provided in Subsection H of 19.15.17.13 NMAC, recontour the location and associated areas to a contour that approximates the original contour and blends with the surrounding topography and re-vegetate according to Subsection I of 19.15.17.13 NMAC.

(2) The operator may propose an alternative to the re-vegetation requirement if the operator demonstrates that the proposed alternative effectively prevents erosion, and protects fresh water, human health and the environment. The proposed alternative shall be agreed upon by the surface owner. The operator shall submit the proposed alternative, with written documentation that the surface owner agrees to the alternative, to the division for approval.

H. Soil cover designs.

(1) The soil cover for closures where the operator has removed the pit con-

tents or remediated the contaminated soil to the division's satisfaction shall consist of the background thickness of topsoil or one foot of suitable material to establish vegetation at the site, whichever is greater.

(2) The soil cover for burial-in-place or trench burial shall consist of a minimum of four feet of compacted, non-waste containing, earthen material. The soil cover shall include either the background thickness of topsoil or one foot of suitable material to establish vegetation at the site, whichever is greater.

(3) The operator shall construct the soil cover to the site's existing grade and prevent ponding of water and erosion of the cover material.

I. Re-vegetation.

(1) The first growing season after the operator closes a pit or trench or is no longer using a drying pad, below-grade tank or an area associated with a closed-loop system, pit or below-grade tank including access roads, the operator shall seed or plant the disturbed areas.

(2) The operator shall accomplish seeding by drilling on the contour whenever practical or by other division-approved methods. The operator shall obtain vegetative cover that equals 70% of the native perennial vegetative cover (un-impacted by overgrazing, fire or other intrusion damaging to native vegetation) consisting of at least three native plant species, including at least one grass, but not including noxious weeds, and maintain that cover through two successive growing seasons. During the two growing seasons that prove viability, there shall be no artificial irrigation of the vegetation.

(3) The operator shall repeat seeding or planting until it successfully achieves the required vegetative cover.

(4) When conditions are not favorable for the establishment of vegetation, such as periods of drought, the division may allow the operator to delay seeding or planting until soil moisture conditions become favorable or may require the operator to use additional cultural techniques such as mulching, fertilizing, irrigating, fencing or other practices.

(5) The operator shall notify the division when it has seeded or planted and when it successfully achieves re-vegetation.

J. Closure notice.

(1) The operator shall notify the surface owner by certified mail, return receipt requested, that the operator plans to close a temporary pit, a permanent pit, a below-grade tank or where the operator has approval for on-site closure. Evidence of mailing of the notice to the address of the surface owner shown in the county tax records is sufficient to demonstrate compliance with this requirement.

(2) The operator of a temporary

pit or below-grade tank or an operator who is approved for on-site closure shall notify the appropriate division district office verbally or by other means at least 72 hours, but not more than one week, prior to any closure operation. The notice shall include the operator's name and the location to be closed by unit letter, section, township and range. If the closure is associated with a particular well, then the notice shall also include the well's name, number and API number.

(3) An operator of a permanent pit shall notify the environmental bureau in the division's Santa Fe office at least 60 days prior to cessation of operations and provide a proposed schedule for closure. If there is no closure plan on file with the environmental bureau in the division's Santa Fe office applicable to the permanent pit, the operator shall provide a closure plan with this notice. Upon receipt of the notice and proposed schedule, the environmental bureau in the division's Santa Fe office shall review the current closure plan for adequacy and inspect the site.

K. Closure report. Within 60 days of closure completion, the operator shall submit a closure report on form C-144, with necessary attachments to document all closure activities including sampling results; information required by 19.15.17 NMAC; a plot plan; and details on back-filling, capping and covering, where applicable. In the closure report, the operator shall certify that all information in the report and attachments is correct and that the operator has complied with all applicable closure requirements and conditions specified in the approved closure plan. If the operator used a temporary pit, the operator shall provide a plat of the pit location on form C-105 within 60 days of closing the temporary pit.

[19.15.17.13 NMAC - Rn, 19.15.2.50 NMAC & A, 6/16/08]

19.15.17.14 E M E R G E N C Y ACTIONS:

A. Permit not required. In an emergency an operator may construct a pit without a permit to contain fluids, solids or wastes, if an immediate danger to fresh water, public health or the environment exists.

B. Construction standards. The operator shall construct a pit during an emergency, to the extent possible given the emergency, in a manner that is consistent with the requirements for a temporary pit specified in 19.15.17 NMAC and that prevents the contamination of fresh water and protect public health and the environment.

C. Notice. The operator shall notify the appropriate division district office as soon as possible (if possible before construction begins) of the need for such pit's construction.

D. Use and duration. A pit constructed in an emergency may be used only for the emergency's duration. If the emergency lasts more than 48 hours, then the operator shall seek the appropriate division district office's approval for the pit's continued use. The operator shall remove all fluids, solids or wastes within 48 hours after cessation of use unless the appropriate division district office extends that time period.

E. Emergency pits. 19.15.17.14 NMAC does not authorize construction or use of an emergency pit as defined in Subsection D of 19.15.17.7 NMAC. Construction or use of any such pit requires a permit issued pursuant to 19.15.17 NMAC, unless the pit is described in a spill prevention, control and countermeasure plan the EPA requires, the operator removes all fluids from the pit within 48 hours and the operator has filed a notice of the pit's location with the appropriate division district office.

[19.15.17.14 NMAC - Rn, 19.15.2.50 NMAC & A, 6/16/08]

19.15.17.15 EXCEPTIONS:

A. General exceptions.

(1) The operator may apply to the environmental bureau in the division's Santa Fe office for an exception to a requirement or provision of 19.15.17 NMAC other than the permit requirements of 19.15.17.8 NMAC; the exception requirements of 19.15.17.15 NMAC; or the permit approval, condition, denial, revocation, suspension, modification or transfer requirements of 19.15.17.16 NMAC. The environmental bureau in the division's Santa Fe office may grant an exception from a requirement or provision of 19.15.17 NMAC, if the operator demonstrates to the satisfaction of the environmental bureau in the division's Santa Fe office that the granting of the exception provides equivalent or better protection of fresh water, public health and the environment. The environmental bureau in the division's Santa Fe office may revoke an exception after notice to the operator of the pit, closed-loop system, below-grade tank or proposed alternative and to the surface owner, and opportunity for a hearing, or without notice and hearing in event of an emergency involving imminent danger to fresh water, public health or the environment, subject to the provisions of NMSA 1978, Section 70-2-23, if the environmental bureau in the division's Santa Fe office determines that such action is necessary to prevent the contamination of fresh water, or to protect public health or the environment.

(2) The operator shall give written notice by certified mail, return receipt requested, to the surface owner of record

where the pit, closed-loop system, below-grade tank or proposed alternative is, or will be, located; to surface owners of record within one-half mile of such location; to the county commission of the county where the pit, closed-loop system, below-grade tank or proposed alternative is, or will be, located; to the appropriate city officials if the pit, closed-loop system, below-grade tank or proposed alternative is, or will be, located within city limits, within one-half mile of the city limits or within the city's zoning and planning jurisdiction; to affected federal or tribal or pueblo governmental agencies; and to such other persons as the environmental bureau in the division's Santa Fe office may direct. Additionally, the operator shall issue public notice by publication one time in a newspaper of general circulation in the county where the pit, closed-loop system, below-grade tank or proposed alternative, is, or will be located. Required written and public notices require the environmental bureau in the division's Santa Fe office's approval. The division shall distribute notice of the application to persons who have requested notification and shall post notice of the application on the division's website.

(3) Any person wishing to comment on an application for an exception may file comments or request a hearing within 30 days after the later of the date when the applicant mails the notice required by Paragraph (2) of Subsection A of 19.15.17.15 NMAC or when the division distributes or posts the notice provided in Paragraph (2) of Subsection A of 19.15.17.15 NMAC. In a request for hearing, the person shall set forth the reasons why the division should hold a hearing.

(4) The environmental bureau in the division's Santa Fe office may grant the exception administratively if the environmental bureau in the division's Santa Fe office receives no comments or requests for hearing within the time for commenting established in Paragraph (3) of Subsection A of 19.15.17.15 NMAC. If the environmental bureau in the division's Santa Fe office receives a request for hearing and the director determines that the request presents issues that have technical merit or that there is significant public interest then the director may set the application for hearing. The director, however, may set any application for hearing. If the environmental bureau in the division's Santa Fe office schedules a hearing on an application, the hearing shall be conducted according to the procedures in 19.15.14.1206 through 19.15.14.1215 NMAC.

(5) If the director does not determine that a hearing is necessary due to technical merit, significant public interest or otherwise then the environmental bureau in

the division's Santa Fe office may grant the exception without a hearing notwithstanding the filing of a request for hearing. If, however, the environmental bureau in the division's Santa Fe office determines to deny the exception, then it shall notify the operator of its determination by certified mail, return receipt requested, and if the operator requests a hearing within 10 days after receipt of such notice shall set the matter for hearing, with notice to the operator and to any party who has filed a comment or requested a hearing.

B. Alternative closure methods. The operator of a temporary pit or a closed-loop system may apply to the environmental bureau in the division's Santa Fe office for an exception to the closure methods specified in Paragraphs (1) and (2) of Subsection B of 19.15.17.13 NMAC or Paragraphs (1) and (2) of Subsection D of 19.15.17.13 NMAC. The environmental bureau in the division's Santa Fe office may grant the proposed exception if all of the following requirements are met.

(1) The operator demonstrates that the proposed alternative method protects fresh water, public health and the environment.

(2) The operator shall remove liquids prior to implementing a closure method and dispose of the liquids in a division-approved facility or recycle or reuse the liquids in a manner that the environmental bureau in the division's Santa Fe office approves.

(3) The operator demonstrates to the satisfaction of the environmental bureau in the division's Santa Fe office that any proposed alternative closure method will implement one or more of the following practices: waste minimization; treatment using best demonstrated available technology; reclamation; reuse; recycling; or reduction in available contaminant concentration; and subject to such conditions as the environmental bureau in the division's Santa Fe office deems necessary in order to protect fresh water, public health and the environment.

(4) The provisions of Subsection A of 19.15.17.15 NMAC shall apply to applications for exceptions pursuant to Subsection B of 19.15.17.15 NMAC.

[19.15.17.15 NMAC - Rn, 19.15.2.50 NMAC & A, 6/16/08]

19.15.17.16 P E R M I T APPROVALS, CONDITIONS, DENIALS, REVOCATIONS, SUSPENSIONS, MODIFICATIONS OR TRANSFERS:

A. The division shall review all applications to permit facilities subject to 19.15.17 NMAC, and may approve, deny or approve an application

with conditions. If the division denies an application or approves the application subject to conditions not expressly provided by the Oil and Gas Act or in 19.15 NMAC, then the division shall notify the applicant by certified mail, return receipt requested, and shall set the matter for hearing if the applicant so requests within 10 days after receipt of such notification.

B. Granting of permit. The division shall issue a permit upon finding that an operator has filed an acceptable application and that the proposed construction, operation and closure of a pit, closed-loop system, below-grade tank or proposed alternative will comply with applicable statutes and rules and will not endanger fresh water, public health, safety or the environment.

C. Conditions. The division may impose conditions or requirements that it determines are necessary and proper for the protection of fresh water, public health, safety or the environment. The division shall incorporate such additional conditions or requirements into the permit.

D. Denial of application. The division may deny an application for a permit if it finds that the application and materials that the operator submitted for consideration with the application do not sufficiently demonstrate that the operator can construct, operate and close the proposed pit, closed-loop system, below-grade tank or proposed alternative without detriment to fresh water, public health, safety or the environment.

E. Revocation, suspension or modification of a permit. The operator may apply to the division for a modification of the permit pursuant 19.15.17 NMAC. The operator shall demonstrate that the proposed modification complies with the applicable provisions of 19.15.17 NMAC. Any modification that is equivalent to an exception of any paragraph of 19.15.17 NMAC shall be subject to the notice and approval procedures required for an exception. The division may revoke, suspend or impose additional operating conditions or limitations on a permit at any time, after notice and opportunity for a hearing, if the division determines that the operator or the permitted facility is in material breach of any applicable statutes or rules, or that such action is necessary for the protection of fresh water, public health or the environment. The division shall notify the operator by certified mail, return receipt requested, of any intended revocation, suspension or imposition of addition conditions, and the operator shall have 10 days after receipt of notification to request a hearing. The division may suspend a permit or impose additional conditions or limitations without hearing in an emergency to forestall an

imminent threat to fresh water, public health, safety or the environment, subject to the provisions of NMSA 1978, Section 70-2-23, as amended.

F. Transfer of a permit. The operator shall not transfer a permit without the division's prior written approval. The division's approval of an application to transfer a well or other facility with which a permitted pit, below-grade tank or closed-loop system is associated shall constitute approval of the transfer of the permit for the pit, below-grade tank or closed-loop system. In all other cases, the operator and the transferee shall apply for approval to transfer the permit to the division office to which permit applications for the type of facility involved are directed.

G. Division approvals. The division shall grant or confirm any division approval authorized by a provision of 19.15.17 NMAC by written statement. Written statements include e-mail.

H. If the division schedules a hearing on an application, the hearing shall be conducted according to 19.15.14.1206 through 19.15.14.1215 NMAC.

[19.15.17.16 NMAC - Rn, 19.15.2.50 NMAC & A, 6/16/08]

19.15.17.17 TRANSITIONAL PROVISIONS:

A. After June 16, 2008, the division shall not accept applications for permits for unlined temporary pits.

B. An operator of an existing operation that is required to close pursuant to Paragraphs (2) or (3) of Subsection A of 19.15.17.13 NMAC shall submit a closure plan pursuant to Subsection C of 19.15.17.9 NMAC to the division not later than 30 days after June 16, 2008. An operator of an existing operation that is required to close pursuant to Paragraphs (1) or (4) of Subsection A of 19.15.17.13 NMAC shall submit a closure plan pursuant to Subsection C of 19.15.17.9 NMAC to the division not later than six months after June 16, 2008.

C. Within 180 days after June 16, 2008, an operator of an existing lined permitted permanent pit shall request a modification pursuant to Subsection E of 19.15.17.16 NMAC. Within 180 days after June 16, 2008, an operator of an existing lined registered permanent pit shall apply to the division for a permit pursuant to 19.15.17 NMAC. An operator of an existing lined, permitted or registered, permanent pit shall comply with the construction requirements of 19.15.17.11 NMAC within 18 months after permit modification or issuance.

D. An operator of an existing below-grade tank shall apply for a permit or permit modification pursuant to

19.15.17 NMAC within 90 days after June 16, 2008. An operator of an existing below-grade tank shall comply with the construction requirements of 19.15.17.11 NMAC within one year of permit issuance.

E. An operator of an existing pit or below-grade tank permitted prior to June 16, 2008, may continue to operate in accordance with such permits or orders, subject to the following provisions.

(1) An operator of an existing lined, permitted or registered, permanent pit shall comply with the operational and closure requirements of 19.15.17.12 NMAC and 19.15.17.13 NMAC.

(2) An operator of an existing, permitted or registered, temporary pit shall comply with the operational and closure requirements of 19.15.17.12 NMAC and 19.15.17.13 NMAC.

(3) An operator of an existing below-grade tank shall comply with the operational and closure requirements of 19.15.17.12 NMAC and 19.15.17.13 NMAC.

(4) The operator shall bring an existing below-grade tank that does not comply with the design and construction requirements of 19.15.17.11 NMAC into compliance with those requirements or close it within five years after June 16, 2008.

F. The operator may continue to operate an existing closed-loop system without applying for a permit, but the operator shall close such system in accordance with the closure requirements of 19.15.17.13 NMAC.

G. An operator of an existing sump shall comply with the operational requirements of 19.15.17.12 NMAC. [19.15.17.17 NMAC - Rn, 19.15.2.50 NMAC & A, 6/16/08]

HISTORY OF 19.15.17 NMAC:

History of Repealed Material:
[RESERVED]

NMAC History:

That portion of 19.15.2 NMAC (19.15.2.50 NMAC) was renumbered, amended and replaced by 19.15.17 NMAC, Pits, Closed-Loop Systems, Below-Grade Tanks and Sumps, effective 6/16/2008.

**NEW MEXICO ENERGY,
MINERALS AND NATURAL
RESOURCES
DEPARTMENT
OIL CONSERVATION DIVISION**

This is an amendment to 19.15.1 NMAC, Sections 7 and 21, effective 6/16/08. Added definitions for ASTM, BS&W, BTEX, cm/sec, downstream facility, DRO, EPA, geomembrane, geotextile, GRO, HDPE, H2S, liner, LLDPE, mg/l, mg/kg, PVC, psi, run-on, TPH, unstable area, upstream facility, and WQCC. Amended definitions of pit, below-grade tank, and surface waste management facility. Amended internal cross-reference in 19.15.1.21 NMAC.

19.15.1.7 DEFINITIONS:

A. Definitions beginning with the letter "A".

(1) Abate or abatement shall mean the investigation, containment, removal or other mitigation of water pollution.

(2) Abatement plan shall mean a description of any operational, monitoring, contingency and closure requirements and conditions for the prevention, investigation and abatement of water pollution.

(3) Adjoining spacing units are those existing or prospective spacing units in the same pool that are touching at a point or line on the spacing unit that is the subject of the application.

(4) Adjusted allowable shall mean the allowable production a well or proration unit receives after all adjustments are made.

(5) Allocated pool is one in which the total oil or natural gas production is restricted and allocated to various wells therein in accordance with proration schedules.

(6) Allowable production shall mean that number of barrels of oil or standard cubic feet of natural gas authorized by the division to be produced from an allocated pool.

(7) Approved temporary abandonment shall be the status of a well that is inactive, has been approved in accordance with 19.15.4.203 NMAC and is in compliance with 19.15.4.203 NMAC.

(8) Aquifer shall mean a geological formation, group of formations or a part of a formation that is capable of yielding a significant amount of water to a well or spring.

(9) ASTM means ASTM International - an international standards developing organization that develops and publishes voluntary technical standards for a wide range of materials, products, systems and services.

B. Definitions beginning

with the letter "B".

(1) Back allowable shall mean the authorization for production of a shortage or underproduction resulting from pipeline proration.

(2) Background shall mean, for purposes of ground water abatement plans only, the amount of ground water contaminants naturally occurring from undisturbed geologic sources or water contaminants occurring from a source other than the responsible person's facility. This definition shall not prevent the director from requiring abatement of commingled plumes of pollution, shall not prevent responsible persons from seeking contribution or other legal or equitable relief from other persons and shall not preclude the director from exercising enforcement authority under any applicable statute, regulation or common law.

(3) Barrel shall mean 42 United States gallons measured at 60 degrees fahrenheit and atmospheric pressure at the sea level.

(4) Barrel of oil shall mean 42 United States gallons of oil, after deductions for the full amount of basic sediment, water and other impurities present, ascertained by centrifugal or other recognized and customary test.

(5) Below-grade tank [shall mean] means a vessel, excluding sumps and pressurized pipeline drip traps, where a portion of the tank's sidewalls is below the [ground surface and not visible] surrounding ground surface's elevation. Below-grade tank does not include an above ground storage tank that is located above or at the surrounding ground surface's elevation and is surrounded by berms.

(6) Berm shall mean an embankment or ridge constructed to prevent the movement of liquids, sludge, solids or other materials.

(7) Biopile, also known as biocell, bioheap, biomound or compost pile, shall mean a pile of contaminated soils used to reduce concentrations of petroleum constituents in excavated soils through the use of biodegradation. This technology involves heaping contaminated soils into piles or "cells" and stimulating aerobic microbial activity within the soils through the aeration or addition of minerals, nutrients and moisture.

(8) Bottom hole or subsurface pressure shall mean the gauge pressure in pounds per square inch under conditions existing at or near the producing horizon.

(9) Bradenhead gas well shall mean a well producing gas through well-head connections from a gas reservoir that has been successfully cased off from an underlying oil or gas reservoir.

(10) BS&W means basic sedi-

ments and water.

(11) BTEX means benzene, toluene, ethylbenzene and xylene.

C. Definitions beginning with the letter "C".

(1) Carbon dioxide gas shall mean noncombustible gas composed chiefly of carbon dioxide occurring naturally in underground rocks.

(2) Casinghead gas shall mean any gas or vapor or both gas and vapor indigenous to and produced from a pool classified as an oil pool by the division. This also includes gas-cap gas produced from such an oil pool.

(3) Cm/sec means centimeters per second.

(4) Commission shall mean the oil conservation commission.

(5) Commission clerk means the oil conservation division employee the division director designates to provide staff support to the commission, and accept filings in rulemaking or adjudicatory cases before the commission.

(6) Common purchaser for natural gas shall mean any person now or hereafter engaged in purchasing from one or more producers gas produced from gas wells within each common source of supply from which it purchases.

(7) Common purchaser for oil shall mean every person now engaged or hereafter engaging in the business of purchasing oil to be transported through pipelines.

(8) Common source of supply. See pool.

(9) Condensate shall mean the liquid recovered at the surface that results from condensation due to reduced pressure or temperature of petroleum hydrocarbons existing in a gaseous phase in the reservoir.

(10) Contiguous shall mean acreage joined by more than one common point, that is, the common boundary must be at least one side of a governmental quarter-quarter section.

(11) Conventional completion shall mean a well completion in which the production string of casing has an outside diameter in excess of 2.875 inches.

(12) Correlative rights shall mean the opportunity afforded, as far as it is practicable to do so, to the owner of each property in a pool to produce without waste his just and equitable share of the oil or gas, or both, in the pool, being an amount, so far as can be practically determined, and so far as can be practically obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas, or both, under such property bears to the total recoverable oil or gas, or both, in the pool, and for such purpose to use his just and

equitable share of the reservoir energy.

~~(42)~~ **(13)** Cubic feet of gas or standard cubic foot of gas, for the purpose of these rules, shall mean that volume of gas contained in one cubic foot of space and computed at a base pressure of 10 ounces per square inch above the average barometric pressure of 14.4 pounds per square inch (15.025 psia), at a standard base temperature of 60 degrees fahrenheit.

D. Definitions beginning with the letter "D".

(1) Deep pool shall mean a common source of supply which is situated 5000 feet or more below the surface.

(2) Depth bracket allowable shall mean the basic oil allowable assigned to a pool and based on its depth, unit size or special pool rules, which, when multiplied by the market demand percentage factor in effect, will determine the top unit allowable for the pool.

(3) Director shall mean the director of the oil conservation division of the New Mexico energy, minerals and natural resources department.

(4) Division shall mean the oil conservation division of the New Mexico energy, minerals and natural resources department.

(5) Division clerk means the oil conservation division employee the division director designates to accept filings in adjudicatory cases before the division.

(6) Downstream facility means a facility associated with the transportation (including gathering) or processing of gas or oil (including a refinery, gas plant, compressor station or crude oil pump station); brine production; or the oil field service industry.

(7) DRO means diesel range organics.

E. Definitions beginning with the letter "E".

(1) EPA means the United States environmental protection agency.

~~(4)~~ **(2)** Exempted aquifer shall mean an aquifer that does not currently serve as a source of drinking water, and which cannot now and will not in the foreseeable future serve as a source of drinking water because:

(a) it is hydrocarbon producing;

(b) it is situated at a depth or location which makes the recovery of water for drinking water purposes economically or technologically impractical; or,

(c) it is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption.

~~(2)~~ **(3)** Existing spacing unit is a spacing unit containing a producing well.

F. Definitions beginning with the letter "F".

(1) Facility shall mean any struc-

ture, installation, operation, storage tank, transmission line, access road, motor vehicle, rolling stock or activity of any kind, whether stationary or mobile.

(2) Field means the general area which is underlaid or appears to be underlaid by at least one pool; and field also includes the underground reservoir or reservoirs containing such crude petroleum oil or natural gas, or both. The words field and pool mean the same thing when only one underground reservoir is involved; however, field unlike pool may relate to two or more pools.

(3) Fresh water (to be protected) includes the water in lakes and playas, the surface waters of all streams regardless of the quality of the water within any given reach and all underground waters containing 10,000 milligrams per liter (mg/l) or less of total dissolved solids (TDS) except for which, after notice and hearing, it is found there is no present or reasonably foreseeable beneficial use which would be impaired by contamination of such waters. The water in lakes and playas shall be protected from contamination even though it may contain more than 10,000 mg/l of TDS unless it can be shown that hydrologically connected fresh ground water will not be adversely affected.

G. Definitions beginning with the letter "G".

(1) Gas lift shall mean any method of lifting liquid to the surface by injecting gas into a well from which oil production is obtained.

(2) Gas-oil ratio shall mean the ratio of the casinghead gas produced in standard cubic feet to the number of barrels of oil concurrently produced during any stated period.

(3) Gas-oil ratio adjustment shall mean the reduction in allowable of a high gas oil ratio unit to conform with the production permitted by the limiting gas-oil ratio for the particular pool during a particular proration period.

(4) Gas transportation facility shall mean a pipeline in operation serving gas wells for the transportation of natural gas, or some other device or equipment in like operation whereby natural gas produced from gas wells connected therewith can be transported or used for consumption.

(5) Gas well shall mean a well producing gas or natural gas from a gas pool, or a well with a gas-oil ratio in excess of 100,000 cubic feet of gas per barrel of oil producing from an oil pool.

(6) Geomembrane means an impermeable polymeric sheet material that is impervious to liquid and gas as long as it maintains its integrity, and is used as an integral part of an engineered structure designed to limit the movement of liquid or gas in a system.

(7) Geotextile means a sheet material that is less impervious to liquid than a geomembrane but more resistant to penetration damage, and is used as part of an engineered structure or system to serve as a filter to prevent the movement of soil fines into a drainage system, to provide planar flow for drainage, to serve as a cushion to protect geomembranes or to provide structural support.

(8) GRO means gasoline range organics.

~~(6)~~ **(9)** Ground water shall mean interstitial water which occurs in saturated earth material and which is capable of entering a well in sufficient amounts to be utilized as a water supply.

~~(7)~~ **(10)** Ground water sensitive area shall mean an area specifically so designated by the division after evaluation of technical evidence where ground water exists that would likely exceed water quality control commission standards if contaminants were introduced into the environment.

H. Definitions beginning with the letter "H".

(1) Hazard to public health exists when water which is used or is reasonably expected to be used in the future as a human drinking water supply exceeds at the time and place of such use, one or more of the numerical standards of Subsection A of 20.6.2.3103 NMAC, or the naturally occurring concentrations, whichever is higher, or if any toxic pollutant as defined at Subsection VV of 20.6.2.7 NMAC affecting human health is present in the water. In determining whether a release would cause a hazard to public health to exist, the director shall investigate and consider the purification and dilution reasonably expected to occur from the time and place of release to the time and place of withdrawal for use as human drinking water.

(2) HDPE means high-density polyethylene.

(3) H₂S means hydrogen sulfide.

~~(2)~~ **(4)** High gas-oil ratio proration unit shall mean a unit with at least one producing oil well with a gas-oil ratio in excess of the limiting gas-oil ratio for the pool in which the unit is located.

I. Definitions beginning with the letter "I".

(1) Illegal gas shall mean natural gas produced from a gas well in excess of the allowable determined by the division.

(2) Illegal oil shall mean crude petroleum oil produced in excess of the allowable as fixed by the division.

(3) Illegal product shall mean any product of illegal gas or illegal oil.

(4) Inactive well shall be a well which is not being utilized for beneficial purposes such as production, injection or monitoring and which is not being drilled,

completed, repaired or worked over.

(5) Injection or input well shall mean any well used for the injection of air, gas, water or other fluids into any underground stratum.

J. Reserved.

K. Definitions beginning with the letter "K". Knowingly and willfully, for the purpose of assessing civil penalties, shall mean the voluntary or conscious performance of an act that is prohibited or the voluntary or conscious failure to perform an act or duty that is required. It does not include performances or failures to perform that are honest mistakes or merely inadvertent. It includes, but does not require, performances or failures to perform that result from a criminal or evil intent or from a specific intent to violate the law. The conduct's knowing and willful nature may be established by plain indifference to or reckless disregard of the requirements of the law, rules, orders or permits. A consistent pattern or performance or failure to perform also may be sufficient to establish the conduct's knowing and willful nature, where such consistent pattern is neither the result of honest mistakes nor mere inadvertency. Conduct that is otherwise regarded as being knowing and willful is rendered neither accidental nor mitigated in character by the belief that the conduct is reasonable or legal.

L. Definitions beginning with the letter "L".

(1) Limiting gas-oil ratio shall mean the gas-oil ratio assigned by the division to a particular oil pool to limit the volumes of casinghead gas which may be produced from the various oil producing units within that particular pool.

(2) Liner means a continuous, low-permeability layer constructed of natural or human-made materials that restricts the migration of liquid oil field wastes, gases or leachate.

(3) LLDPE means linear low-density polyethylene.

(4) Load oil is any oil or liquid hydrocarbon which has been used in remedial operation in any oil or gas well.

(5) Log or well log shall mean a systematic detailed and correct record of formations encountered in the drilling of a well.

M. Definitions beginning with the letter "M".

(1) Marginal unit shall mean a proration unit which is incapable of producing top unit allowable for the pool in which it is located.

(2) Market demand percentage factor shall mean that percentage factor of 100 percent or less as determined by the division at an oil allowable hearing, which, when multiplied by the depth bracket allow-

able applicable to each pool, will determine the top unit allowable for that pool.

(3) Mg/l means milligrams per liter.

(4) Mg/kg means milligrams per kilogram.

(5) Mineral estate is the most complete ownership of oil and gas recognized in law and includes all the mineral interests and all the royalty interests.

(6) Mineral interest owners are owners of an interest in the executive rights, which are the rights to explore and develop, including oil and gas lessees (i.e., "working interest owners") and mineral interest owners who have not signed an oil and gas lease.

(7) Minimum allowable shall mean the minimum amount of production from an oil or gas well which may be advisable from time to time to the end that production will repay reasonable lifting cost and thus prevent premature abandonment and resulting waste.

(8) Multiple completion (combination) shall mean a multiple completion in which two or more common sources of supply are produced through a combination of two or more conventional diameter casing strings cemented in a common well-bore, or a combination of small diameter and conventional diameter casing strings cemented in a common well-bore, the conventional diameter strings of which might or might not be a multiple completion (conventional).

(9) Multiple completion (conventional) shall mean a completion in which two or more common sources of supply are produced through one or more strings of tubing installed within a single casing string, with the production from each common source of supply completely segregated by means of packers.

(10) Multiple completion (tubingless) shall mean completion in which two or more common sources of supply are produced through an equal number of casing strings cemented in a common well-bore, each such string of casing having an outside diameter of 2.875 inches or less, with the production from each common source of supply completely segregated by use of cement.

N. Definitions beginning with the letter "N".

(1) Natural gas or gas shall mean any combustible vapor composed chiefly of hydrocarbons occurring naturally in a pool classified by the division as a gas pool.

(2) Non-aqueous phase liquid shall mean an interstitial body of liquid oil, petroleum product, petrochemical or organic solvent, including an emulsion containing such material.

(3) Non-marginal unit shall mean

a proration unit which is capable of producing top unit allowable for the pool in which it is located, and to which has been assigned a top unit allowable.

O. Definitions beginning with the letter "O".

(1) Official gas-oil ratio test shall mean the periodic gas-oil ratio test made by division order by such method and means and in such manner as the division prescribes.

(2) Oil, crude oil or crude petroleum oil shall mean petroleum hydrocarbon produced from a well in the liquid phase and that existed in a liquid phase in the reservoir.

(3) Oil field waste shall mean waste generated in conjunction with the exploration for, drilling for, production of, refining of, processing of, gathering of or transportation of crude oil, natural gas or carbon dioxide; waste generated from oil field service company operations; and waste generated from oil field remediation or abatement activity regardless of the date of release. Oil field waste does not include waste not generally associated with oil and gas industry operations such as tires, appliances or ordinary garbage or refuse unless generated at a division-regulated facility, and does not include sewage, regardless of the source.

(4) Oil well shall mean a well capable of producing oil and that is not a gas well as defined in Paragraph (5) of Subsection G of 19.15.1.7 NMAC.

(5) Operator shall mean a person who, duly authorized, is in charge of the development of a lease or the operation of a producing property, or who is in charge of a facility's operation or management.

(6) Overage or overproduction shall mean the amount of oil or the amount of natural gas produced during a proration period in excess of the amount authorized on the proration schedule.

(7) Owner shall mean the person who has the right to drill into and to produce from a pool, and to appropriate the production either for himself or for himself and another.

P. Definitions beginning with the letter "P".

(1) Penalized unit shall mean a proration unit to which, because of an excessive gas-oil ratio, an allowable has been assigned which is less than top unit allowable for the pool in which it is located and also less than the ability of the well(s) on the unit to produce.

(2) Person shall mean an individual or any other entity including partnerships, corporation, associations, responsible business or association agents or officers, the state or a political subdivision of the state or any agency, department or instru-

mentality of the United States and any of its officers, agents or employees.

(3) Pit shall mean any surface or sub-surface impoundment, man-made or natural depression or diked area on the surface. Excluded from this definition are berms constructed around tanks or other facilities solely for the purpose of safety, ~~and~~ secondary containment and storm water or run-on control.

(4) Playa lake shall mean a level or nearly level area that occupies the lowest part of a completely closed basin and that is covered with water at irregular intervals, forming a temporary lake.

(5) Pool means any underground reservoir containing a common accumulation of crude petroleum oil or natural gas or both. Each zone of a general structure, which zone is completely separated from any other zone in the structure, is covered by the word "pool" as used herein. "Pool" is synonymous with "common source of supply" and with "common reservoir".

(6) Potential shall mean the properly determined capacity of a well to produce oil, or gas, or both, under conditions prescribed by the division.

(7) Pressure maintenance shall mean the injection of gas or other fluid into a reservoir, either to maintain the existing pressure in such reservoir or to retard the natural decline in the reservoir pressure.

(8) Produced water shall mean those waters produced in conjunction with the production of crude oil and/or natural gas and commonly collected at field storage, processing or disposal facilities including but not limited to: lease tanks, commingled tank batteries, burn pits, LACT units and community or lease salt water disposal systems and which may be collected at gas processing plants, pipeline drips and other processing or transportation facilities.

(9) Producer shall mean the owner of a well or wells capable of producing oil or natural gas or both in paying quantities.

(10) Product means any commodity or thing made or manufactured from crude petroleum oil or natural gas, and all derivatives of crude petroleum oil or natural gas, including refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, treated crude oil, fuel oil, residuum, gas oil, naphtha, distillate, gasoline, kerosene, benzene, wash oil, lubricating oil, and blends or mixtures of crude petroleum oil or natural gas or any derivative thereof.

(11) Proration day shall consist of 24 consecutive hours which shall begin at 7 a.m. and end at 7 a.m. on the following day.

(12) Proration month shall mean the calendar month which shall begin at 7 a.m. on the first day of such month and end

at 7 a.m. on the first day of the next succeeding month.

(13) Proration period shall mean for oil the proration month and for gas the twelve-month period which shall begin at 7 a.m. on January 1 of each year and end at 7 a.m. on January 1 of the succeeding year or other period designated by general or special order of the division.

(14) Proration schedule shall mean the order of the division authorizing the production, purchase and transportation of oil, casinghead gas and natural gas from the various units of oil or of natural gas in allocated pools.

(15) Proration unit is the area in a pool that can be effectively and efficiently drained by one well as determined by the division or commission (See NMSA 1978 Section 70-2-17.B) as well as the area assigned to an individual well for the purposes of allocating allowable production pursuant to a prorationing order for the pool. A proration unit will be the same size and shape as a spacing unit. All proration units are spacing units but not all spacing units are proration units.

(16) Prospective spacing unit is a hypothetical spacing unit that does not yet have a producing well.

(17) PVC means poly vinyl chloride.

(18) Psi means pounds per square inch.

Q. Reserved.

R. Definitions beginning with the letter "R".

(1) Recomplete shall mean the subsequent completion of a well in a different pool from the pool in which it was originally completed.

(2) Regulated naturally occurring radioactive material (regulated NORM) shall mean naturally occurring radioactive material (NORM) contained in any oil-field soils, equipment, sludges or any other materials related to oil-field operations or processes exceeding the radiation levels specified in 20.3.14.1403 NMAC.

(3) Release shall mean all breaks, leaks, spills, releases, fires or blowouts involving crude oil, produced water, condensate, drilling fluids, completion fluids or other chemical or contaminant or mixture thereof, including oil field wastes and natural gases to the environment.

(4) Remediation plan shall mean a written description of a program to address unauthorized releases. The plan may include appropriate information, including assessment data, health risk demonstrations and corrective action(s). The plan may also include an alternative proposing no action beyond the submittal of a spill report.

(5) Responsible person shall mean the owner or operator who must com-

plete division approved corrective action for pollution from releases.

(6) Royalty interest owners are owners of an interest in the non-executive rights including lessors, royalty interest owners and overriding royalty interest owners. Royalty interests are non-cost bearing.

(7) Run-on means rainwater, leachate or other liquid that drains from other land on to any part of a division-approved facility.

S. Definitions beginning with the letter "S".

(1) Secondary recovery shall mean a method of recovering quantities of oil or gas from a reservoir which quantities would not be recoverable by ordinary primary depletion methods.

(2) Shallow pool shall mean a pool that has a depth range from zero to 5000 feet.

(3) Shortage or underproduction shall mean the amount of oil or the amount of natural gas during a proration period by which a given proration unit failed to produce an amount equal to that authorized in the proration schedule.

(4) Shut-in shall be the status of a production well or an injection well that is temporarily closed down, whether by closing a valve or disconnection or other physical means.

(5) Shut-in pressure shall mean the gauge pressure noted at the wellhead when the well is completely shut in, not to be confused with bottom hole pressure.

(6) Significant modification of an abatement plan shall mean a change in the abatement technology used excluding design and operational parameters, or relocation of 25 percent or more of the compliance sampling stations, for a single medium, as designated pursuant to Item (iv) of Subparagraph (b) of Paragraph (4) of Subsection E of 19.15.5.19 NMAC.

(7) Soil shall mean earth, sediments or other unconsolidated accumulations of solid particles produced by the physical and chemical disintegration of rocks, and which may or may not contain organic matter.

(8) Spacing unit shall mean the area allocated to a well under a well spacing order or rule. Under the Oil and Gas Act, NMSA 1978, Section 70-2-12.B(10), the commission has the power to fix spacing units without first creating proration units. See *rutter & wilbanks corp. v. oil conservation comm'n*, 87 NM 286 (1975). This is the area designated on division form C-102.

(9) Subsurface water shall mean ground water and water in the vadose zone that may become ground water or surface water in the reasonably foreseeable future or may be utilized by vegetation.

(10) Surface waste management facility ~~shall mean~~ means a facility that

receives oil field waste for collection, disposal, evaporation, remediation, reclamation, treatment or storage except:

(a) a facility that utilizes underground injection wells subject to division regulation pursuant to the federal Safe Drinking Water Act, and does not manage oil field wastes on the ground in pits, ponds, below-grade tanks or land application units;

(b) a facility permitted pursuant to environmental improvement board rules or water quality control commission rules;

(c) ~~a drilling or workover pit as defined in 19.15.2.50 NMAC~~ a temporary pit as defined in 19.15.17 NMAC;

(d) a ~~tank~~ below-grade tank or pit that receives oil field waste from a single well, permitted pursuant to 19.15.17 NMAC, regardless of the capacity or volume of oil field waste received;

(e) a facility located at an oil and gas production facility and used for temporary storage of oil field waste generated on-site from normal operations, if such facility does not pose a threat to fresh water, public health, safety or the environment;

(f) a remediation conducted in accordance with a division-approved abatement plan pursuant to 19.15.1.19 NMAC, a corrective action pursuant to 19.15.3.116 NMAC or a corrective action of a non-reportable release;

(g) a facility operating pursuant to an emergency order of the division;

(h) a site or facility where the operator is conducting emergency response operations to abate an immediate threat to fresh water, public health, safety or the environment or as the division has specifically directed or approved; or

(i) a facility that receives only exempt oil field waste, receives less than 50 barrels of liquid water per day (averaged over a 30-day period), has a capacity to hold 500 barrels of liquids or less and is permitted pursuant to ~~[19.15.2.50 NMAC]~~ 19.15.17 NMAC.

T. Definitions beginning with the letter "T".

(1) Tank bottoms shall mean that accumulation of hydrocarbon material and other substances that settles naturally below crude oil in tanks and receptacles that are used in handling and storing of crude oil, and which accumulation contains in excess of two percent of basic sediment and water; provided, however, that with respect to lease production and for lease storage tanks, a tank bottom shall be limited to that volume of the tank in which it is contained that lies below the bottom of the pipeline outlet thereto.

(2) Temporary abandonment shall be the status of a well that is inactive.

(3) Top unit allowable for gas shall mean the maximum number of cubic

feet of natural gas, for the proration period, allocated to a gas producing unit in an allocated gas pool.

(4) Top unit allowable for oil shall mean the maximum number of barrels for oil daily for each calendar month allocated on a proration unit basis in a pool to non-marginal units. The top unit allowable for a pool shall be determined by multiplying the applicable depth bracket allowable by the market demand percentage factor in effect.

(5) TPH means total petroleum hydrocarbons.

~~(5)~~ (6) Treating plant shall mean any plant constructed for the purpose of wholly or partially or being used wholly or partially for reclaiming, treating, processing or in any manner making tank bottoms or any other waste oil marketable.

~~(6)~~ (7) Tubingless completion shall mean a well completion in which the production string of casing has an outside diameter of 2.875 inches or less.

U. Definitions beginning with the letter "U".

(1) Underground source of drinking water shall mean an aquifer which supplies water for human consumption or which contains ground water having a total dissolved solids concentration of 10,000 mg/l or less and which is not an exempted aquifer.

(2) Unit of proration for gas shall consist of such multiples of 40 acres as may be prescribed by special pool rules issued by the division.

(3) Unit of proration for oil shall consist of one 40-acre tract or such multiples of 40-acre tracts as may be prescribed by special pool rules issued by the division.

(4) Unorthodox well location shall mean a location which does not conform to the spacing requirements established by the rules and regulations of the division.

(5) Unstable area means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of a division-approved facility's structural components. Examples of unstable areas are areas of poor foundation conditions, areas susceptible to mass earth movements and karst terrain areas where karst topography is developed as a result of dissolution of limestone, dolomite or other soluble rock. Characteristic physiographic features of karst terrain include sinkholes, sinking streams, caves, large springs and blind valleys.

(6) Upstream facility means a facility or operation associated with the exploration, development, production or storage of oil or gas that is not a downstream facility.

V. Definitions beginning

with the letter "V". Vadose zone shall mean unsaturated earth material below the land surface and above ground water, or in between bodies of ground water.

W. Definitions beginning with the letter "W".

(1) Waste, in addition to its ordinary meaning, shall include:

(a) underground waste as those words are generally understood in the oil and gas business, and in any event to embrace the inefficient, excessive or improper use or dissipation of the reservoir energy, including gas energy and water drive, of a pool, and the locating, spacing, drilling, equipping, operating or producing of a well or wells in a manner to reduce or tend to reduce the total quantity of crude petroleum oil or natural gas ultimately recovered from a pool, and the use of inefficient underground storage of natural gas;

(b) surface waste as those words are generally understood in the oil and gas business, and in any event to embrace the unnecessary or excessive surface loss or destruction without beneficial use, however caused, of natural gas of any type or in any form, or crude petroleum oil, or a product thereof, but including the loss or destruction, without beneficial use, resulting from evaporation, seepage, leakage or fire, especially such loss or destruction incident to or resulting from the manner of spacing, equipping, operating or producing a well or wells, or incident to or resulting from the use of inefficient storage or from the production of crude petroleum oil or natural gas, in excess of the reasonable market demand;

(c) the production of crude petroleum oil in this state in excess of the reasonable market demand for such crude petroleum oil; such excess production causes or results in waste that the Oil and Gas Act prohibits; the words "reasonable market demand" as used herein with respect to crude petroleum oil, shall be construed to mean the demand for such crude petroleum oil, for reasonable current requirements for current consumption and use within or outside of the state, together with the demand of such amounts as are reasonably necessary for building up or maintaining reasonable storage reserves of crude petroleum oil or the products thereof, or both such crude petroleum oil and products;

(d) the non-ratable purchase or taking of crude petroleum oil in this state; such non-ratable taking and purchasing causes or results in waste, as defined in Subparagraphs (a), (b) and (c) of Paragraph (1) of Subsection W of 19.15.1.7 NMAC and causes waste by violating the Oil and Gas Act, NMSA 1978, Section 70-2-16;

(e) the production in this state of natural gas from a gas well or wells, or from

a gas pool, in excess of the reasonable market demand from such source for natural gas of the type produced or in excess of the capacity of gas transportation facilities for such type of natural gas; the words "reasonable market demand", as used herein with respect to natural gas, shall be construed to mean the demand for natural gas for reasonable current requirements, for current consumption and for use within or outside the state, together with the demand for such amounts as are necessary for building up or maintaining reasonable storage reserves of natural gas or products thereof, or both such natural gas and products.

(2) Waste (exempt). Exempt waste shall mean oil field waste exempted from regulation as hazardous waste pursuant to Subtitle C of the federal Resource Conservation and Recovery Act (RCRA) and applicable regulations.

(3) Waste (hazardous). Hazardous waste shall mean non-exempt waste that exceeds the minimum standards for waste hazardous by characteristics established in RCRA regulations, 40 CFR 261.21-261.24, or listed hazardous waste as defined in 40 CFR, part 261, subpart D, as amended.

(4) Waste (non-exempt). Non-exempt waste shall mean oil field waste not exempted from regulation as hazardous waste pursuant to Subtitle C of RCRA and applicable regulations.

(5) Waste (non-hazardous). Non-hazardous waste shall mean non-exempt oil field waste that is not hazardous waste.

(6) Water shall mean all water including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not combine with other surface or subsurface water.

(7) Water contaminant shall mean a substance that could alter if released or spilled the physical, chemical, biological or radiological qualities of water. "Water contaminant" does not mean source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954.

(8) Watercourse shall mean a river, creek, arroyo, canyon, draw or wash or other channel having definite banks and bed with visible evidence of the occasional flow of water.

(9) Water pollution shall mean introducing or permitting the introduction into water, either directly or indirectly, of one or more water contaminants in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or the use of property.

(10) Well blowout shall mean a loss of control over and subsequent eruption of a drilling or workover well or the rupture

of the casing, casinghead or wellhead or an oil or gas well or injection or disposal well, whether active or inactive, accompanied by the sudden emission of fluids, gaseous or liquid, from the well.

(11) Wellhead protection area shall mean the area within 200 horizontal feet of a private, domestic fresh water well or spring used by less than five households for domestic or stock watering purposes or within 1000 horizontal feet of any other fresh water well or spring. Wellhead protection areas shall not include areas around water wells drilled after an existing oil or natural gas waste storage, treatment or disposal site was established.

(12) Wetlands shall mean those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions in New Mexico. Constructed wetlands used for wastewater treatment purposes are not included in this definition.

(13) Working interest owners are the owners of the operating interest under an oil and gas lease who have the exclusive right to exploit the oil and gas minerals. Working interests are cost bearing.

(14) WQCC means the New Mexico water quality control commission. [1-5-50...2-1-96; A, 7-15-96; Rn, 19 NMAC 15.A.7.1 through 7.84, 3-15-97; A, 7-15-99; 19.15.1.7 NMAC - Rn, 19 NMAC 15.A.7, 5-15-001; A, 3/31/04; A, 9/15/04; A, 09/30/05; A, 12/15/05; A, 2/14/07; A, 6/16/08]

19.15.1.21 SPECIAL PROVISIONS FOR SELECTED AREAS OF SIERRA AND OTERO COUNTIES:

A. The selected areas comprise:

(1) all of Sierra county except the area west of range 8 west NMPM and north of township 18 south, NMPM; and

(2) all of Otero county except the area included in the following townships and ranges:

(a) township 11 south, range 9 1/2 east and range 10 east NMPM;

(b) township 12 south, range 10 east and ranges 13 east through 16 east, NMPM;

(c) township 13 south, ranges 11 east through 16 east, NMPM;

(d) township 14 south, ranges 11 east through 16 east, NMPM;

(e) township 15 south, ranges 11 east through 16 east, NMPM;

(f) township 16 south, ranges 11 east through 15 east, NMPM;

(g) township 17 south, range 11 east (surveyed) and ranges 12 east through 15 east, NMPM;

(h) township 18 south, ranges 11 east through 15 east, NMPM;

(i) township 20 1/2 south, range 20 east, NMPM;

(j) township 21 south, range 19 east and range 20 east, NMPM; and

(k) township 22 south, range 20 east, NMPM; and also excepting also the un-surveyed area bounded as follows:

(i) beginning at the most northerly northeast corner of Otero county, said point lying in the west line of range 13 east (surveyed);

(ii) thence west along the north boundary line of Otero county to the point of intersection of such line with the east line of range 10 east NMPM (surveyed);

(iii) thence south along the east line of range 10 east NMPM (surveyed) to the southeast corner of township 11 south, range 10 east NMPM (surveyed);

(iv) thence west along the south line of township 11 south, range 10 east NMPM (surveyed) to the more southerly northeast corner of township 12 south, range 10 east NMPM (surveyed);

(v) thence south along the east line of range 10 east NMPM (surveyed) to the inward corner of township 13 south, range 10 east NMPM (surveyed) (said inward corner formed by the east line running south from the more northerly northeast corner and the north line running west from the more southerly northeast corner of said township and range);

(vi) thence east along the north line of township 13 south NMPM (surveyed) to the southwest corner of township 12 south, range 13 east, NMPM (surveyed);

(vii) thence north along the west line of range 13 east, NMPM (surveyed) to the point of beginning.

B. The division shall not issue permits under [~~19.15.2.50 NMAC or 19.15.9.711 NMAC~~] 19.15.17 NMAC for pits located in the selected areas.

C. Produced water injection wells located in the selected areas are subject to the following requirements in addition to those set out in 19.15.9.701 NMAC through 19.15.9.710 NMAC.

(1) Permits shall be issued under 19.15.9.701 NMAC only after notice and hearing.

(2) The radius of the area of review shall be the greater of:

(a) one-half mile; or

(b) one and one-third times the radius of the zone of endangering influence, as calculated under environmental protection agency regulation 40 CFR Part 146.6(a) or by any other method acceptable to the division; but in no case shall the radius of the area of review exceed one and one-third miles.

(3) Operators shall demonstrate the vertical extent of any fresh water aquifer(s) prior to using a new or existing well for injection.

(4) All fresh water aquifers shall be isolated throughout their vertical extent with at least two cemented casing strings. In addition,

(a) existing wells converted to injection shall have continuous, adequate cement from casing shoe to surface on the smallest diameter casing, and

(b) wells drilled for the purpose of injection shall have cement circulated continuously to surface on all casing strings, except the smallest diameter casing shall have cement to at least 100 feet above the casing shoe of the next larger diameter casing.

(5) Operators shall run cement bond logs acceptable to the division after each casing string is cemented, and file the logs with the appropriate district office of the division. For existing wells the casing and cementing program shall comply with 19.15.9.702 NMAC.

(6) Produced water transportation lines shall be constructed of corrosion-resistant materials acceptable to the division, and shall be pressure tested to one and one-half times the maximum operating pressure prior to operation, and annually thereafter.

(7) All tanks shall be placed on impermeable pads and surrounded by lined berms or other impermeable secondary containment device having a capacity at least equal to one and one-third times the capacity of the largest tank, or, if the tanks are interconnected, of all interconnected tanks.

(8) Operators shall record injection pressures and volumes daily or in a manner acceptable to the division, and make the record available to the division upon request.

(9) Operators shall perform a mechanical integrity tests as described in Paragraph (2) of Subsection A of 19.15.9.704 NMAC annually, shall advise the appropriate district office of the division of the date and time each such test is to be commenced in order that the test may be witnessed and shall file the pressure chart with the appropriate district office of the division.

[19.15.1.21 NMAC - N, 08-13-04; A, 6/16/08]

**NEW MEXICO ENERGY,
MINERALS AND NATURAL
RESOURCES
DEPARTMENT
OIL CONSERVATION DIVISION**

This is an amendment to 19.15.2 NMAC, with the repeal of Section 50, which is replaced by 19.15.17 NMAC, and the amendment of Section 52. This amendment is to be effective 6/16/08.

**19.15.2.50 [PITS AND BELOW-
GRADE TANKS:]**

A. Permit — required. Discharge into, or construction of, any pit or below grade tank is prohibited absent possession of a permit issued by the division, unless otherwise herein provided or unless the division grants an exemption pursuant to Subsection G of 19.15.2.50 NMAC. Facilities permitted by the division pursuant to Section 711 of 19.15.9 NMAC or water quality control commission regulations are exempt from Section 50 of 19.15.2 NMAC.

B. Application:
(1) Where filed; application form.
(a) Downstream facilities. — An operator shall apply to the division's environmental bureau for a permit to construct or use a pit or below grade tank at a downstream facility such as a refinery, gas plant, compressor station, brine facility, service company or surface waste management facility that is not permitted pursuant to Section 711 of 19.15.9 NMAC or water quality control commission regulations. The operator shall use a form C-144, application to discharge into a pit or below grade tank. The operator may submit the form separately or as an attachment to an application for a discharge permit, best management practices permit, surface waste management facility permit or other permit.

(b) Drilling or production. — An operator shall apply to the appropriate district office for a permit for use of a pit or below grade tank in drilling, production or operations not otherwise identified in Subparagraph (a), Paragraph (1), Subsection B of 19.15.2.50 NMAC. The operator shall apply for the permit on the application for permit to drill or on the sundry notices and reports on wells, or electronically as otherwise provided in this chapter. Approval of such form constitutes a permit for all pits and below grade tanks annotated on the form. A separate Form C-144 is not required.

(2) General permit; individual permit. An operator may apply for a permit to use an individual pit or below grade tank, or may apply for a general permit applicable to a class of like facilities.

(3) When filed.

(a) New pits or new below grade tanks. — After April 15, 2004, operators shall obtain a permit before constructing a pit or below grade tank.

(b) Existing pits or new below grade tanks. — For each pit or below grade tank in existence on April 15, 2004 that has not received an exemption after hearing as allowed by OCC Order R-3221 through R-3221D inclusive, the operator shall submit a notice not later than April 15, 2004 indicating either that use of the pit or below grade tank will continue or that such pit or below grade tank will be closed. If use of a pit or below grade tank is to be discontinued, discharge into the pit or use of the below grade tank shall cease not later than June 30, 2005. If use of a pit or below grade tank will continue, the operator shall file a permit application not later than September 30, 2004. If an operator files a timely, administratively complete application for continued use, use of the pit or below grade tank may continue until the division acts upon the permit application.

C. Design, construction and operational standards:

(1) In general. — Pits, sumps and below grade tanks shall be designed, constructed and operated so as to contain liquids and solids to prevent contamination of fresh water and protect public health and the environment.

(2) Special requirements for pits.
(a) Location. — No pit shall be located in any watercourse, lakebed, sinkhole or playa lake. Pits adjacent to any such watercourse or depression shall be located safely above the ordinary high water mark of such watercourse or depression. No pit shall be located in any wetland. The division may require additional protective measures for pits located in groundwater sensitive areas or wellhead protection areas.
(b) Liners.

(i) Drilling pits; workover pits. — Each drilling pit or workover pit shall contain, at a minimum, a single liner appropriate for conditions at the site. The liner shall be designed, constructed and maintained so as to prevent the contamination of fresh water, and protect public health and the environment. Pits used to vent or flare gas during drilling or workover operations that are designed to allow liquids to drain to a separate pit do not require a liner.

(ii) Disposal or storage pits. — Each disposal pit (including, but not limited to, any separator pit, tank drain pit, evaporation pit, blowdown pit used in production activities, pipeline drip pit, or production pit) and each storage pit (including any brine pit, salt water pit, fluid storage pit for an LPG system, or production pit) shall contain, at a minimum, a primary and a sec-

ondary liner appropriate to the conditions at the site. Liners shall be designed, constructed and maintained so as to prevent the contamination of fresh water, and protect public health and the environment.

(iii) ~~Alternative liner media.~~ The division may approve liners that are not constructed in accordance with division guidelines only if the operator demonstrates to the division's satisfaction that the alternative liner protects fresh water, public health and the environment as effectively as those prescribed in division guidelines.

(c) ~~Leak detection.~~ A leak detection system shall be installed between the primary and secondary liner in each disposal or storage pit. The leak detection system shall be designed, installed and operated so as to prevent the contamination of fresh water, and protect public health and the environment. The operator shall notify the division at least twenty-four hours prior to installation of the primary liner so a division representative may inspect the leak detection system before it is covered.

(d) ~~Drilling and workover pits.~~ Each drilling or workover pit shall be of an adequate size to assure that a supply of fluid is available and sufficient to confine oil, natural gas or water within its native strata. Hydrocarbon-based drilling fluids shall be contained in tanks made of steel or other division approved material.

(e) ~~Disposal or storage pits.~~ No measurable or visible layer of oil may be allowed to accumulate or remain anywhere on the surface of any pit. Spray evaporation systems shall be operated such that all spray borne suspended or dissolved solids remain within the perimeter of the pond's lined portion.

(f) ~~Fencing and netting.~~ All pits shall be fenced or enclosed to prevent access by livestock, and fences shall be maintained in good repair. Active drilling or workover pits may have a portion of the pit unfenced to facilitate operations. In issuing a permit, the division may impose additional fencing requirements for protection of wildlife in particular areas. All tanks exceeding 16 feet in diameter, exposed pits, and ponds shall be screened, netted, covered, or otherwise rendered non-hazardous to migratory birds. Drilling and workover pits are exempt from the netting requirement. Immediately after cessation of these operations such pits shall have any visible or measurable layer of oil removed from the surface. Upon written application, the division may grant an exception to screening, netting or covering requirements upon a showing that an alternative method will adequately protect migratory birds or that the tank or pit is not hazardous to migratory birds.

(g) ~~Unlined pits.~~

(i) ~~General prohibition.~~ After June 30, 2005 use of, or discharge into, any unlined pit that has not been previously permitted pursuant to Section 711 of 19.15.9 NMAC or water quality control commission regulations is prohibited, except as otherwise provided in Section 50 of 19.15.2 NMAC. After April 15, 2004, construction of unlined pits is prohibited unless otherwise provided in Section 50 of 19.15.2 NMAC.

(ii) ~~Unlined pits exempted by previous order.~~ An operator of an unlined pit existing on April 15, 2004 for which a previous exemption was received after hearing as allowed pursuant to commission Orders No. R 3221 through R 3221D inclusive, shall not be required to reapply for an exemption pursuant to Subparagraph (g), Paragraph (2), Subsection C of 19.15.2.50 NMAC provided the operator notifies the division, no later than April 15, 2004, of the existence of each unlined pit it believes is exempted by order, the location of the pit, and the nature and amount of any discharge into the pit. Such order shall constitute a permit for the purpose of Subparagraph (g), Paragraph (2), Subsection C of 19.15.2.50 NMAC. The division may terminate any such permit in accordance with Paragraph (2), Subsection C of 19.15.2.50 NMAC. Any pit constructed after April 15, 2004 shall comply with the permitting, lining and other requirements of Section 50 of 19.15.2 NMAC, notwithstanding any previous order to the contrary.

(iii) ~~Unlined pits shall be allowed in the following areas provided that the operator has submitted, and the division has approved, an application for permit as provided in Section 50 of 19.15.2 NMAC, and provided that the pit site is not located in fresh water bearing alluvium or in a wellhead protection area:~~

~~TOWNSHIP 19 SOUTH, RANGE 30 EAST, NMPM Sections 8 through 36; TOWNSHIP 20 SOUTH, RANGE 30 EAST, NMPM Sections 1 through 36; TOWNSHIP 20 SOUTH, RANGE 31 EAST, NMPM Sections 1 through 36; TOWNSHIP 20 SOUTH, RANGE 32 EAST, NMPM Sections 4 through 9, Sections 16 through 21; and Sections 28 through 33; TOWNSHIP 21 SOUTH, RANGE 29 EAST, NMPM Sections 1 through 36; TOWNSHIP 21 SOUTH, RANGE 30 EAST, NMPM Sections 1 through 36; TOWNSHIP 21 SOUTH, RANGE 31 EAST, NMPM Sections 1 through 36; TOWNSHIP 22 SOUTH, RANGE 29 EAST, NMPM Sections 1 through 36; TOWNSHIP 22 SOUTH, RANGE 30 EAST, NMPM Sections 1 through 36; TOWNSHIP 23 SOUTH, RANGE 29 EAST, NMPM Sections 1 through 3;~~

~~Sections 10 through 15, Sections 22 through 27, and Sections 34 through 36;~~

~~TOWNSHIP 23 SOUTH, RANGE 30 EAST, NMPM Sections 1 through 19; and that area within San Juan, Rio Arriba, Sandoval and McKinley counties that is outside the valleys of the San Juan, Animas, Rio Grande and La Plata rivers, which are bounded by the topographic lines on either side of the rivers that are 100 vertical feet above the river channels, measured perpendicularly to the river channels, and is outside those areas that lie within 50 vertical feet, measured perpendicularly to the drainage channel, of all perennial and ephemeral creeks, canyons, washes, arroyos and draws, and is outside the areas between the above named rivers and the Highland Park Ditch, Hillside Thomas Ditch, Cunningham Ditch, Farmers Ditch, Halford Independent Ditch, Citizens Ditch or Hammond Ditch, provided that no protectable ground water is present or if present, will not be adversely affected; or any area where the discharge into the pit meets New Mexico water quality control commission ground water standards.~~

(3) ~~Special requirements for below grade tanks.~~ All below grade tanks constructed after April 15, 2004 shall be constructed with secondary containment and leak detection. The operator of any below grade tank constructed prior to April 15, 2004 shall test its integrity annually and shall promptly repair or replace any below-grade tank that does not demonstrate integrity. Any such below grade tank shall be equipped with leak detection at the time of any major repair.

(4) ~~Sumps.~~ Operators shall test the integrity of all sumps annually, and shall promptly repair or replace any sump that does not demonstrate integrity. Sumps that can be removed from their placements may be tested by visual inspection. Other sumps shall be tested by appropriate mechanical means.

~~D. Emergency actions.~~

(1) ~~Permit not required.~~ In an emergency an operator may construct a pit without a permit to contain fluids, solids or wastes if an immediate danger to fresh water, public health or the environment exists.

(2) ~~Construction standards.~~ A pit constructed in an emergency shall be constructed, to the extent possible given the emergency, in a manner that is consistent with the requirements of Section 50 of 19.15.2 NMAC and that prevents the contamination of fresh water, and protects public health and the environment.

(3) ~~Notice.~~ The operator shall notify the appropriate district office as soon as possible (if possible before construction begins) of the need for construction of such a pit.

(4) Use and duration. The pit may be used only for the duration of the emergency. If the emergency lasts more than forty eight (48) hours, the operator must seek approval from the division for continued use of the pit. All fluids, solids or wastes must be removed within 24 hours after cessation of use unless the division extends that time period.

(5) "Emergency pits." Subsection D, of 19.15.2.50 NMAC shall not be construed to allow construction or use of so-called "emergency pits", which are pits constructed as a precautionary matter to contain a spill in the event of a release. Construction or use of any such pit shall require a permit issued pursuant to Section 50 of 19.15.2 NMAC unless the pit is described in a spill prevention, control and countermeasure (SPCC) plan required by the United States environmental protection agency, all fluids are removed from the pit within 24 hours and the operator has filed a notice of the location of the pit with the division.

E. Drilling fluids and drill cuttings. Drilling fluids and drill cuttings shall either be recycled or be disposed of as approved by the division and in a manner to prevent the contamination of fresh water and protect public health and the environment. The operator shall describe the proposed disposal method in the application for permit to drill or the sundry notices and reports on wells.

F. Closure and restoration.

(1) Closure. Except as otherwise specified in Section 50 of 19.15.2 NMAC, a pit or below grade tank shall be properly closed within six months after cessation of use. As a condition of a permit, the division may require the operator to file a detailed closure plan before closure may commence. The division for good cause shown may grant a six month extension of time to accomplish closure. Upon completion of closure a closure report (form C-144), or sundry notices and reports on wells shall be submitted to the division. Where the pit's contents will likely migrate and cause ground water or surface water to exceed water quality control commission standards, the pit's contents and the liner shall be removed and disposed of in a manner approved by the division.

(2) Surface restoration. Within one year of the completion of closure of a pit, the operator shall contour the surface where the pit was located to prevent erosion and ponding of rainwater.

G. Exemptions; additional conditions.

(1) The division may attach additional conditions to any permit upon a finding that such conditions are necessary to prevent the contamination of fresh water, or

to protect public health or the environment.

(2) The division may grant an exemption from any requirement if the operator demonstrates that the granting of such exemption will not endanger fresh water, public health or the environment. The division may revoke any such exemption after notice to the operator of the pit and opportunity for a hearing if the division determines that such action is necessary to prevent the contamination of fresh water, or to protect public health or the environment.

(3) Exemptions may be granted administratively without hearing provided that the operator gives notice to the surface owner of record where the pit is to be located and to such other persons as the division may direct and (a) written waivers are obtained from all persons to whom notice is required, or (b) no objection is received by the division within 30 days of the time notice is given. If any objection is received and the director determines that the objection has technical merit or that there is significant public interest the director shall set the application for hearing. The director, however, may set any application for hearing. [RESERVED]

[19.15.2.50 NMAC - N, 02/13/04; Repealed, 6/16/08]

19.15.2.52 DISPOSITION OF PRODUCED WATER AND OTHER OIL FIELD WASTE:

A. Prohibited dispositions.

Except as authorized by 19.15.1.19 NMAC, [19.15.2.50 NMAC, 19.15.2.53 NMAC] 19.15.17 NMAC, 19.15.36 NMAC, 19.15.3.116 NMAC or 19.15.9.701 NMAC, no person, including a transporter, shall dispose of produced water or other oil field waste:

(1) on or below the surface of the ground; in a pit; or in a pond, lake, depression or watercourse;

(2) in another place or in a manner that may constitute a hazard to fresh water, public health, safety or the environment; or

(3) in a permitted pit or registered or permitted surface waste management facility without the permission of the owner or operator of the pit or facility.

B. Authorized disposition of produced water. The following methods of disposition of produced water are authorized:

(1) in a manner that does not constitute a hazard to fresh water, public health, safety or the environment, delivery to a permitted salt water disposal well or facility, secondary recovery or pressure maintenance injection facility, surface waste management facility or [disposal] permanent pit permitted pursuant to [19.15.2.50 NMAC] 19.15.17 NMAC or to a drill site for use in

drilling fluid; or

(2) use in accordance with a division-issued use permit or other division authorization.

C. Authorized dispositions of other oil field waste. Persons shall dispose of other oil field waste by transfer to an appropriate permitted or registered surface waste management facility or injection facility or applied to a division-authorized beneficial use. Persons may transport recovered drilling fluids to other drill sites for reuse provided that such fluids are transported and stored in a manner that does not constitute a hazard to fresh water, public health, safety or the environment.

[19.15.2.52 NMAC - Rp, 19.15.9.710 NMAC, 2/14/07; A, 6/16/08]

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

This is an amendment to 19.15.3 NMAC, Section 114, effective 6/16/08.

19.15.3.114 SAFETY [REGULATIONS] PROCEDURES FOR DRILLING AND PRODUCTION:

[A. All oil wells shall be cleaned into a pit or a tank, not less than 40 feet from the derrick floor and 150 feet from any fire hazard. All flowing oil wells must be produced through an oil and gas separator of ample capacity and in good working order. No boiler or portable electric lighting generator shall be placed or remain nearer than 150 feet to any producing well or oil tank. Any rubbish or debris that might constitute a fire hazard shall be removed to a distance of at least 150 feet from the vicinity of wells and tanks. All waste shall be burned or disposed of in such manner as to avoid creating a fire hazard.]

[B. When coming out of the hole with drill pipe, drilling fluid shall be circulated until equalized and subsequently drilling fluid level shall be maintained at a height sufficient to control subsurface pressures. During course of drilling blowout preventers shall be tested at least once each 24 hour period.]

A. An operator shall:

(1) clean oil wells into a pit permitted pursuant to 19.15.17 NMAC or a tank, not less than 40 feet from the derrick floor and 150 feet from a fire hazard;

(2) produce flowing oil wells through an oil and gas separator of ample capacity and in good working order;

(3) not place or leave a boiler or portable electric lighting generator nearer than 150 feet to a producing well or oil tank;

and

(4) remove rubbish or debris that might constitute a fire hazard to a distance of at least 150 feet from the vicinity of wells and tanks and burn or dispose of waste in a manner as to avoid creating a fire hazard.

B. When coming out of the hole with drill pipe, the operator shall circulate drilling fluid until equalized and subsequently maintain drilling fluid level at a height sufficient to control bottom hole pressures. During course of drilling, the operator shall test blowout preventers at least once each 24-hour period.

[1-1-50...2-1-96; 19.15.3.114 NMAC - Rn, 19 NMAC 15.C.114, 11-15-01; A, 6-16-08]

**NEW MEXICO ENERGY,
MINERALS AND NATURAL
RESOURCES
DEPARTMENT
OIL CONSERVATION DIVISION**

This is an amendment to 19.15.4 NMAC, Section 202, effective 6/16/08.

**19.15.4.202 PLUGGING AND
PERMANENT ABANDONMENT:**

A. Notice of plugging.

(1) [Notice of intention to plug must be filed with the division on form C-103, Sundry Notices and Reports on Wells, by the operator prior to the commencement of plugging operations, which must provide all of the information required by Rule 1103 including operator and well identification and proposed procedures for plugging said well, and in addition the operator shall provide a well bore diagram showing the proposed plugging procedure. Twenty four hours written notice shall be given prior to commencing any plugging operations. In the case of a newly drilled dry hole, the operator may obtain verbal approval from the appropriate district supervisor or his representative of the method of plugging and time operations are to begin. Written notice in accordance with this rule shall be filed with the division ten (10) days after such verbal approval has been given.] The operator shall file notice of intention to plug with the division on form C-103 prior to commencing plugging operations. The notice shall provide all the information 19.15.13.1103 NMAC requires including operator and well identification and proposed procedures for plugging the well.

(2) In addition, the operator shall provide a well-bore diagram showing the proposed plugging procedure.

(3) The operator shall notify the division 24 hours prior to commencing plugging operations. In the case of a newly drilled dry hole, the operator may obtain verbal approval from the appropriate dis-

trict supervisor or the district supervisor's representative of the plugging method and time operations are to begin. The operator shall file written notice in accordance with Subsection C of 19.15.4.202 NMAC with the division 10 days after the district supervisor has given verbal approval.

B. Plugging.

(1) [Before any well is abandoned, it shall be plugged in a manner which will permanently confine all oil, gas and water in the separate strata in which they are originally found. This may be accomplished by using mud-laden fluid, cement and plugs singly or in combination as approved by the division on the notice of intention to plug.] Before an operator abandons a well, the operator shall plug the well in a manner that permanently confines all oil, gas and water in the separate strata in which they are originally found. The operator may accomplish this by using mud-laden fluid, cement and plugs singly or in combination as approved by the division on the notice of intention to plug.

(2) [The operator shall mark the exact location of plugged and abandoned wells with a steel marker not less than four inches in diameter set in cement and extending at least four feet (4') above mean ground level. The operator name, lease name and well number and location, including unit letter, section, township and range, shall be welded, stamped or otherwise permanently engraved into the metal of the marker. No permanent structures preventing access to the wellhead shall be built over a plugged and abandoned well without written approval of the OCD. No plugged and abandonment marker shall be removed without the written permission of the OCD.] The operator shall mark the exact location of plugged and abandoned wells with a steel marker not less than four inches in diameter set in cement and extending at least four feet above mean ground level. The operator name, lease name and well number and location, including unit letter, section, township and range, shall be welded, stamped or otherwise permanently engraved into the marker's metal. A person shall not build permanent structures preventing access to the wellhead over a plugged and abandoned well without the division's written approval. A person shall not remove a plugged and abandonment marker without the division's written permission.

(3) The operator may use below-ground plugged and abandonment markers only with the division's written permission when an above-ground marker would interfere with agricultural endeavors. The below-ground marker shall have a steel plate welded onto the abandoned well's surface or conductor pipe and shall be at least three feet below the ground surface and of sufficient size so that all the information

19.15.3.103 NMAC requires can be stenciled into the steel or welded onto the steel plate's surface. The division may require a re-survey of the well location.

(3) (4) As soon as practical but no later than one year after, the completion of plugging operations, the operator shall:

(a) fill all pits;

(b) level the location;

(c) remove deadmen and all other junk; and

(d) take such other measures as are necessary or required by the division to restore the location to a safe and clean condition.

(5) The operator shall close all pits or below-grade tanks pursuant to 19.15.17 NMAC.

(6) Upon completion of plugging and clean up restoration operations as required, the operator shall contact the appropriate district office to arrange for an inspection of the well and location.

(5) Below ground plugged and abandonment markers can be used only with written permission of the OCD when an above ground marker would interfere with agricultural endeavors. The below-ground marker shall have a steel plate welded onto the surface or conductor pipe of the abandoned well and shall be at least 3 feet below the ground surface and of sufficient size so that all the information required by Section 103 of 19.15.3 NMAC can be stenciled into the steel or welded onto the surface of the steel plate. The OCD may require a re-survey of the well location.]

C. Reports.

(1) The operator shall file form C-105, well completion or recompletion report and log as provided in [Rule 1105] 19.15.13.1105 NMAC.

(2) Within [thirty (30)] 30 days after completing [the] the required restoration work, the operator shall file with the division, in triplicate, a record of the work done on form C-103 as provided in [Rule 1103] 19.15.13.1103 NMAC.

(3) The division shall not approve the record of plugging or release any bonds until the operator has filed all necessary reports [have been file] and the division has inspected and approved the location [has been inspected and approved by the division].

[1-1-50, 7-12-90...2-1-96; A, 3-31-00; 19.15.4.202 NMAC - Rn, 19 NMAC 15.D.202, 12-14-01; A, 6/16/08]

**NEW MEXICO ENERGY,
MINERALS AND NATURAL
RESOURCES
DEPARTMENT
OIL CONSERVATION DIVISION**

This is an amendment to 19.15.13 NMAC, Section 1103, effective 6/16/08.

19.15.13.1103 SUNDRY NOTICES AND REPORTS ON WELLS (Form C-103): Form C-103 is a dual purpose form the operator shall file with the ~~[appropriate district office of the division]~~ appropriate division district office to obtain division approval prior to commencing certain operations and ~~[also]~~ to report various completed operations.

A. Form C-103 as a notice of intention.

(1) The operator shall file form C-103 and obtain the division's approval prior to:

(a) effecting a change of plans from those the division previously approved on form C-101 or form C-103;

(b) altering a drilling well's casing program or pulling casing or otherwise altering an existing well's casing installation;

(c) placing a well in approved temporary abandonment;

(d) plugging and abandoning a well; or

(e) performing remedial work on a well that, when completed, will affect the well's original status; (this ~~[shall include]~~ includes making new perforations in existing wells or squeezing old perforations in existing wells, but ~~[is not applicable]~~ does not apply to new wells in the process of being completed nor to old wells being deepened or plugged back to another zone when ~~[such] the division has authorized the recompletion [has been authorized]~~ by an approved form C-101, application for permit to drill, re-enter, deepen plug back or add a zone, nor to acidizing, fracturing or cleaning out previously completed wells, nor to installing artificial lift equipment.)

(2) In the case of well plugging operations, the notice of intention shall include a detailed statement of the proposed work including plans for shooting and pulling casing; plans for mudding, including the mud's weight; plans for cementing, including number of sacks of cement and depths of plugs; restoration and remediation of the location; and the time and date of the proposed plugging operations. The operator shall file a complete log of the well on form C-105 with the notice of intention to plug the well, if the operator has not previously filed the log (see 19.15.13.1105 NMAC); the division shall not release the

financial assurance until the operator complies with this requirement.

B. Form C-103 as a subsequent report.

(1) The operator shall file form C-103 as a subsequent report of operations in accordance with the provisions of 19.15.13.1103 NMAC applicable to the particular operation being reported.

(2) ~~[Form C-103 is to be used in reporting such completed operations as]~~ The operator shall use form C-103 in reporting such completed operations as:

(a) commencement of drilling operations;

(b) casing and cement test;

(c) altering a well's casing installation;

(d) work to secure approved temporary abandonment;

(e) plugging and abandonment;

(f) plugging back or deepening within the same pool;

(g) remedial work;

(h) installation of artificial lifting equipment; or

(i) other operations that affect the well's original status but that are not specifically covered herein.

C. Information to be entered on form C-103, subsequent report, for a particular operation is as follows: report of commencement of drilling operations. Within 10 days following the commencement of drilling operations, the ~~[well's]~~ operator shall file a report thereof on form C-103. ~~[Such]~~ The report shall indicate the hour and the date the operator spudded the well ~~[was spudded]~~.

D. Report of results of test of casing and cement job; report of casing alteration. The ~~[well's]~~ operator shall file a report of casing and cement test within 10 days following the setting of each string of casing or liner. ~~[Said report shall be filed on form C-103 and shall present]~~ The operator shall file the report on form C-103 and include a detailed description of the test method employed and the results obtained by ~~[such]~~ the test and any other pertinent information ~~[required by 19.15.1.107 NMAC]~~ 19.15.3.107 NMAC requires. The report shall also indicate the top of the cement and the means by which ~~[such top was determined]~~ the operator determined the top. It shall also indicate any changes from the casing program previously authorized for the well.

E. Report of temporary abandonment. The operator shall file a notice of work to secure approved temporary abandonment within 30 days following the work's completion. The report shall present a detailed account of the work done on the well, including location and type of plugs used, if any, and status of surface and

downhole equipment and any other pertinent information relative to the well's overall status.

F. Report on plugging of well.

(1) The operator shall file a report of plugging operations within 30 days following completion of plugging operations on ~~[any]~~ a well. ~~[Said report shall be filed]~~ The operator shall file the report on form C-103 and shall include the date ~~[the plugging operations were begun and the date the work was completed]~~ the operator began the plugging operation and the date the operator completed the work, a detailed account of the manner in which ~~[the work was performed]~~ the operator performed the work including the depths and lengths of the various plugs set, the nature and quantities of materials employed in the plugging operations including the weight of the mud used, the size and depth of all casing left in the hole and any other pertinent information. (See 19.15.4.201 NMAC - 19.15.4.204 NMAC regarding plugging operations.)

(2) The division shall not approve a plugging report until the ~~[pits have been closed and the location leveled and cleared of junk]~~ operator demonstrates compliance with the requirements of Subsection B of 19.15.4.202 NMAC. It shall be the operator's responsibility to contact the ~~[appropriate district office of the division]~~ appropriate division district office when the location has been so restored in order to arrange for an inspection of the plugged well and the location by a division representative.

G. Report of remedial work. The operator shall file a report of remedial work performed on a well within 30 days following ~~[completion of such work]~~ the work's completion. ~~[Said report shall be filed]~~ The operator shall file the report on form C-103 and shall present a detailed account of the work done and the manner in which ~~[such work was performed]~~ the operator performed the work; the daily production of oil, gas and water both prior to and after the remedial operation; the size and depth of shots; the quantity of and, crude, chemical or other materials employed in the operation; and any other pertinent information. Among the remedial work ~~[to be reported]~~ an operator shall report on form C-103 are the following:

(1) report on shooting, fluid fracturing or chemical treatment of a previously completed well;

(2) report of squeeze job;

(3) report on setting of liner or packer;

(4) report of installation of pumping equipment or gas lift facilities; or

(5) report of any other remedial operations that are not specifically covered herein.

H. Report on deepening or plugging back within the same pool. The operator shall file a report of deepening or plugging back within 30 days following completion of such operations on any well. The operator shall file said report on form C-103 and shall present a detailed account of work done and the manner in which ~~such work was performed~~ the operator performed the work. If the ~~well is recompleted~~ operator recompletes the well in the same pool, the operator shall also report the daily production of oil, gas and water both prior to and after recompletion. If the well is recompleted in another pool, the operator shall file forms C-101, C-102, C-104 and C-105 in accordance with 19.15.13.1101, 19.15.13.1102, 19.15.13.1104 and 19.15.13.1105 NMAC.

I. Other reports on wells. The operator shall submit reports on any other operations that affect the well's original status but that are not specifically covered ~~herein~~ in 19.15.13.1103 NMAC to the division on form C-103 10 days following such operation's completion. [1-1-65...2-1-96; 19.15.13.1103 NMAC - Rn, 19 NMAC 15.M.1103, 06/30/04; A, 12/15/05; A, 6/16/08]

**NEW MEXICO ENERGY,
MINERALS AND NATURAL
RESOURCES
DEPARTMENT AND NEW
MEXICO TAXATION AND
REVENUE DEPARTMENT**

The Energy, Minerals and Natural Resources Department and Taxation and Revenue Department repeal their rule 3.13.20 NMAC, filed December 11, 2003, entitled Land Conservation Incentives Tax Credit, effective June 16, 2008.

**NEW MEXICO ENERGY,
MINERALS AND NATURAL
RESOURCES
DEPARTMENT AND NEW
MEXICO TAXATION AND
REVENUE DEPARTMENT**

**TITLE 3 TAXATION
CHAPTER 13 BUSINESS TAX
CREDITS
PART 20 LAND CONSERVA-
TION INCENTIVES TAX CREDIT**

3.13.20.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department and the Taxation and Revenue Department.

[3.13.20.1 NMAC - Rp, 3.13.20.1 NMAC, 6-16-2008]

3.13.20.2 SCOPE: 3.13.20 NMAC applies to application and certification procedures for administration of the land conservation incentives tax credit.

[3.13.20.2 NMAC - Rp, 3.13.20.2 NMAC, 6-16-2008]

3.13.20.3 STATUTORY AUTHORITY: 3.13.20 NMAC is adopted pursuant to NMSA 1978, Sections 7-2-18.10; 7-2A-8.9; 9-1-5(E) and 9-11-6.2 and the Land Conservation Incentives Act, NMSA 1978, Sections 75-9-1 to 75-9-6.

[3.13.20.3 NMAC - Rp, 3.13.20.3 NMAC, 6-16-2008]

3.13.20.4 DURATION: Permanent.

[3.13.20.4 NMAC - Rp, 3.13.20.4 NMAC, 6-16-2008]

3.13.20.5 EFFECTIVE DATE: June 16, 2008, unless a later date is cited at the end of a section.

[3.13.20.5 NMAC - Rp, 3.13.20.5 NMAC, 6-16-2008]

3.13.20.6 OBJECTIVE: 3.13.20 NMAC's objective is to establish procedures for certifying whether donations of land or interests in land to public or private conservation agencies made on or after January 1, 2004, are eligible for the land conservation incentives tax credit and to administer the land conservation incentives tax credit.

[3.13.20.6 NMAC - Rp, 3.13.20.6 NMAC, 6-16-2008]

3.13.20.7 DEFINITIONS:

A. "Applicant" means a taxpayer who on or after January 1, 2004, donates or partially donates (or for purposes of 3.13.20.8 NMAC plans to donate or partially donate) through a bargain sale for a conservation or preservation purpose, a perpetual less-than-fee interest in land that appears to qualify as a charitable contribution under 26 U.S.C. section 170(h) and its implementing regulations or a fee interest in land, which is subject to a perpetual conservation easement, to a public or private conservation agency. If more than one taxpayer owns an interest in the land or interest in land that is the donated or partially donated, they shall be considered one applicant, but the application shall include the names and addresses of all taxpayers that own an interest in the donated land or interest in land.

B. "Bargain sale" means a sale where the taxpayer is paid less than the fair market value of the land or interest in land.

C. "Building envelope"

means a designated area within a conservation easement that is identified in the deed of conservation easement that contains existing structures and activities or will contain future structures and activities that are for the grantor's continued use of the property but that are prohibited elsewhere within the conservation easement.

D. "Conservation or preservation purpose" means open space, natural area preservation, land conservation or preservation, natural resource or biodiversity conservation including habitat conservation, forest land preservation, agricultural preservation, watershed preservation or historic or cultural property preservation, or similar uses or purposes such as protection of land for outdoor recreation purposes. The resources or areas contained in the donation must be significant or important.

E. "Cultural property" means a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance.

F. "Development approach" means a method of appraising undeveloped land having a highest and best use for subdivision into lots. This approach consists of estimating a final sale price for the total number of lots into which the property could best be divided and then deducting all development costs, including the developer's anticipated profit. The remaining sum, the residual, represents the raw land's market value.

G. "Governmental body" means the state of New Mexico or any of its political subdivisions.

H. "Interest in land" means a right in real property, including access, improvement, water right, fee simple interest, easement, land use easement, mineral right, remainder interest or other interest in or right in real property that complies with the requirements of 26 U.S.C. section 170(h)(2) and its implementing regulations, or any pertinent successor of 26 U.S.C. section 170(h)(2).

I. "Land" means real property, including rights of way, easements, privileges, water rights and all other rights or interests connected with real property.

J. "Less-than-fee interest" means an interest in land that is less than the entire property or all of the rights in the property or a non-possessory interest in land that imposes a limitation or affirmative obligation such as a conservation, land use or preservation restriction or easement.

K. "National register of historic places" means the register that the United States secretary of the interior maintains of districts, sites, buildings, structures and objects significant in American history, architecture, archaeology, engineering or culture.

L. "Pass-through entity" means a business association other than a sole proprietorship; an estate or trust; a corporation, limited liability company, partnership or other entity not a sole proprietorship taxed as a corporation for federal income tax purposes for the taxable year; or a partnership that is organized as an investment partnership in which the partners' income is derived solely from interest, dividends and sales of securities.

M. "Public or private conservation agency" means a governmental body or a private non-profit charitable corporation or trust authorized to do business in New Mexico that is organized and operated for natural resources, land or historic conservation purposes and that has tax-exempt status as a public charity under 26 U.S.C. section 501(c)(3) and meets the requirements of 26 U.S.C. section 170(h)(3) and its implementing regulations, and has the power to acquire, hold or maintain land or interests in land.

N. "Qualified appraisal" means a qualified appraisal as defined in 26 C.F.R. section 1.170A-13(c)(3) or subsequent amendments and does not use the development approach as the sole means of determining fair market value. The appraisal for a conservation easement or restriction shall state whether the donation increases the value of other property the donor or a related person owns. In accordance with 26 C.F.R. section 1.170A-14(h)(3)(i), if the donation increases the value of other property the donor or a related person owns the appraisal shall reflect the increase by reducing the value of the conservation contribution by the amount of the increase in value to the other property, whether or not the other property is contiguous with the donated property.

O. "Qualified appraiser" means a qualified appraiser as defined in 26 C.F.R. section 1.170A-13(c)(5) or subsequent amendments and who is a certified general real estate appraiser.

P. "Qualified intermediary" means any person who has not been previously convicted of a felony, who has not had a professional license revoked, who is not engaged in the practice of public accountancy as defined in NMSA 1978, Section 61-28B-3 or who is not identified in the NMSA 1978, Section 61-29-2, which governs real estate brokers and salespersons, or who is not an entity owned wholly or in part by or employing a person who has been previously convicted of a felony, who has had a professional license revoked, who is engaged in the practice of public accountancy as defined in NMSA 1978, Section 61-28B-3 or who is identified in NMSA 1978, Section 61-29-2.

Q. "Taxpayer" means a

United States citizen or resident, a United States domestic partnership, a limited liability company, a United States domestic corporation, an estate, including a foreign estate, or a trust. A non-profit may be a taxpayer if organized as a United States domestic partnership, a limited liability company, a United States domestic corporation or a trust. A governmental body or other governmental entity is not a taxpayer.

R. "Tax filer" means a New Mexico taxpayer who files a New Mexico tax return claiming a tax credit pursuant to the Land Conservation Incentives Act together with valid numbered documentation from the taxation and revenue department or valid sub-numbered documentation from a qualified intermediary.

S. "Secretary" means the secretary of energy, minerals and natural resources department or his or her designee. [3.13.20.7 NMAC - Rp, 3.13.20.7 NMAC, 6-16-2008]

3.13.20.8 GENERAL PROVISIONS:

A. Only an applicant may apply for a land conservation incentives tax credit.

B. A taxpayer shall be listed as an owner on the deed conveying the land or interest in land to be eligible for the land conservation incentives tax credit (see Subsection N of 3.13.20.8 NMAC for use of a land conservation tax credit issued to a pass-through entity).

C. A taxpayer is not eligible for a land conservation incentives tax credit if they are or have been a subsidiary, partner, manager, member, shareholder or beneficiary of a domestic partnership, limited liability company, domestic corporation or pass-through entity that owns or has owned the donated land or interest in land in the five years preceding the date that the applicant conveyed the land or interest in land.

D. Qualified donations include a conveyance, on or after January 1, 2004, in perpetuity for a conservation or preservation purpose of a less-than-fee interest in land that appears to qualify as a charitable contribution under 26 U.S.C. section 170(h) and its implementing regulations or a fee interest in land.

E. Dedications of land for open space for the purpose of fulfilling density requirements to obtain subdivision or building permits do not qualify for the land conservation incentives tax credit.

F. For a donation of a fee interest in land or less-than-fee interest in land that the applicant conveys, the total amount of the land conservation incentives tax credit for the donation for which an applicant applies shall not exceed 50 per-

cent of the fair market value of the land or interest in land that the applicant donated in perpetuity, regardless of the value of the land or interest in land donated or the number of taxpayers that own an interest in the donated property. An applicant shall only apply for one land conservation incentives tax credit per taxpayer per taxable year.

G. For donations made prior to January 1, 2008, a taxpayer that owns an interest in the donated land or interest in land may receive a land conservation incentives tax credit worth the lesser of \$100,000 or the taxpayer's proportionate share, as determined by the taxpayer's ownership interest in the donated land or interest in land, of 50 percent of the donated land's or interest in land's fair market value. For donations made on or after January 1, 2008, a taxpayer that owns an interest in the donated land or interest in land may receive a land conservation incentives tax credit worth the lesser of \$250,000 or the taxpayer's proportionate share, as determined by the taxpayer's ownership interest in the donated land or interest in land, of 50 percent of the donated land or interest in land's fair market value. No matter the number of taxpayers that the donated land or interest in land has, the total land conservation incentives tax credit all taxpayers receive for the donated land or interest in land cannot exceed 50 percent of the donated land's or interest in land's fair market value. Therefore, if the applicant conveyed the donation on or after January 1, 2008, and there are 10 taxpayers that have an equal interest in donated land or interest in land that is worth \$2,000,000, each taxpayer's land conservation incentives tax credit would be limited to \$100,000.

H. For donations conveyed prior to January 1, 2008, a husband and wife who both own a recorded interest in the donated land or interest in land, as opposed to one spouse not being named on the deed but having a community property interest, may each receive a land conservation incentives tax credit worth the lesser of \$100,000 or his or her proportionate share, as determined by his or her ownership interest in the donated land or interest in land, of 50 percent of the donated land's or interest in land's fair market value. For donations made on or after January 1, 2008, a husband and wife who both own a recorded interest in a donated land or interest in land, as opposed to one spouse not being named on the deed but having a community property interest, may each receive a land conservation incentives tax credit worth the lesser of \$250,000 or his or her proportionate share, as determined by his or her ownership interest in the donated land or interest in land, of 50 percent of the donated land's or interest in land's fair market value.

I. The land conservation incentives tax credit originates in the year the applicant conveys the donation, which shall be determined by the date that the deed is recorded with the county clerk where the land or interest in land is located. Pursuant to NMSA 1978, Section 7-1-26, an applicant who files a tax return may amend his or her tax return and claim the land conservation incentives tax credit for three calendar years after the applicant has paid the tax. An applicant may apply for the land conservation incentives tax credit and then amend the applicant's tax return to the year the applicant conveyed the donation as long as the applicant receives approval of the land conservation incentives tax credit and files the amendment within the three year period provided in NMSA 1978, Section 7-1-26. The applicant may carry over portions of the land conservation incentives tax credit that are unused in prior taxable years for a maximum of 20 consecutive years following the taxable year in which the applicant donated the land or interest in land until fully expended.

J. If the applicant donated a portion of the land or interest in land's value, but received payment for the remaining fair market value of the land or interest in land, the applicant may claim only the land conservation incentives tax credit on that portion of the value that the applicant donated.

K. An applicant claiming a tax credit pursuant to the Land Conservation Incentives Act shall not claim a credit pursuant to a similar law for costs related to the same donation.

L. A tax filer may claim the land conservation incentives tax credit against the tax liability that the Income Tax Act or the Corporate Income and Franchise Tax Act impose.

M. The amount of the land conservation incentives tax credit a tax filer uses in a taxable year may not exceed the amount of the individual income or corporate income tax otherwise due.

N. A land conservation incentives tax credit that a pass-through tax entity claims may be used either by the pass-through tax entity if it is the tax filer on behalf of the pass-through tax entity or by the member, manager, partner, shareholder or beneficiary, as applicable, in proportion to the interest in the pass-through tax entity if the income, deductions and tax liability pass through to the member, manager, partner, shareholder or beneficiary. Either (1) the pass-through tax entity or (2) the member, manager, partner, shareholder or beneficiary, but not both (1) and (2) may claim the land conservation incentives tax credit for the same donation.

[3.13.20.8 NMAC - Rp, 3.13.20.8 NMAC, 6-16-2008]

3.13.20.9 ASSESSMENT APPLICATION:

A. An applicant who plans to apply for a land conservation incentives tax credit shall apply for an assessment by the energy, minerals and natural resources department of the donation the applicant made or proposes to make for a conservation or preservation purpose of a fee interest in land or a less-than-fee interest in land. An applicant may submit the assessment application to the energy, minerals and natural resources department either prior to conveying the fee interest in land or less-than-fee interest in land or after conveying the fee interest in land or less-than-fee interest in land. The applicant does not need to submit an appraisal with the assessment application package.

B. An applicant may obtain an assessment application form from the energy, minerals and natural resources department.

C. An applicant shall submit the assessment application package, which shall include an original and eight copies, to the energy, minerals and natural resources department. The applicant may submit the assessment application package in electronic format on a compact or digital video disc or other electronic medium such as a USB flash drive, instead of a paper original and copies, but shall provide nine copies of the compact or digital video disc or nine of the other electronic medium.

D. The assessment application package shall consist of an assessment application form that contains the applicant's name, address, telephone number, e-mail address if available and signature, with the following required attachments:

(1) a donation assessment report that includes:

(a) a detailed description of the donation or proposed donation including:

(i) whether the donation or proposed donation is a fee interest in land or a less-than-fee interest in land;

(ii) if the donation or proposed donation is a fee interest in land, in order to ensure that the conservation or preservation purpose is protected in perpetuity, a description of who holds or will hold a conservation easement that the applicant has placed or will place on the land and assurance that the conservation easement will contain a provision that the conservation restrictions run with the land in perpetuity and that any reserved use shall be consistent with the conservation or preservation purpose and that separate donees will hold the fee interest and conservation easement;

(iii) the donation or proposed donation's conservation or preservation purpose and how the donation or proposed donation protects that purpose in per-

petuity;

(iv) significant natural or cultural resources present on the property; and

(iv) a description of any water rights associated with the property and whether the conservation easement or deed requires or will require any water rights associated with the property to remain with the property;

(b) the current property characteristics and condition with maps showing the property's location and boundaries, directions to the property, topography, relation to adjacent land uses and ownership (*i.e.* federal, tribal, state, private, etc.) and other properties whose conservation or preservation purposes are protected in perpetuity that are adjacent to the property or within a five mile radius of the property;

(c) the size of the property in acres;

(d) a description of all structures existing on the property;

(e) if a donation or proposed donation is a less-than-fee interest, a description of any building envelopes including their size and exact location and the size of the buildings allowed within each building envelope;

(f) if a donation or proposed donation is a less-than-fee interest, a description of the reserved rights and permitted activities that the applicant has or plans to retain or a copy of the completed or draft conservation easement;

(g) if a conservation or preservation purpose is for the preservation of a historically important land area, documentation that the donation meets the requirements of 26 C.F.R. section 1.170A-14(d)(5); historically important land areas include an independently significant land area that meets the national register criteria for evaluation in 36 C.F.R. section 60.4, a land area (including related historic resources) within a registered historic district including a building on the land area that can reasonably be considered as contributing to the district's significance and a land area adjacent to a property listed individually in the national register of historic places where the land area's physical or environmental features contribute to the property's historic or cultural integrity;

(h) if a conservation or preservation purpose is for the preservation of a certified historic structure, which means buildings, structures or land areas, documentation that the structure is listed in the national register of historic places or is located in a registered historic district and is certified by the secretary of the interior to the secretary of treasury as being of historic significance to the district and that the donation meets the requirements of 26 C.F.R. section 1.170A-14(d)(5);

(i) if a conservation or preservation purpose is for the preservation of land areas for outdoor recreation by or for the education of the general public, a detailed description of how the conservation easement or deed will provide for the general public's substantial and regular use;

(j) if a conservation or preservation purpose is for the protection of a relatively natural area, a detailed description of the vegetative cover, wildlife use, how the property contributes to the functioning of the larger regional ecosystem and watershed and how the conservation easement will protect the soil, native plant cover and wildlife use of the property;

(k) if a conservation or preservation purpose is for the preservation of open space pursuant to a clearly delineated federal, state or local government policy, documentation of such policy and a detailed description identifying the significant public benefit;

(l) if a conservation or preservation purpose is for the preservation of open space that is not pursuant to a clearly delineated federal, state or local government policy, a detailed description of how the conservation easement or deed will provide for the general public's scenic enjoyment and identifying the significant public benefit;

(m) if a conservation or preservation purpose is for the protection of agricultural land, a detailed description of the property's crop or animal production potential and how the conservation easement or deed will provide for agricultural use and the continued use of any water rights;

(n) the results of and a description of the physical inspection of the property the donee or proposed donee conducted for any indications of potentially hazardous materials or activities that have or may result in environmental contamination such as landfills, leaking petroleum storage tanks, hazardous material containers or spills, polychlorinated biphenyl containing equipment, asbestos insulation and abandoned mineral mining or milling facilities or other past activities using hazardous materials and the results of and a description of the interview the donee or proposed donee conducted with the landowner concerning the landowner's knowledge of such potentially hazardous materials or activities;

(2) if the donee or proposed donee or landowner identified the potential for potentially hazardous materials or activities in the donation assessment report, a phase I environmental site assessment of the property and a phase II environmental site assessment if recommended by the phase I environmental assessment;

(3) a copy of any formal donor or donee plan for management or stewardship

of the property's conservation or preservation values;

(4) signed authorization from the applicant that allows personnel from the energy, minerals and natural resources department or members of the committee established pursuant to the Natural Lands Protection Act to enter upon the land or interest in land to view the conservation or preservation values conveyed or to be conveyed by the applicant for the purposes of reviewing the assessment application, upon the personnel or committee members providing the applicant with 48 hours prior notice; and

(5) a report from the public or private land conservation agency that has accepted or plans to accept the donation that provides the following:

(a) the number of fee lands held for conservation or preservation purposes or conservation easements that the agency holds in New Mexico;

(b) the number of acres of each fee land held for conservation or preservation purposes or conservation easement that the agency holds in New Mexico;

(c) the names of board members if the agency is a private nonprofit organization or the names of elected or appointed officials if the organization is a public entity; and

(d) a signed statement from the public or private conservation agency describing its commitment to protect the donation's conservation or preservation purposes, its resources to provide stewardship of and management for fee lands or to enforce conservation easement restrictions and, if a conservation easement, its resources and policies to annually monitor the conservation easement.

E. The secretary reviews the assessment applications in consultation with the committee established pursuant to the Natural Lands Protection Act. The secretary initiates consultation by sending the assessment application package to the committee members for review and comment or by calling a meeting of the committee. The secretary, in consultation with the committee, shall assess the donation or proposed donation, using the factors in 3.13.20.13 NMAC, to determine if the donation or proposed donation is for a conservation or preservation purpose and will protect the conservation or preservation purpose in perpetuity and that the resources or areas contained in the donation or proposed donation are significant or important.

F. If the secretary finds, contingent upon the applicant meeting the requirements in 3.13.20.10 NMAC, the completed conservation easement or deed accurately reflecting the donation or proposed donation described in the donation

assessment report and the taxation and revenue department, property tax division, appraisal bureau not issuing an unfavorable recommendation of the appraisal pursuant to 3.13.20.12 NMAC, that the donation as conveyed or proposed is for a conservation or preservation purpose and will protect the conservation or preservation purpose in perpetuity and that the resources or areas contained in the donation or proposed donation are significant or important, the secretary shall notify the applicant by letter that the applicant may file an application for certification of eligibility as provided in 3.13.20.10 NMAC. In order to apply for certification of eligibility, the applicant may not change a proposed donation, donation assessment report or, if a proposed donation, the public or private conservation agency to which it is making the donation after it submits the assessment application. If the applicant makes such changes, the applicant shall submit a new assessment application and receive a favorable finding from the secretary before applying for certification of eligibility.

G. The secretary shall reject an assessment application that is not complete or correct. If the secretary rejects the assessment application because it is incomplete or incorrect or finds that the donation or proposed donation is not for a conservation or preservation purpose, the donation or proposed donation may not or will not protect the conservation or preservation purpose in perpetuity or that the resources or areas contained in the donation or proposed donation are not significant or important, the applicant may not submit an application for certification of eligibility for the land conservation incentives tax credit. The secretary's letter shall state the specific reasons why the secretary found the assessment application incomplete or incorrect, that the donation or proposed donation is not for a conservation or preservation purpose, that the donation or proposed donation may not or will not protect the conservation or preservation purpose in perpetuity or that the resources or areas contained in the donation or proposed donation are not significant or important.

H. If the secretary rejects the application because it is incomplete or incorrect; or although it is complete and correct and the donation or proposed donation is for a conservation or preservation purpose the resources or areas contained in the donation or proposed donation are not significant or important; or the donation or proposed donation may not or will not protect the conservation or preservation purpose in perpetuity, the applicant may resubmit the application package with the complete or correct information or additional information that addresses the requirement

that the resources or areas contained in the donation or proposed donation be significant or important or that the donation or proposed donation protect the conservation or preservation purpose in perpetuity. The secretary shall place the resubmitted assessment application in the review schedule as if it were a new assessment application. [3.13.20.9 NMAC - N, 6-16-2008]

3.13.20.10 APPLICATION FOR CERTIFICATION OF ELIGIBILITY:

A. An applicant who submitted an assessment application to the energy, minerals and natural resources department and received a finding from the secretary that the donation or proposed donation is for a conservation or preservation purpose and will protect that conservation or preservation purpose in perpetuity and that the resources or areas contained in the donation or proposed donation are significant or important may apply for certification of eligibility for a land conservation incentives tax credit. An applicant may not apply for certification of eligibility for a land conservation incentives tax credit without first submitting an assessment application pursuant to 3.13.20.9 NMAC and receiving a favorable finding from the secretary. The applicant shall certify in writing that the applicant has not changed the donation or proposed donation, donation assessment report or the public or private conservation agency to which it conveyed or planned to convey the donation since it submitted the assessment application. If the applicant has made such changes the applicant shall submit a new assessment application pursuant to 3.13.20.9 NMAC and receive a favorable finding from the secretary before applying for certification of eligibility.

B. The applicant may obtain a land conservation incentives tax credit certification of eligibility application form from the energy, minerals and natural resources department.

C. An applicant shall submit the certification of eligibility application package, which shall include an original and eight copies of the application package, to the energy, minerals and natural resources department. The applicant may submit the certification of eligibility application package in electronic format on a compact or digital video disc or other electronic medium such as a USB flash drive, instead of a paper original and copies, but shall provide nine copies of the compact or digital video disc or nine of the other electronic medium. The applicant shall certify that the information and documents included in the application for certification of eligibility are true and correct.

D. The completed application for certification of eligibility shall con-

tain the applicant's name, address, telephone number, e-mail address if available, signature, federal employer identification number or social security number, and, if available, the New Mexico combined reporting system (CRS) identification number as well as the certifications, information and attachments required by Subsections E through I of 3.13.20.10 NMAC, as applicable. If more than one taxpayer owns the donated land or interest in land, the application shall include each taxpayer's federal employer identification number or social security number and, if available, New Mexico CRS identification number. The applicant shall indicate on the application whether the applicant is a United States citizen or resident, a United States domestic partnership, a limited liability company, a United States domestic corporation, an estate or a trust. If more than one taxpayer owns the donated land or interest in land, the application shall include each taxpayer's status.

E. The application shall state whether the applicant made the donation as part of a bargain sale. If the applicant made the donation as part of a bargain sale, the application shall include the amount the applicant received from the sale of the land or interest in land.

F. The applicant shall certify on the certification of eligibility application that none of the taxpayers listed on the certification of eligibility application is or was a subsidiary, partner, manager, member, shareholder or beneficiary of a domestic partnership, limited liability company, domestic corporation or pass-through entity that owns or has owned the land or interest in land in the five years preceding the date that the applicant conveyed the land or interest in land. If an individual and a domestic partnership, limited liability company, domestic corporation or pass-through entity are listed as owners on the deed conveying the land or interest in land, the applicant shall certify on the certification of eligibility application that the individual is not a partner, manager, member, shareholder or beneficiary of the domestic partnership, limited liability company, domestic corporation or pass-through entity. If more than one domestic partnership, limited liability company, domestic corporation or pass-through entity are listed as an owner on the deed conveying the land or interest in land, the applicant shall certify on the certification of eligibility application that none of the named entities is a subsidiary, partner, manager, member, shareholder or beneficiary of any of the other entities listed on the deed.

G. The certification of eligibility application package shall consist of a land conservation incentives tax credit application form, with the following

required attachments as well as any attachments required in Subsection H of 3.13.20.10 NMAC for fee donations or Subsection I of 3.13.20.10 NMAC for less-than-fee donations:

(1) a copy of the letter from the secretary stating that after reviewing the applicant's assessment application that the donation or proposed donation is for a conservation or preservation purpose and will protect the conservation or preservation purpose in perpetuity and that the resources or areas contained in the donation or proposed donation are significant or important;

(2) written certification signed by the applicant that the applicant has not changed the donation or proposed donation, donation assessment report or the public or private conservation agency to which it conveyed or planned to convey the donation since it submitted the assessment application;

(3) a copy of the conservation easement or deed recorded with the county clerk of the county or counties where the land is located, which reflects the ownership interest of each individual or entity conveying the land or interest in land;

(4) a qualified appraisal of the land or interest in land donated that a qualified appraiser prepared showing the fair market value of the land or interest in land with a statement from the appraiser that prepared the appraisal certifying that the appraisal is a qualified appraisal and that the appraiser is a qualified appraiser;

(5) if the donation is to a private conservation agency, a copy of that agency's 501(c)(3) certification from the United States internal revenue service;

(6) a signed statement from the applicant certifying that the applicant did not donate the land or interest in land for open space for the purpose of fulfilling density requirements to obtain subdivision or building permits;

(7) if the applicant owns other properties within a 10 mile radius of the donated land or interest in land, a legal description of those properties;

(8) signed authorization from the applicant that authorizes personnel from the taxation and revenue department, property tax division, appraisal bureau to contact the appraiser that prepared the appraisal for the donation;

(9) if the applicant owns the mineral interest under the land or the interest in land, a title opinion certifying such ownership, other documentation establishing such ownership, or a report from a professional geologist that the probability of surface mining occurring on such property is so remote as to be negligible, and a provision in the conservation easement or deed that prohibits any extraction or removal of minerals by any surface mining method; meth-

ods of mining that have limited, localized negative effects on the land and that are not irretrievably destructive of significant conservation interests may be allowed if the secretary finds that the methods will have limited, localized negative effects and are not irretrievably destructive of significant conservation interests; and

(10) if the ownership of the surface estate and mineral interest has been separate and remains separate, a report, satisfactory to the secretary, from a professional geologist that the probability of surface mining occurring on such property is so remote as to be negligible; the secretary may have a geologist that the state employs review the report; if the secretary finds the report unsatisfactory the secretary's letter denying certification of eligibility shall state the reasons that the report is unsatisfactory.

H. If the applicant donated the land in fee, the applicant shall also include the following attachments with the application package:

(1) a statement from the public or private conservation agency to which the applicant donated the land, that the applicant donated the land for conservation or preservation purposes and the public or private conservation agency will hold the land for such purposes;

(2) a copy of United States internal revenue service form 8283 for the donation signed by the public or private conservation agency; and

(3) to ensure the land will be used in perpetuity for the purposes of the donation, documentation in the form of a conservation easement that complies with 26 U.S.C. section 170(h) and its implementing regulations placed on the land that contains a provision in the conservation easement that the conservation restrictions run with the land in perpetuity and that any reserved use shall be consistent with the conservation or preservation purpose (separate donees must hold the fee and conservation easement).

I. If the applicant donated a less-than-fee interest in land, the applicant shall also include the following attachments with the application package:

(1) a copy of United States internal revenue service form 8283 for that donation signed by the public or private conservation agency;

(2) a provision in the conservation easement that identifies the donation's conservation or preservation purpose or purposes;

(3) a provision in the conservation easement that provides that the conveyance of the less-than-fee interest does not and will not adversely affect contiguous landowners' existing property rights;

(4) if a conservation or preservation purpose is for the conservation or preservation of land areas for outdoor recreation by or for the education of the general public, a provision in the conservation easement that provides for the general public's substantial and regular use;

(5) if a conservation or preservation purpose is for the protection of a relatively natural habitat, a provision in the conservation easement that describes the habitat;

(6) if a conservation or preservation purpose is for the preservation of open space pursuant to a clearly delineated federal, state or local government policy, a provision in the conservation easement identifying such policy and identifying the significant public benefit;

(7) if a conservation or preservation purpose is for the preservation of open space that is not pursuant to a clearly delineated federal, state or local government policy, a provision in the conservation easement stating how the easement or restriction provides for the general public's scenic enjoyment and identifies the significant public benefit;

(8) if a conservation or preservation purpose is for the property's continued use for irrigated agriculture, a provision that provides that sufficient water rights will remain with the property;

(9) a provision in the conservation easement that the conservation restrictions run with the land in perpetuity;

(10) a provision in the conservation easement that any reserved use shall be consistent with the conservation or preservation purpose;

(11) a provision in the conservation easement that prohibits the donee from subsequently transferring the interest in land unless the transfer is to another public or private conservation agency and the donee, as a condition of the transfer, requires that the conservation or preservation purposes for which the donation was originally intended continue to be carried out;

(12) a provision in the conservation easement that provides that the donation of the less-than-fee interest is a property right, immediately vested in the donee, and provides that the less-than-fee interest has a fair market value that is at least equal to the proportionate value that the conservation restriction at the time of the donation bears to the property as a whole at that time; the provision shall further provide that if subsequent unexpected changes in the conditions surrounding the property make impossible or impractical the property's continued use for conservation or preservation purposes and judicial proceedings extinguish the easement or restrictions then

the donee is entitled to a portion of the proceeds from the property's subsequent sale, exchange or involuntary conversion at least equal to the perpetual conservation restriction's proportionate value;

(13) if the applicant reserves rights that if exercised may impair the conservation interests associated with the property, documentation sufficient to establish the property's condition at the time of the donation and a provision in the conservation easement whereby the applicant agrees to notify the public or private conservation agency receiving the donation before exercising any reserved right that may adversely impact the conservation or preservation purposes; and

(14) if the interest in land is subject to a mortgage, a subordination agreement, recorded with the county clerk of the county or counties where the land that is located, from the mortgage holder that it subordinates its rights in the interest in land to the right of the public or private conservation agency to enforce the conservation or preservation purposes of the donation in perpetuity.

[3.13.20.10 NMAC - Rp, 3.13.20.9 NMAC, 6-16-2008]

3.13.20.11 CERTIFICATION OF ELIGIBILITY APPLICATION REVIEW PROCESS AND CERTIFICATION OF ELIGIBLE DONATION:

A. The secretary reviews certification of eligibility applications.

B. The secretary shall reject a certification of eligibility application if it is incomplete or incorrect; the applicant changed the donation or proposed donation, donation assessment report or the public or private conservation agency to which it conveyed or planned to convey the donation since it submitted the assessment application; the donation does not meet the requirements of 3.13.20.8 NMAC or 3.13.20.10 NMAC; the completed conservation easement or deed does not accurately reflect the donation the applicant described in its assessment application; or the taxation and revenue department, property tax division, appraisal bureau provides an unfavorable recommendation of the appraisal. The secretary's letter shall state the specific reasons why the secretary rejected the certification of eligibility application.

C. If the secretary rejects the certification of eligibility application because it was incomplete or incorrect; does not meet the requirements of 3.13.20.8 NMAC or 3.13.20.10 NMAC; the filed conservation easement or deed does not accurately reflect the donation the applicant described in its assessment application; or the taxation and revenue department, prop-

erty tax division, appraisal bureau provides an unfavorable recommendation of the appraisal, the applicant may resubmit the application package for the rejected certification of eligibility application with the complete or correct information or additional information that addresses the requirements the donation does not meet. The secretary shall place the resubmitted certification of eligibility application in the review schedule as if it were a new certification of eligibility application.

D. If the secretary rejects the certification of eligibility application because the applicant changed the donation or proposed donation, donation assessment report or the public or private conservation agency to which it conveyed or planned to convey the donation since it submitted the assessment application, the applicant shall submit a new assessment application pursuant to 3.13.20.8 NMAC.

E. The secretary approves the certification of eligibility application if the secretary finds the donation of land or interest in land meets the requirements of 3.13.20.8 NMAC or 3.13.20.10 NMAC; the secretary issued a favorable finding on the applicant's assessment application and the applicant has not changed the donation or proposed donation, donation assessment report or the public or private conservation agency to which it conveyed or planned to convey the donation since it submitted the assessment application; the completed conservation easement or deed accurately reflects the donation the applicant described in its assessment application; the donation does not adversely affect contiguous landowners' property rights; and the taxation and revenue department, property tax division, appraisal bureau does not issue an unfavorable recommendation of the appraisal. The secretary's approval is given by the issuance of a letter to the applicant and the taxation and revenue department. This letter shall certify that the donation of land or interest in land includes the conveyance in perpetuity, on or after January 1, 2004, for a conservation or preservation purpose of a fee interest in land or a less-than-fee interest in land that meets the requirements of the Land Conservation Incentives Act; NMSA 1978, Sections 7-2-18.10 or 7-2A-8.9; and 3.13.20 NMAC, and include a calculation of the maximum amount of the land conservation incentives tax credit for which each taxpayer is eligible.

[3.13.20.11 NMAC - Rp, 3.13.20.10 NMAC, 6-16-2008]

3.13.20.12 APPRAISALS:

A. Upon receiving the certification of eligibility application, the energy, minerals and natural resources department forwards the appraisal to the taxation

and revenue department, property tax division, appraisal bureau for review.

B. The taxation and revenue department, property tax division, appraisal bureau shall review the appraisal and advise the secretary whether the appraisal meets the requirements of 3.13.20 NMAC including whether the appraisal complies with the uniform standards of professional appraisal practice and whether the appraiser used proper methodology and reached a reasonable conclusion concerning value. The secretary may approve certification of eligibility without an appraisal review if the secretary determines that the taxation and revenue department, property tax division, appraisal bureau is unable to provide a timely review.

C. The taxation and revenue department, property tax division, appraisal bureau's review does not preclude further audit by the taxation and revenue department or the United States internal revenue service.

[3.13.20.12 NMAC - N, 6-16-2008]

3.13.20.13 FACTORS IN DETERMINING SUITABILITY FOR CERTIFICATION OF ELIGIBILITY:

A. The donation shall meet the following three criteria for the secretary to consider the donation for certification eligibility:

(1) the land or interest in land fits one or more of the descriptions of purposes in Subsection D of 3.13.20.7 NMAC;

(2) the recipient is a public or private conservation agency with the ability and commitment to monitor and ensure the grantor's compliance with the conservation easement or provide stewardship of the fee land, as applicable; and

(3) the donation provides for the protection in perpetuity of the conservation or preservation purposes for which the applicant donated the land or interest in land through a conservation easement.

B. In determining an application's suitability for certification of eligibility, the secretary considers several factors including the following:

(1) property size;

(2) property condition or potential;

(3) presence of significant natural or cultural resources;

(4) property's location relative to other lands protected for conservation or preservation purposes;

(5) current and future management and use;

(6) contribution to local, regional or state conservation or preservation objectives;

(7) terms of the conservation easement or deed;

(8) qualifications and stewardship

capacity of the public or private conservation agency that holds the fee or conservation easement; and

(9) other factors affecting the property's long-term protection and viability.

C. The secretary also considers the criteria listed in the following table in determining whether the resources or areas contained in the donation are significant or important: These criteria relate to the property's overall condition and viability as well as the compatibility of future management and uses and surrounding land uses for maintenance of conservation values.

[Please see table on page 403.]

Ranking	Site Condition	Development	Uses	Surroundings	Stewardship or Monitoring
Favorable	Site is of uniformly good condition and sufficient size to maintain the conservation or preservation purposes, assuming other favorable factors such as good potential for restoration if needed	Additional development of the property is specifically prohibited or additional development that is allowed is consistent with the conservation or preservation purposes	Allowed uses of the property are consistent with the conservation or preservation purposes	Surrounding land uses are entirely compatible with site conservation or preservation purposes, or site serves as a connection between other conservation lands or provides significant or important open space	If a fee donation, the recipient has sufficient resources as well as a formal plan to provide stewardship for the conservation or preservation purposes. If a less-than-fee donation the recipient has sufficient resources to monitor and ensure the grantor's compliance with the conservation's easement's terms.
Marginal	Site is of minimum size and condition to maintain the conservation or preservation purposes, assuming other favorable factors	Additional development allowed that may impair the conservation or preservation purposes	Allowed uses of the property may be incompatible for long-term maintenance of the conservation or preservation purposes	Surrounding lands uses are not consistent with site conservation or preservation purposes, and site does not serve as a connection between other conservation lands or provide significant or important open space, but surrounding land uses do not seriously compromise site integrity	If a fee donation, the recipient has no formal plan and marginal capacity to provide stewardship of the conservation or preservation purposes. If a less-than-fee donation, the recipient has marginal resources to monitor and ensure the grantor's compliance with the conservation's easement's terms.
Unfavorable	Maintenance of conservation or preservation values is severely compromised by the site's size, configuration, location or condition	Additional development allowed that is inconsistent with the conservation or preservation purposes	Allowed uses are clearly incompatible with the long-term maintenance of the conservation or preservation purposes	Surrounding land uses are clearly incompatible with site conservation or preservation and threaten site integrity and the site does not serve as a connection between other conservation lands or provide significant or important open space	If a fee donation, the recipient has no plan or resources to provide stewardship of the conservation or preservation purposes. If a less-than-fee donation, the recipient has no or limited resources to monitor and ensure the grantor's compliance with the conservation's easement's terms.

D. The secretary evaluates each application in the context of the property’s unique geographic setting and characteristics, but the secretary will not apply rigid standards relating to tract size or other factors. Instead, the secretary evaluates the donation’s overall contribution to the indicated conservation or preservation purpose as well as the probability the purposes will be supported in perpetuity. [3.13.20.13 NMAC - N, 6-16-2008]

3.13.20.14 FILING REQUIREMENTS:

A. After obtaining a certificate of eligibility from the energy, minerals and natural resources department, the applicant shall apply for the land conservation incentives tax credit with the taxation and revenue department on a form the taxation and revenue department develops. The applicant shall attach the certificate of eligibility received from the secretary.

B. If the applicant complies with all the requirements in NMSA 1978, Section 7-2-18.10 or Section 7-2-8.9 and has

received the certificate of eligibility from the secretary, the taxation and revenue department shall issue a document granting the land conservation incentives tax credit, which is numbered for identification and includes its date of issuance and the amount of the land conservation incentives tax credit allowed.

C. A tax filer shall use a claim form the taxation and revenue department develops to apply the land conservation incentives tax credit to the tax filer's income taxes. A tax filer shall submit the claim form with its income tax return.

D. A tax filer who has both a carryover credit and a new credit derived from a qualified donation in the taxable year for which the tax filer is filing the return shall first apply the amount of carryover credit against the income tax liability. If the amount of liability exceeds the carryover credit, then the tax filer may apply the current year credit against the liability.

E. If an applicant claims a charitable deduction on the applicant's federal income tax for a contribution for which the applicant also claims a tax credit pursuant to the Land Conservation Incentives Act, the applicant's itemized deduction for New Mexico income tax shall be reduced by the deduction amount for the contribution to determine the applicant's New Mexico taxable income.

[3.13.20.14 NMAC - Rp, 3.13.20.11 NMAC, 6-16-2008]

3.13.20.15 TRANSFER OF THE LAND CONSERVATION INCENTIVES TAX CREDIT:

A. An applicant may sell, exchange or otherwise transfer an approved land conservation incentives tax credit, represented by the document that the taxation and revenue department issues, for a conveyance made on or after January 1, 2008. A land conservation incentives tax credit or increment of a land conservation incentives tax credit may only be transferred once. An applicant may transfer its land conservation incentives tax credit to any tax filer.

B. A tax filer to whom an applicant has transferred a land conservation incentives tax credit may use the land conservation incentives tax credit in the year that the transfer occurred and carry forward unused amounts to succeeding taxable years, but may not use the land conservation incentives tax credit for more than 20 years after the taxation and revenue department originally issued it. In order to use the land conservation incentives tax credit for that taxable year, the transfer of the land conservation incentives tax credit must occur on or before December 31 of that taxable year.

C. An applicant may only transfer a land conservation incentives tax credit in increments of \$10,000 or more.

D. An applicant shall use a qualified intermediary to transfer a land conservation incentives tax credit. The qualified intermediary shall notify the taxation and revenue department of the transfer and the date of the transfer on a taxation and revenue department-developed form within 10 days following the transfer. The qualified intermediary shall keep an account of the land conservation incentives tax credit transferred.

E. A qualified intermediary may issue sub-numbers registered with and obtained from the taxation and revenue department.

F. If an individual who owns an interest in the donated property dies prior to selling, exchanging or otherwise transferring the land conservation incentives tax credit, the donor's estate may sell, exchange or otherwise transfer the land conservation incentives tax credit.

[3.13.20.15 NMAC - N, 6-16-2008]

3.13.20.16 TRANSITION PROVISIONS:

3.13.20 NMAC, effective on June 16, 2008, shall apply to those applications for a land conservation incentives tax credit, an applicant submits on or after June 16, 2008 even if the applicant conveyed the donation prior to that date.

[3.13.20.16 NMAC - N, 6-16-2008]

HISTORY OF 3.13.20 NMAC:

Pre-NMAC History: None.

History of Repealed Material: 3.13.20 NMAC, Land Conservation Incentives Tax Credit (filed 12-11-2003) repealed 6-16-2008.

NMAC History: 3.13.20 NMAC, Land Conservation Incentives Tax Credit (filed 12-11-2003) was replaced by 3.13.20 NMAC, Land Conservation Incentives Tax Credit, effective 6-16-2008.

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

**TITLE 8 SOCIAL SERVICES
CHAPTER 102 CASH ASSISTANCE PROGRAMS
PART 501 EMPLOYMENT RETENTION BONUS PROGRAM**

8.102.501.1 ISSUING AGENCY: New Mexico Human Services Department. [8.102.501.1 NMAC - N, 07/01/2008]

8.102.501.2 SCOPE: The rule applies to the general public. [8.102.501.2 NMAC - N, 07/01/2008]

8.102.501.3 STATUTORY AUTHORITY:

A. New Mexico Statutes Annotated 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the aid to families with dependent children (AFDC), general assistance (GA), shelter care supplement, the burial assistance programs and such other public welfare functions as may be assumed by the state.

B. Federal legislation contained in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 abolished the AFDC program. The federal act created the temporary assistance for needy families (TANF) block grant under Title IV of the Social Security Act. Through the New Mexico Works Act of 1998 (NMW), the New Mexico works program was created to replace the aid to families with dependent children program.

C. Under authority granted to the governor by the federal Social Security Act, the human services department is designated as the state agency responsible for the TANF program in New Mexico.

D. Effective April 1, 1998, in accordance with the requirements of the New Mexico Works Act and title IV-A of the federal Social Security Act, the department is creating the New Mexico works program as one of its financial assistance programs.

E. Effective July 1, 2008, in accordance with the requirements of the New Mexico Works Act, the department is creating the Employment Retention Bonus (ERB) Program as one of its financial assistance programs.

F. In close coordination with the NMW program, the department administers the food stamp employment and training program (E&T) pursuant to the Food Security Act of 1985 and federal regulations at title 7, code of federal regulations.

[8.102.501.3 NMAC - N, 07/01/2008]

8.102.501.4 DURATION: Permanent.

[8.102.501.4 NMAC - N, 07/01/2008]

8.102.501.5 EFFECTIVE DATE: July 1, 2008 unless a later date is cited at the end of a section.

[8.102.501.5 NMAC - N, 07/01/2008]

8.102.501.6 OBJECTIVE:

A. The purpose NMW program is to improve the quality of life for parents and children by increasing family income, resources and support. The further purpose of the program is to increase family income through family employment, child support and by utilizing cash assistance as a support service to enable and assist parents to participate in employment.

B. The objective of the

education works program (EWP) is to provide cash assistance to a benefit group where at least one individual is enrolled in a post-secondary, graduate or post-graduate institution. Education and training are essential to long-term career development. The applicant or participant benefit group would be otherwise eligible for NMW cash assistance, but chooses to participate in EWP.

C. The objective of the ERB program is to provide for a limited duration and a fixed monthly cash assistance bonus incentive to encourage NMW families to leave NMW cash assistance and participate in the ERB program by maintaining a certain number of hours in paid employment and leave the ERB program due to increased earnings.

[8.102.501.6 NMAC - N, 7/01/2008]

8.102.501.7 DEFINITIONS:
[Reserved]

8.102.501.8 EMPLOYMENT RETENTION BONUS PROGRAM:

A. Purpose: The ERB program provides a limited duration and fixed month cash assistance bonus incentive to encourage NMW families to leave NMW cash assistance, participate in the ERB program by maintain a certain number of hours in paid employment and leave the ERB program due to increased earnings. This program also provides supportive services on an ongoing basis, provided that the participant is eligible to receive the services during the months provided.

B. Method of payment: ERB payments are paid by issuing funds into an electronic benefits transfer (EBT) account accessible to the participant. In some circumstances benefits may be issued by warrant.

C. Fixed benefit amount: A non-prorated fixed benefit amount of \$200.00 will be given to all ERB program participants under 150% of federal poverty guidelines. The benefit can only be reduced to recoup an existing ERB cash assistance overpayment in accordance with 8.102.640 NMAC. The benefit will be countable for the benefit group's eligibility for food stamp and medicaid benefits unless otherwise excluded.

D. Lifetime limits:

(1) The ERB benefit shall not be provided to an adult, minor head of household or the spouse of a minor head of household for more than 18 months during the individual's lifetime. A benefit group as defined at 8.102.400 NMAC shall be ineligible if the benefit group contains at least one adult, minor head of household or spouse of the minor head of household who has received 18 or more months of the ERB

benefit.

(2) Any month in which an adult, a minor head of household, or the spouse of a minor head of household, has received full or partial ERB benefit shall be considered a month of receipt and shall be counted towards the 18 month lifetime limit for any benefit group in which that individual is a member.

(3) Participants who have received less than or equal to 30 months of NMW and are approved for the ERB program shall have each month of receipt of the ERB benefit count toward the 60 month lifetime limit for NMW eligibility until the 30th month is received.

(4) Participants who have received more than or equal to 31 months and up to 60 months of NMW and are approved for the ERB program shall not have each month of receipt of the ERB count toward the 60 month lifetime limit for NMW eligibility.

E. Initial eligibility:

(1) The ERB program shall be subject to all federal and state NMW cash assistance application, eligibility, certification and reporting requirements, except where specified within the ERB program regulations. Resources of the budget group are excluded in determining eligibility for the ERB program.

(2) **Application requirements:** Active NMW benefit groups that meet the qualifications and eligibility requirements for the ERB program shall be eligible without an application. An application will be required if the NMW case is closed.

(3) The ERB program shall be available only to a benefit group that meets all of the following criteria:

(a) does not simultaneously participate in the NMW program;

(b) has left the NMW cash assistance program;

(c) meets all ERB program requirements and voluntarily chooses to participate in the program;

(d) is currently engaged in paid unsubsidized or subsidized employment, except for subsidized employment funded with TANF, for a minimum of 30 hours per week, and averaged over a month;

(e) has gross income that does not exceed 150% of federal poverty guidelines;

(f) has received NMW cash assistance for at least three months and one of the last three months; and

(g) does not include an adult, minor head of household or spouse of the minor head of household that participated in the ERB program for 18 months in their lifetime and 60 months of TANF.

(4) Eligibility for the ERB program shall be prospective for a six month period up to a lifetime limit of 18 months of

ERB benefits.

F. In accordance with Subsection B of 8.102.500.8 NMAC, income eligibility limits for the ERB program will be revised and adjusted each year in October.

[8.102.501.8 NMAC - N, 07/01/2008]

8.102.501.9 CONTINUED ELIGIBILITY:

A. Six month reporting requirement: All benefit groups participating in the ERB program shall be assigned to a six month reporting requirement. A benefit group assigned to a six month reporting shall be required to file a six month report no later than the tenth day of the sixth month or in conjunction with the food stamp semiannual report, whichever is appropriate. The benefit group must include the following information along with verification:

(1) any change in benefit group composition, whether a member has moved in or out of the home along with the date, the change took place;

(2) the amount of money received from employment by each benefit group member;

(3) the amount of unearned income received by each benefit group member;

(4) verification for residence, only if, there has been a change in residence since the last certification;

(5) changes in child support receipt; and

(6) changes in alien status for a benefit group member.

B. Continued eligibility at the six month reporting: For continued ERB eligibility, the benefit group must meet all of the following criteria:

(1) engaged in paid unsubsidized employment for at least 30 hours per week, averaged over a month, for at least four of the last six months;

(2) have earnings from paid unsubsidized employment that do not exceed 150% of the federal poverty guidelines; and

(3) have not reached the benefit group's 18 month ERB program lifetime limit as an adult, minor head of household or spouse of a minor head of household.

C. Action on changes reported between reporting periods for benefit groups assigned to six month reporting:

(1) The department shall not act on reported changes between reporting periods that would result in a decrease in benefits with the following exceptions:

(a) a benefit group reports income in excess of 150% of federal poverty guidelines for size of the benefit group;

(b) a benefit group reports, or the department receives documented evidence that the benefit group has moved from the state or intends to move from the state on a specific date;

(c) a benefit group requests closure;

(d) the department receives documented evidence that the head of benefit group has died; or

(e) at the time of a mass change.

(2) A newborn shall be added to the benefit group effective the month following the month the report is received, if the addition is reported to the agency by the benefit group or by the hospital for medicated purposes.

D. Notice: An eligible benefit group that qualifies and is eligible for the bonus shall be issued notice in accordance with policy at 8.102.110.13 NMAC and for the following circumstances:

(1) **Approval:** An approval notice shall be issued at the time the benefit group is determined eligible. The approval notice shall identify the amount of approval and recertification date.

(2) **Benefit change:** A benefit group shall be issued a notice at the time the benefit group is increased or decreased. The amount of benefit is subject to change due to the availability of state or federal funds.

(3) **Ineligibility:** A benefit group shall be issued a notice when the benefit group no longer qualifies or is not eligible for the ERB program as indicated in Subsection D of 8.102.501.9 NMAC. [8.102.501.10 NMAC - N, 07/01/2008]

8.102.501.10 BENEFIT ISSUANCE AND DELIVERY:

A. Benefit issuance: The ERB program benefits are issued and placed into a benefit group's electronic benefit transfer (EBT) cash assistance account as defined in 8.102.610.8 NMAC.

B. Supportive services: Participants of the ERB program shall be eligible to receive NMW case management and supportive services in accordance with 8.102.620.14, 8.102.620.15, and 8.102.620.16 NMAC.

C. Expungement: The ERB program benefit shall be subject to expungement in accordance with 8.102.610.9 NMAC.

D. Issuance and replacement of EBT card: To access and use the ERB program benefit, the benefit group may use the same EBT card issued for the cash assistance benefits.

E. Approval notification: Upon approval of the retention bonus program benefit, the household shall be notified of the new benefit amount and the notice shall be mailed to the applicant per

8.102.110.13 NMAC.

[8.102.501.11 NMAC - N, 07/01/2008]

8.102.501.11 NMW PARTICIPATION REQUIREMENTS:

An ERB recipient will be encouraged to participate in work program activities and shall be expected to attend and complete all required activities, such as the assessment, individual responsibility plan (IRP), work participation agreement (WPA) and monthly participation requirements in accordance with 8.102.460.12 through 8.102.460.16 NMAC if not otherwise meeting. Participation requirements apply to each benefit group member whether the benefit group is considered to be a two-parent or single-parent benefit group. No ERB program participant shall be sanctioned for NMW non-cooperation.

[8.102.501.12 NMAC - N, 07/01/2008]

HISTORY OF 8.102.501 NMAC: [RESERVED]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.102.520 NMAC, Section 12, effective July 1, 2008.

8.102.520.12 EARNED INCOME DEDUCTIONS:

A. Earnings deductions:

Deductions from gross earned income shall be made in determining the net countable earned income of benefit group members.

(1) Earned income deductions may not exceed the amount of a participant's gross earned income.

(2) The earned income deductions may not be used to reduce unearned income, nor may deductions that are not used by one benefit group member be allocated against the earnings of another benefit group member.

(3) An allowable deduction that is not verified at the time of certification or processing of the semiannual report shall not be allowed as a deduction. A deduction verified after certification shall be processed as a change.

(4) An allowable deduction that is verified after a semiannual report is processed shall be handled as set forth at Subsection I of 8.102.120.11 NMAC.

B. Business expenses and self-employment costs: Business expenses and self-employment costs shall be deducted from the gross earnings of a self-employed benefit group member. The income after all allowable business expenses and self-employment costs shall be counted as the gross income of the benefit group member. To be eligible for this

expense a tax ID shall be required.

(1) **Allowable expenses and costs:** Allowable costs of producing self-employment income include, but are not limited to:

(a) costs of materials and supplies;

(b) business travel, but not personal commuting expenses, calculated at \$.25 per mile, unless the self-employed individual can prove that the actual expense is greater;

(c) business taxes, including occupational taxes, gross receipts taxes, property taxes on a place of business other than the home, and business licenses.

(d) rental of equipment, tools, and machinery;

(e) rent expense for the place of business, except for the place of business when the individual operates the business out of the individual's residence, unless the individual can demonstrate that the expense has been allowed under federal income tax guidelines;

(f) payments on the principal of the purchase price of income producing real estate and capital assets, machinery, equipment and other durable goods;

(g) interest paid to purchase income producing property.

(2) **Expenses and costs not allowed:**

(a) Costs for depreciation, personal business, entertainment expenses, personal transportation to and from work.

(b) Expenses or costs of self-employment that are reimbursed by other agencies cannot also be claimed as costs of self-employment, such as but not limited to, reimbursements made through USDA to individuals who provide home child care.

(3) Expenses or costs that exceed self-employment income shall not be deducted from other income.

[C. Excess hours work deduction:

~~(1) To qualify for the excess hours work deduction the benefit group member must be a parent of a dependent child included in the benefit group or the caretaker relative of a dependent child included in the benefit group whose parent does not live in the home, or the legal spouse of such parent or caretaker relative.~~

~~(2) Time limit for allowing the deduction: The excess hours work deduction is allowed for the first 24 months of receipt of NMW cash assistance. The 24 month period begins with and includes April 1998 and includes each month thereafter in which the individual is a member of a NMW benefit group receiving cash assistance or services. Months in which an individual is not a member of an NMW benefit group receiving cash assistance or services shall not add to the count of months for this~~

deduction.

~~(3) For the excess hours deduction only, in determining the number of hours worked, only those hours spent in paid employment are counted.~~

~~(4) To determine the number of hours worked when the person is self-employed, the monthly gross earnings are divided by the minimum wage. The amount of the excess hours work deduction shall be calculated using minimum wage.~~

~~(5) **Single parent benefit group:** For the first 24 months of receiving cash assistance or services, if a participant works over the participation standard set by the department pursuant to the New Mexico Works Act, all the income earned by the participant beyond the participation standard shall be excluded.~~

~~(6) **Two parent benefit group:** For the first two years of receiving cash assistance or services, for a two parent benefit group in which one parent works over 35 hours per week and the other parent works over 24 hours per week, all the income earned by each parent beyond the participation standard set by the department shall be excluded.~~

~~(a) In determining the number of excess hours, the 35 hour per week requirement shall be applied to the person with the larger number of hours of work and the 24 hour per week requirement shall be applied to the person with the smaller number of hours.~~

~~(b) With respect to a two parent benefit group in which only one parent is subject to work program participation and is employed, the excess hours deduction shall be allowed for work hours in excess of 35 hours per week.~~

~~(7) Other adults included in a single parent or two parent benefit group shall be allowed the excess hours work deduction based on single parent provisions.~~

~~**D.] C. Work incentive deduction:**~~

~~(1) To qualify for the work incentive deduction the benefit group member must be a parent of a dependent child included in the benefit group or the caretaker relative of a dependent child included in the benefit group whose parent does not live in the home, or the legal spouse of such parent or caretaker relative.~~

~~(2) **Allowing the deduction:** The work incentive deduction is allowed with no time limit as follows:~~

~~(a) \$125 and one-half of the remainder for the parent in a single-parent benefit group;~~

~~(b) \$225 and one-half of the remainder for each parent in a two-parent group;~~

~~(c) \$125 and one-half of the remainder for a benefit group member in a~~

single-parent or two-parent benefit group who is not a parent; and

~~(d) \$125 for a non-benefit group members whose income is deemed available.~~

~~**[E.] D. Child care costs:** Out of pocket expenses for child care that is necessary due to employment of a benefit group member shall be allowed.~~

~~(1) From earnings remaining after allowing the excess hours and work incentive deductions, deduct an amount not to exceed \$200 per month for a child under age two and \$175 per month for a child age two or older.~~

~~(2) If more than one parent is working, costs of child care shall be allocated to maximize the available deduction to the benefit group.~~

~~(3) The total amount deducted per child, regardless of the number of benefit group members who are employed, shall not exceed the applicable limits set forth above.~~

~~**[F.] E. Contributions made into approved individual development accounts:** The actual amount contributed into an approved IDA from an employed benefit group member's earnings shall be an allowable deduction from earned income.~~

~~[8.102.520.12 NMAC - Rp 8.102.520.11 NMAC, 07/01/2001; A, 02/14/2002; A, 01/01/2004; A, 11/15/2007; A, 07/01/2008]~~

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.106.500 NMAC, section 8, and effective 06/16/2008.

8.106.500.8 GA - GENERAL REQUIREMENTS:

A. Need determination process: Eligibility for the GA program based on need requires a finding that the:

(1) countable resources owned by and available to the benefit group do not exceed either the \$1500 liquid or \$2000 non-liquid resource limit;

(2) benefit group's countable gross earned and unearned income does not equal or exceed eighty-five percent (85%) of the federal poverty guideline for the size of the benefit group; and

(3) benefit group's countable net income does not equal or exceed the standard of need for the size of the benefit group.

B. GA payment determination: The benefit group's cash assistance payment is determined after subtracting from the standard of need the benefit group's countable income and any payment sanctions or recoupments.

C. Gross income test:

The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent (85%) of the federal poverty guidelines for the size of the benefit group.

(1) Income eligibility limits are revised and adjusted each year in October.

(2) The gross income limit for the size of the benefit group is as follows:

- | | |
|-----------------------------------|---------|
| (a) one person | \$ 723 |
| (b) two persons | \$ 970 |
| (c) three persons | \$1,216 |
| (d) four persons | \$1,463 |
| (e) five persons | \$1,709 |
| (f) six persons | \$1,956 |
| (g) seven persons | \$2,202 |
| (h) eight persons | \$2,449 |
| (i) add \$247 for each additional | |

person.

D. Standard of need:

(1) The standard of need is based on the number of individuals included in the benefit group and allows for a financial standard and basic needs.

(2) Basic needs include food, clothing, shelter, utilities, personal requirements and an individual benefit group member's share of supplies.

(3) The financial standard includes approximately \$91 per month for each individual in the benefit group.

(4) The standard of need for the GA cash assistance benefit group is:

- | | |
|----------------------------------|--------|
| (a) one person | \$ 266 |
| (b) two persons | \$ 357 |
| (c) three persons | \$ 447 |
| (d) four persons | \$ 539 |
| (e) five persons | \$ 630 |
| (f) six persons | \$ 721 |
| (g) seven persons | \$ 812 |
| (h) eight persons | \$ 922 |
| (i) add \$91 for each additional | |

person.

E. Net income test: The total countable earned and unearned income of the benefit group after all allowable deductions cannot equal or exceed the standard of need for the size of the GA benefit group.

F. Special clothing allowance for school-age dependent children: In order to assist in preparing a child for school, a special clothing allowance is made each year in the amount of \$100 for the months of August and January subject to the availability of state or federal funds.

(1) For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age if the child is six years of age or older and less than age nineteen (19) by the end of August.

(2) The clothing allowance shall be allowed for each school-age child who is included in the GA cash assistance benefit group for the months of August and January subject to the availability of state or federal

funds.

(3) The clothing allowance is not counted in determining eligibility for GA cash assistance.

G. Supplemental issuance: A one time supplemental issuance may be distributed to recipients of GA for disabled adults based on the sole discretion of the secretary of the human services department and the availability of state funds.

(1) The one time supplemental issuance may be no more than the standard GA payment made during the month the GA payment was issued.

(2) To be eligible to receive the one time supplement, a GA application must be active and determined eligible no later than the last day of the month in the month the one time supplement is issued.

[8.106.500.8 NMAC - N, 07/01/2004; A/E, 10/01/2004; A/E, 10/01/2005; A, 7/17/2006; A/E, 10/01/2006; A/E, 10/01/2007; A, 01/01/2008; A, 06/16/2008]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.510 NMAC, Section 12, effective July 1, 2008.

8.200.510.12 POST-ELIGIBILITY CALCULATION (MEDICAL CARE CREDIT): Apply applicable deductions in the order listed below when determining the medical care credit for an institutionalized spouse.

<u>DEDUCTION</u>	<u>AMOUNT</u>
A. Personal needs allowance for institutionalized spouse	[\$58] \$60
B. Basic community spouse monthly income allowance standard (CSMIA)	[\$1,712] \$1,750
(CSMIA standard minus income of community spouse = deduction)	
C. * Excess shelter allowance for allowable expenses for community spouse	[\$898] \$860
D. ** Extra maintenance allowance	
E. Dependent family member 1/3 X (CSMIA - dependent member's income)	
F. Non-covered medical expenses	
G. * The allowable shelter expenses of the community spouse must exceed [\$514] \$525 per month for any deduction to apply.	
H. ** To be deducted, the extra maintenance allowance for the community spouse must be ordered by a court of jurisdiction or a state administrative hearing officer.	
I. MAXIMUM TOTAL: The maximum total of the community spouse monthly income allowance and excess shelter deduction	

is \$2,610.

[1-1-95, 7-1-95, 3-30-96, 8-31-96, 4-1-97, 6-30-97, 4-30-98, 6-30-98, 1-1-99, 7-1-99, 7-1-00; 8.200.510.12 NMAC - Rn, 8 NMAC 4.MAD.510.2 & A, 1-1-01, 7-1-01; A, 1-1-02; A, 7-1-02; A, 1-1-03; A, 7-1-03; A, 1-1-04; A, 7-1-04; A, 1-1-05; A, 7-1-05; A, 1-1-06; A, 7-1-06; A, 1-1-07; A, 7-1-07; A, 1-1-08; A, 7-1-08]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION

This is an amendment to 14.7.3 NMAC Section 12, effective 06-30-08.

14.7.3.12 CHAPTER 4 FOUNDATIONS:

A. Section R401 and R402. See these sections of the IRC.

B. Section R403 Footings. See this section of the IRC except that the text of section R403.1.4 is deleted and the following language is inserted: All exterior footings shall be placed at least 12 inches (305 mm) below the grade. Where applicable, the depth of footings shall also conform to sections R403.1.4.1 and R403.1.4.2.

C. Section R404 Foundations. See this section of the IRC except for the following.

(1) R404.1 Concrete and masonry foundation walls. See this section of the IRC, except delete tables [R404.1(1), R404.1(2), R404.1(3)] R404.1.1(1), R404.1.1(2), R404.1.1(3) and the following: foundation walls that meet all of the following shall be considered laterally supported.

(a) 1. Full basement floor shall be 3.5 inches (89 mm) thick concrete slab poured tight against the bottom of the foundation wall.

(b) 2. Floor joists and blocking shall be connected to the sill plate at the top of wall by the prescriptive method called out in Table R404.1(1), or; shall be connected with an approved connector with listed capacity meeting Table R404.1(1).

(c) 3. Bolt spacing for the sill plate shall be no greater than per Table R404.1(2).

(d) 4. Floor shall be blocked perpendicular to the floor joists. Blocking shall be full depth within two joist spaces of the foundation wall, and be flat-blocked with minimum 2-inch by 4-inch (51mm by 102mm) blocking elsewhere.

(e) 5. Where foundation walls support unbalanced load on opposite sides of the building, such as a daylight basement, the building aspect ratio, L/W, shall not exceed the value specified in Table R404.1(3). For such foundation walls, the rim board shall be attached to the sill with a 20 gage metal angle clip at 24 inches (610 mm) on center, with five 8d nails per leg, or an approved connector supplying 230 pounds per linear foot (3.36 kN/m) capacity.

(2) R404.5 Retaining walls. Delete this section of the IRC and add the following: Retaining walls that are not laterally supported at the top and that retain in excess of 36 inches (915 mm) of unbalanced fill shall be designed to ensure stability against overturning, sliding, excessive foundation pressure and water uplift. Retaining walls shall be designed for a safety factor of 1.5 against lateral sliding and

overturning.
[14.7.3.12 NMAC - Rp, 14.7.3.12, NMAC,
1-1-08; A, 06-30-08]

End of Adopted Rules Section

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Other Material Related to Administrative Law

**NEW MEXICO HOISTING
OPERATORS LICENSURE
EXAMINING COUNCIL****NOTICE OF MEETING**

The New Mexico Hoisting Operators Licensure Examining Council will hold a regular meeting on Thursday, July 17, 2008 - 1:30 p.m. at the Construction Industries Division - 5200 Oakland Avenue NE - Albuquerque, New Mexico 87113.

The New Mexico Operators Licensure Examining Council will discuss and vote on items that need attention. If you have any items for discussion, please submit them to the Executive Director, Carmen Gomez at the above address no later than July 3, 2008. A copy of the Agenda will be available at her office prior to said meeting.

If you are an individual with a disability who wishes to attend the meeting, but need a reader, amplifier, qualified sign language interpreter, any form of auxiliary aid or service to participate please call Ms. Gomez at (505) 222-9809 at least two weeks prior to the meetings or as soon as possible.

**End of Other Related
Material Section**

SUBMITTAL DEADLINES AND PUBLICATION DATES

2008

Volume XIX	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 29
Issue Number 5	March 3	March 14
Issue Number 6	March 17	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 30
Issue Number 11	June 2	June 16
Issue Number 12	June 17	June 30
Issue Number 13	July 1	July 16
Issue Number 14	July 17	July 31
Issue Number 15	August 1	August 14
Issue Number 16	August 15	August 29
Issue Number 17	September 2	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 30
Issue Number 21	October 31	November 14
Issue Number 22	November 17	December 1
Issue Number 23	December 2	December 15
Issue Number 24	December 16	December 31

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