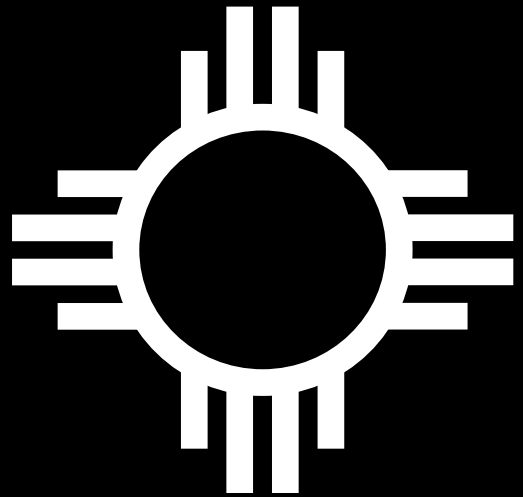


**NEW
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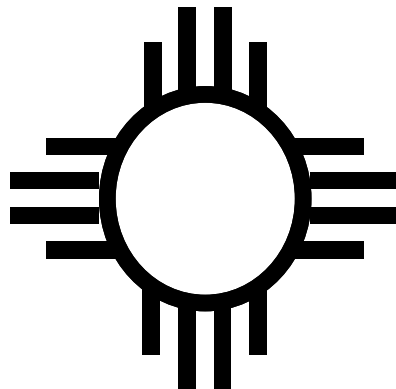


Volume XIX
Issue Number 16
August 29, 2008

New Mexico Register

Volume XIX, Issue Number 16

August 29, 2008



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

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2008

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New Mexico Register

Volume XIX, Number 16

August 29, 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 DEPARTMENT OF AGRICULTURE

NEW MEXICO DEPARTMENT OF
AGRICULTURE
NOTICE OF RULEMAKING HEARING

The New Mexico Department of Agriculture (NMDA) will hold a public hearing on September 22nd, 2008 from 1:00 p.m. to 5:00 p.m. at the New Mexico State University Albuquerque Center, 2444 Louisiana in the Compass Bank Building, across from the Coronado Mall. Attendees will need to park in the back. The purpose of the hearing is to consider a proposed new tax credit rule, as required by 7-2-18.20 NMSA 1978 and 7-2A-22 NMSA 1978, for agriculture and water conservation expenses.

The proponent of this regulatory adoption is NMDA.

NMDA is proposing a new rule to establish procedures and guidelines implementing and interpreting the provisions of the agricultural water conservation tax credit.

The proposed new regulation may be reviewed during regular business hours at NMDA, 3190 South Espina, Las Cruces, New Mexico 88003-8005. A full text of the new tax regulation is available on NMDA's web site, www.nmda.nmsu.edu, or by contacting Vicente Vargas (575) 646-5814 or vvargas@nmda.nmsu.edu.

Interested individuals may testify either at the public hearing or submit written comments regarding the proposed rulemaking to Vicente Vargas, MSC 3189 Box 30005, Las Cruces, New Mexico 88003-8005, vvargas@nmda.nmsu.edu, or telefax 575-646-8120. Written comments will be accepted through the close of business on September 22nd, 2008.

NOTICE TO PERSONS WITH DISABILITIES: If you have a disability and require special assistance to participate in this meeting, please contact the NMDA at least three (3) days prior to the meeting via mail MSC 3189 Box 30005, Las Cruces, New Mexico 88003-8005, by phone at (575) 646-5814, telefax 575-646-8120, email vvargas@nmda.nmsu.edu, or at NMDA's physical address 3190 South Espina, Las Cruces, New Mexico 88003-8005. Disabled persons who need documents such as agendas or minutes in accessible form

should contact the New Mexico Department of Agriculture.

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

FAMILY SERVICES DIVISION

CHILDREN, YOUTH AND FAMILIES DEPARTMENT NOTICE OF PUBLIC HEARING

The Children, Youth and Families Department, Family Services will hold a formal public hearing on **Tuesday September 30th 2008 9:00 a.m. to 11:00 am** in Apodaca Hall located in the PERA Building on the 2nd floor, 1120 Paseo de Peralta, Santa Fe, New Mexico. The Public Hearing is to receive public comments regarding proposed regulations 7.20.11 NMAC for Certification Requirements for Comprehensive Community Support Services (CCSS).

The proposed regulations may be obtained by contacting Olivia Ridgeway at 505-827-5889. Interested persons may testify at the hearing or submit written comments no later than 5:00 p.m. on **September 30th**. Written comments will be given the same consideration as oral testimony given at the hearing. Written comments should be addressed to: Olivia Ridgeway, Program Manager, Children, Youth and Families Department, Family Services, Licensing & Certification, 1920 Fifth Street, Santa Fe, New Mexico 87505, Fax Number: 505-827-4595

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 the Family Services, Licensing & Certification Unit at 505-827-5889. Family Services requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

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 September 17 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 repeal of regulations 8.14.11 NMAC, governing Contracted Facility: Camp Sierra Blanca.

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 September 3, 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 ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL
IMPROVEMENT BOARD
NOTICE OF PUBLIC HEARING TO
CONSIDER PROPOSED REVISION
OF HAZARDOUS WASTE MANAGE-
MENT REGULATIONS, 20.4.1 NMAC

The New Mexico Environmental Improvement Board (Board) will hold a public rule making hearing on October 6, 2008 at 10:00 a.m. at the New Mexico State Capitol Building, Room 317, at the corner of Don Gaspar and Paseo de Peralta, Santa Fe, New Mexico. The purpose of the hearing is to consider proposed revisions to Hazardous Waste Management Regulations, 20.4.1 NMAC. The New Mexico Environment Department is the proponent of the amendments to the regulations.

The amendments are for the purpose of updating the Hazardous Waste Management Regulations to bring them into conformity with federal regulations through July 1, 2008. The federal regulations must be adopted before the Environment Department can obtain required authorizations from the EPA for its Hazardous Waste Management Program. The current regulations adopt federal regulations through July 1, 2002. With the proposed amendments, the federal regulations would be adopted

through July 1, 2008. Following approval of these amendments, the Department intends to submit the revisions to the Environmental Protection Agency to obtain an updated federal authorization of its Hazardous Waste Program. The proposed amendments further include: language for major permit modifications consistent with the New Mexico Hazardous Waste Act; management of universal waste including labeling, breaking and crushing of waste lamps; management of aerosol cans; and used oil alternative labeling and storage. The proposed amendments would also omit language relating to standardized permitting and certain provisions of a burden reduction initiative.

The sections proposed to be amended include the following:

20.4.1.100 NMAC - Adoption of 40 CFR Part 260. The proposed amendments will adopt 40 CFR Part 260, through July 1, 2008.

20.4.1.101 NMAC - Modifications, Exceptions and Omissions. The proposed amendments will omit reference to 40 CFR Part 267.

20.4.1.200 NMAC - Adoption of 40 CFR Part 261. The proposed amendments will adopt 40 CFR Part 261, through July 1, 2008.

20.4.1.300 NMAC - Adoption of 40 CFR Part 262. The proposed amendments will adopt 40 CFR Part 262, through July 1, 2008.

20.4.1.400 NMAC - Adoption of 40 CFR Part 263. The proposed amendments will adopt 40 CFR Part 263, through July 1, 2008.

20.4.1.500 NMAC - Adoption of 40 CFR Part 264. The proposed amendments will adopt 40 CFR Part 264, through July 1, 2008.

20.4.1.501 NMAC - Modifications, Exceptions and Omissions. This section is proposed to be amended to be consistent with the format of the regulations regarding modifications, exceptions and omissions. The proposed amendment will adopt requirements for submission of Performance Track member facility Class 1 permit modification requests, semi-annual report submittals, New Mexico licensed Professional Engineer, and maintenance of the facility operating record until closure.

20.4.1.600 NMAC - Adoption of 40 CFR part 265. The proposed amendments will adopt 40 CFR Part 265, through July 1, 2008.

20.4.1.601 NMAC - Modifications, Exceptions and Omissions. This section is proposed to be amended to be consistent with the format of the regulations regarding modifications, exceptions and omissions. The proposed amendment will adopt

requirements for semi-annual report submittals, New Mexico licensed Professional Engineer, and maintenance of the facility operating record until closure.

20.4.1.700 NMAC - Adoption of 40 CFR Part 266. The proposed amendments will adopt 40 CFR Part 266, through July 1, 2008.

20.4.1.800 NMAC - Adoption of 40 CFR Part 268. The proposed amendments will adopt 40 CFR Part 268, through July 1, 2008.

20.4.1.801 NMAC - Modifications, Exceptions and Omissions. This section is proposed to be amended to be consistent with the format of the regulations regarding modifications, exceptions and omissions. The proposed amendments will adopt requirements for submittal of reports, New Mexico licensed Professional Engineer, and maintenance of the operating record until closure.

20.4.1.900 NMAC - Adoption of 40 CFR Part 270. The proposed amendments will adopt 40 CFR Part 270, through July 1, 2008.

20.4.1.901 NMAC - Permitting Procedures. The proposed amendments will adopt consistent language for major permit modification with the New Mexico Hazardous Waste Act, NMSA 1978, 74-4-4.2.

20.4.1.1000 NMAC - Adoption of 40 CFR Part 273. The proposed amendments will adopt 40 CFR Part 273, through July 1, 2008.

20.4.1.1001 NMAC - Modifications, Exceptions and Omissions. This section is proposed to be amended to be consistent with the format of regulations regarding modifications, exceptions and omissions. The proposed amendments will adopt requirements to address management of universal waste with regards to labeling, breaking and crushing lamps and aerosol cans.

20.4.1.1002 NMAC - Adoption of 40 CFR Part 279. The proposed amendments will adopt 40 CFR Part 279, through July 1, 2008.

20.4.1.1107 NMAC - Availability of Materials Incorporated By Reference. Amend the name.

The sections proposed to be added include the following:

20.4.1.301 NMAC - Modifications, Exceptions and Omissions. This section is proposed to be added to be consistent with the format of the regulations regarding modifications, exceptions and omissions. This proposed section will provide for the language from 20.4.1.300 NMAC.

20.4.1.701 NMAC - Modifications, Exceptions and Omissions. This section is proposed to be added to be consistent with

the format of the regulations regarding modifications, exceptions and omissions. The proposed adoption of these requirements will address maintenance of the operating record until closure.

20.4.1.702 NMAC - Omission of 40 CFR Part 267. The addition of this section would omit 40 CFR Part 267.

20.4.1.902 NMAC - Modifications, Exceptions and Omissions. This section is proposed to be added to be consistent with the format of the regulations regarding modifications, exceptions and omissions. The proposed adoption of these requirements will address requirements for New Mexico licensed Professional Engineer, and omit references to the requirements of standardized permits.

20.4.1.1003 NMAC - Modifications, Exceptions and Omissions. This section is proposed to be added to be consistent with the format of the regulations regarding modifications, exceptions and omissions. The section is proposed to address alternative used oil labeling for generators and used oil storage.

The proposed changes may be reviewed during regular business hours at the office of the Environmental Improvement Board, Harold Runnels Building, 1190 St. Francis Drive, Room N-2153 Santa Fe, NM, 87502. Copies of the proposed revisions may be obtained by contacting Joyce Medina at (505) 827-2425 or by email at: joyce.medina@state.nm.us or by visiting the Department's web site at www.nmenv.state.nm.us/hwb/stareg.html. Written comments regarding the proposed revisions may be addressed to Ms. Medina at the above address, and should reference docket number EIB 08-12 (R).

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures) Environmental Improvement Board, the Environmental Improvement Act, Section 74-1-9 NMSA 1978, the Hazardous Waste Act, Chapter 74, Article 4 NMSA 1978 and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

- identify the person for whom the witness(es) will testify;

- identify each technical witness that the person intends to present and state the qualifications of the witness, including a

description of their education and work background;

- summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;

- list and describe, or attach, each exhibit anticipated to be offered by that person at the hearing; and

- attach the text of any recommended modifications to the proposed changes.

Notices of intent for the hearing must be received in the Office of the Environmental Improvement Board not later than 5:00 pm on September 26, 2008, and should reference the name of the regulation, the date of the hearing, and docket number EIB 08-12(R). Notices of intent to present technical testimony should be submitted to:

Joyce Medina, Board Administrator
Office of the Environmental Improvement Board
Harold Runnels Building
1190 St. Francis Dr., Room N-2153
Santa Fe, NM 87502

Any member of the general public may present relevant non-technical testimony and exhibits at the hearing. No prior notification is required. Any person who wishes to submit a non-technical written statement for the record in lieu of oral testimony shall file such statement prior to the close of the hearing.

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact Judy Bentley by September 22, 2008. Ms. Bentley can be reached at the New Mexico Environment Department, Human Resources Bureau, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone number: (505) 827-9872. TDY users please access her number via the New Mexico Relay Network at 1-800-659-8331.

Please note formatting and minor technical changes in the proposed amendments may occur. In addition, the Board may make other amendments in response to comments submitted to the Board and evidence presented at the hearing.

The Board may make a decision on the proposed regulatory change at the conclusion of the hearing, or the Board may convene a meeting after the hearing to consider action on the proposal.

NEW MEXICO DEPARTMENT OF HEALTH

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on 7.27.2 NMAC "Licensing of Emergency Medical Services Personnel". The Hearing will be held on September 29, 2008 at 9:00 a.m. in the Harold Runnels Building Auditorium, located at 1190 St. Francis Drive, Santa Fe, New Mexico.

The public hearing will be conducted to provide the public an opportunity to comment on the Department of Health's changes made to 7.27.2 NMAC. The rule would modify licensing requirements for emergency medical technicians ("EMTs") in the state of New Mexico, and includes modifications to the Scopes of Practice for EMTs.

A copy of the proposed regulation can be obtained from:

Lauren Pena
1301 Siler Rd. Bldg. F
Santa Fe, NM 87507
(505) 476-8229

Please submit any written comments regarding the proposed regulation to:

Lauren Pena
1301 Siler Rd. Bldg. F
Santa Fe, NM 87507
(505) 476-8229

The Department will accept public comment through the close of the hearing.

If you are an individual with a disability who is in need of special services to attend or participate in the hearing, please contact Lauren Pena by telephone at (505) 476-8229. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

NOTICE OF PUBLIC HEARING

The Human Services Department will hold a public hearing to consider adopting revised rules in the Cash Assistance Program. The hearing will be held at 10:00 am on September 30, 2008. The hearing will be held at the Income Support Division conference room, 2009 S. Pacheco St., Santa Fe, NM. The conference room is

located in Room 120 on the lower level.

The U.S. Department of Health and Human Services implemented additional revisions to the regulations for the TANF Program based on the updated Deficit Reduction Act (DRA) of 2005.

The proposed regulations intend to clarify guidelines for several areas of the TANF program to include: work participation standards, supervision of approved of work activities, acceptable component criteria to satisfy attendance in a work activity, countable hours of participation and absences, and aligning Semi-annual Reporting criteria with the Food Stamp Program.

The proposed regulation is available on the Human Services Department website at <http://www.hsd.state.nm.us/isd/ISDRregisters.html>. Individuals wishing to testify or requesting a copy of the proposed regulation should contact the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, NM 87505-2348, or by calling 505-827-7250.

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. Please send comments to:

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

You may send comments electronically to: vida.tapia-sanchez@state.nm.us

NEW MEXICO OIL CONSERVATION COMMISSION

NOTICE OF RULE MAKING

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL
RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION
SANTA FE, NEW MEXICO

The State of New Mexico, through its Oil Conservation Commission, hereby gives notice that the Commission will conduct a public hearing on **September 12, 2008**, beginning at 9:00 a.m., in Porter Hall at 1220 South St. Francis Drive, Santa Fe, New Mexico, concerning the repeal, adoption and amendment of rules issued pursuant to the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38. If additional time is needed, the hearing may con-

tinue at a later date announced by the Commission.

The hearing concerns the following changes to Title 19, Chapter 15 of the New Mexico Administrative Code: repeal of Parts 1-15; adoption of new Parts 2-16, 18-26, 29, 30, 34, 35, 37 and 39 to replace the repealed Parts 1-15; the amendment of Parts 17 and 36. The changes restructure the existing rules; correct cross-references to conform to the new numbering system; correct the placement of definition sections; re-write the rules in the active voice; remove outdated transition language; adopt consistent use of terms; remove outdated references to the carbon black plant monthly report and the new well tax incentive; add definitions of "tribal lands," "tribal leases," "tribal minerals" and "deliverability pressure;" and amend rules on forms to reflect actual filing practices.

Copies of the text of the proposed new rules and amendments are available from acting commission clerk Theresa Duran-Saenz at (505) 476-3483 or from the Division's web site at <http://www.emnrd.state.nm.us/ocd> under "Announcements." If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Ms. Duran-Saenz at (505) 476-3483 or through the New Mexico Relay Network (1-800-659-1779) as soon as possible.

Written comments on the proposed amendments, pre-hearing statements and notices of recommended modifications must be received no later than 5:00 p.m. on Wednesday, September 3, 2008. Any person may present non-technical testimony or make an un-sworn statement at the hearing. Any person who intends to present technical testimony or cross-examine witnesses at the hearing shall, no later than 5:00 p.m. on Wednesday, September 3, 2008, file six sets of a pre-hearing statement with Ms. Duran-Saenz. The pre-hearing statement shall include the person's name and the name of the person's attorney; the names of all witnesses the person will call to testify at the hearing; a concise statement of each witnesses' testimony; all technical witnesses' qualifications including a description of the witnesses' education and experience; and the approximate time needed to present the testimony. The person shall attach to the pre-hearing statement any exhibits he or she plans to offer as evidence at the hearing. Any person recommending modifications to a proposed rule change shall, no later than Wednesday, September 3, 2008, file a notice of recommended modifications with Ms. Duran-Saenz including the text of the rec-

ommended modifications, an explanation of the modifications' impact, and the reasons for adopting the modifications. Written comments, pre-hearing statements and notices of recommended modifications may be hand-delivered or mailed to Ms. Duran-Saenz at 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, or may be faxed to Ms. Duran-Saenz at (505) 476-3462.

Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 13th day of August 2008.

**STATE OF NEW MEXICO
OIL CONSERVATION DIVISION
Mark E. Fesmire, P.E.
Director, Oil Conservation Division**

**NEW MEXICO PUBLIC
REGULATION
COMMISSION
INSURANCE DIVISION**

**BEFORE THE NEW MEXICO
SUPERINTENDENT OF INSURANCE**

**IN THE MATTER OF REPEALING
AND REPLACING
13.10.13 NMAC, MANAGED HEALTH
CARE RULE**

DOCKET NO. 08-00261-IN

**NOTICE OF PROPOSED RULEMAKING,
HEARING AND PROCEDURAL
ORDER**

NOTICE IS HEREBY GIVEN that the New Mexico Superintendent of Insurance ("Superintendent") pursuant to NMSA 1978, Section 59A-2-9, proposes to repeal and replace 13.10.13 NMAC, Managed Health Care Rule (MHCR). The Superintendent, being otherwise fully advised, **FINDS and CONCLUDES THAT:**

1. In April of 2007, the Superintendent appointed a task force, composed of a wide range of stakeholders and regulators, to provide guidance to him and the Insurance Division Staff ("Staff") regarding the current status of the MHCR, 13.10.13 NMAC, the Grievance Procedures Rule, 13.10.17 NMAC, and the regulation of various forms of health care plans offered by insurers and other state-regulated entities, including all insurers that utilize preferred provider arrangements in their health plans.

2. The task force has been meeting since that time on a regular basis, often on a

monthly basis, and provided invaluable input into the amended 13.10.17 NMAC, which became effective on February 1, 2008.

3. Interested members of the task force agreed to meet with Staff to provide further guidance and comments in the review of the MHCR, 13.10.13 NMAC. As a result of this review, Staff has recommended that the MHCR be repealed and replaced with four separate rules. Highlights of changes proposed to the current MHCR are summarized, below.

4. The first new rule, "Managed Health Care Benefits," will replace 13.10.13 NMAC, to include:

a. Statutory authority revised to reflect passage of the Patient Protection Act.

b. Definitions, including reference to 13.10.17 NMAC, to provide consistency between all rules regarding managed health care plans; consistent use of "practitioner" to replace, where applicable, the terms "physician," "professional," and "provider," to conform with current practice and terminology in related contexts;" and a definition of "traditional fee-for service indemnity benefit" to clarify that insurers utilizing preferred provider networks or organizations are generally subject to most sections of the managed health care rules.

c. Clarification of when and to whom insurers will provide a summary of benefits and explanation of benefits.

d. Extension, as applicable, of patient rights and responsibilities to all covered persons in managed health care plans.

e. Requirement that managed health care plans provide an approved example of disclosure of covered person's financial responsibility for out-of-network services.

f. Supplemental health care services, as in original 13.10.13 NMAC.

g. Updated prescription drug provisions to reference state law on use in cancer clinical trials.

h. Coordination of benefits, copayments, consumer assistance and penalties, as in original 13.10.13 NMAC, with the understanding that all managed health care plans will have a consumer assistance office and consumer advisory board.

5. A second rule, "HMO-Required Health Care Services & Provider Credentialing" replaces the current 13.10.13.9 NMAC and 13.10.13.13 NMAC with a rule that includes:

a. Under "Scope," an explanation that the rule applies only to HMOs, as certified and defined in New Mexico.

b. Definitions of "health care practitioner services," "primary care practi-

tioner” and “women’s health care practitioner.”

c. Basic health care services that must be covered in any HMO plan, including current mandated benefits; refers to statutes for details of those mandates.

d. Outpatient, inpatient or ER sections; essentially unchanged.

e. “Women’s health” organized to be more concise and clearly defined.

f. “Health promotion” language streamlined; continued conformance to national best practices, with references to the U.S. preventive services task force, the CDC Advisory Committee for Immunization Practice and state statutory law for details.

g. Provider credentialing intended to provide uniformity with other credentialing rules in the state; defines “credentialing” and “uniform credentialing forms” to be used by all HMOs.

6. A third rule, “Managed Health Care Plan Compliance,” includes:

a. Defines “health care facility,” “health care insurer,” “health care practitioner” or “practitioner,” “health care services” and “managed health care plan.”

b. Extends provider network adequacy provisions to all managed health care plans, recognizing that the use of a primary care practitioner referral system may be found under only some types of managed health care plans, and therefore those provisions would be required only where applicable; recognizing that PPO plans could substitute evidence that they have met NCQA standards at the 100% level for access.

c. Requires a care coordination approach between utilization management and disease management.

d. Continuous quality improvement to include a system for evaluating the coordinated care approach between utilization management, case management and disease management.

e. Cultural and linguistic diversity provisions extended to all managed health care plans.

f. “Contracts with providers” provisions are clarified and updated to conform to recent national litigation setting best practices standards; includes provision requiring the health care insurer to provide interpreters at no cost to the provider; clarifies that the provider need not consult with the plan’s medical director if no prior authorization is required for covered outpatient medical services.

g. Administrative costs and benefit disclosures; a new section to comply with NMSA 1978, §59A- 57-8, which requires the Superintendent to provide consumers with meaningful administrative

costs and benefit comparisons between health care plans.

7. The fourth rule, “Managed Health Care Plan Contracting,” includes:

a. Information to be provided to covered persons at the time of enrollment; relatively unchanged from earlier rule; clarifies that the MHCP must provide covered persons with information on how to access and obtain an evidence of coverage, which is then to be provided upon request; clarification of use of toll-free telephone numbers and web-based correspondence; would extend from 30 days to 60 days notice required for individual contracts when there was a change of premium, plan design or benefits; clarifying that these provisions are applicable to all managed health care plans.

b. Clarifies notice calendar regarding termination of coverage; termination grievances are addressed at 13.10.17.41 NMAC.

c. Medical records are defined; clarifies and reflects current law and practices; including confidentiality and destruction of records.

d. Nondiscrimination by health care insurers re-formatted and clarified; including genetic information.

e. Deceptive health care insurer, basically unchanged from former rule.

f. Advertising section revised to include solicitations, and clarification regarding the filing of a signed verification that written translations are true, accurate and complete, and accurately reflect the substance of the contract.

g. Continuation of coverage and conversion; relatively unchanged from former rule, with a clarification that some provisions only apply if the plan offers maternity coverage.

COPIES OF PROPOSED RULEMAKING ARE AVAILABLE:

a. by downloading from the Public Regulation Commission’s website, www.nmprc.state.nm.us, then clicking on “Proposed Rules,” “Insurance,” Docket No. 08-00261-IN , “IN THE MATTER OF REPEALING AND REPLACING 13.10.13 NMAC, MANAGED HEALTH CARE RULE;”

b. by sending a written request with the docket number, rule names, and rule numbers to the Public Regulation Commission’s Docketing Office, P.O. Box 1269, Santa Fe, NM 87504-1269 along with a self-addressed envelope and a check for \$9.25 made payable to the Public Regulation Commission to cover the cost of copying; or

c. for inspection and copying during regular business hours in the Public Regulation Commission’s Docketing

Office, Room 406, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, NM.

COMMENTS ON RULEMAKING: The Superintendent requests written and oral comments from all interested persons and entities on the proposed rulemaking. All relevant and timely comments, including data, views, or arguments, will be considered by the Superintendent. In reaching his decision, the Superintendent may take into account information and ideas not contained in the comments, providing that such information or a writing containing the nature and source of such information is placed in the docket file, and provided that the fact of the Superintendent’s reliance on such information is noted in the order the Superintendent ultimately issues.

IT IS THEREFORE ORDERED that this Notice of Hearing on Proposed Rulemaking and Procedural Order be issued.

IT IS FURTHER ORDERED that an **informal public hearing** pursuant to Section 59A-4-18 NMSA 1978 be held on Wednesday, September 17, 2008 at 9:30 a.m. in the Public Regulation Commission, Fourth Floor Hearing Room, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico for the purpose of receiving oral public comments including data, views, or arguments on the proposed rulemaking. All interested persons wishing to present oral comments may do so at the hearing. Interested persons should contact the Insurance Division ahead of time to confirm the hearing date, time and place since hearings are occasionally rescheduled.

IT IS FURTHER ORDERED that all interested parties may file **written comments** on the proposed rulemaking on or before September 9, 2008. An original and (2) two copies of written comments and suggested changes concerning the repeal and replacement of the Managed Health Care Rule must be mailed or delivered to: NM Public Regulation Commission - Docketing Division, ATTN: Mariano Romero, RE: Proposed Repeal and Replacement of Rule in Docket No. 08-00261-IN, Public Regulation Commission’s Docketing Office, Room 406, PO Box 1269, Santa Fe, NM 87504-1269. Telephone (505) 827-4368. If possible, please also e-mail a copy of written comments as an attachment in Microsoft Word format to Melinda.Silver@state.nm.us, or call her at 505-827-6904 to notify her that comments were submitted to the Docketing Office. Comments will be available for public inspection during regular business hours

in the Docketing Office, Room 406, P.E.R.A. Building, 1120 Paseo de Peralta, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, NM.

IT IS FURTHER ORDERED that the Superintendent may require the submission of additional information, make further inquiries, and modify the dates and procedures if necessary to provide for a fuller record and a more efficient proceeding.

IT IS FURTHER ORDERED that Insurance Division Staff shall cause a copy of this Notice to be published once in the New Mexico Register and once in the Albuquerque Journal.

PLEASE BE ADVISED THAT the New Mexico Lobbyist Regulation Act, Section 2-11-1 et seq., NMSA 1978 regulates lobbying activities before state agencies, officers, boards and commissions in rulemaking and other policy-making proceedings. A person is a lobbyist and must register with the Secretary of State if the person is paid or employed to do lobbying or the person represents an interest group and attempts to influence a state agency, officer, board or commission while it is engaged in any formal process to adopt a rule, regulation, standard or policy of general application. An individual who appears for himself or herself is not a lobbyist and does not need to register. The law provides penalties for violations of its provisions. For more information and registration forms, contact the Secretary of State's Office, State Capitol Building, Room 420, Santa Fe, NM 87503, (505) 827-3600.

PLEASE BE ADVISED THAT individuals with a disability, who are in need of a reader, amplifier, qualified sign language interpreter or any other form of auxiliary aid or service to attend or participate in the hearing, may contact the Docketing Office at (505) 827-4368. Public documents associated with the hearing can be provided in various accessible forms for disabled individuals. Requests for summaries or other types of accessible forms should be addressed to Mr. Romero.

DONE, this 8 day of August, 2008.

**NEW MEXICO PUBLIC REGULATION COMMISSION
INSURANCE DIVISION**

MORRIS J. CHAVEZ, Superintendent of Insurance

NEW MEXICO REAL ESTATE APPRAISERS BOARD

Rule Hearing and Regular Board meeting

The New Mexico Real Estate Appraisers Board will hold a Rule Hearing on September 29, 2008 and will convene at 9:00 am. Following the Rule Hearing the New Mexico Real Estate Appraisers Board will convene a regular board meeting to adopt the rules and take care of regular business. The meeting will be held at the Regulations and Licensing Department, 2550 Cerrillos Rd., 2nd Floor Rio Grand Room Santa Fe, NM.

If you would like a copy of the proposed change you may access the website at www.rld.state.nm.us after September 2, 2008 to get a draft copy. In order for Board members to review the comments in their meeting packets prior to the meeting, public comments must be received in writing no later than September 5, 2008. Persons wishing to present their comments at the hearing will need to bring (10) copies of any comments or proposed changes for distribution to the Board staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4639 at least two weeks prior to the meeting or as soon as possible.

NEW MEXICO RESPIRATORY CARE ADVISORY BOARD

NEW MEXICO RESPIRATORY CARE ADVISORY BOARD

PUBLIC RULE HEARING AND REGULAR BOARD MEETING NOTICE

Notice is hereby given that the New Mexico Respiratory Care Advisory Board will convene a public rule hearing at 1:00 p.m. on Friday, October 10, 2008. The hearing will be held at the Toney Anaya Bldg., 2nd Floor located at 2550 Cerrillos Road in Santa Fe, New Mexico.

The purpose of the rule hearing is to consider for adoption proposed amendments to the following Board Regulations in 16.23 NMAC:

PART 1 "General Provisions"
PART 2 "Fees"
PART 3 "Qualifications for Practitioner License"
PART 4 "Application Procedures for Practitioner License"
PART 6 "Temporary Permit"
PART 7 "Temporary Permit Renewal"
PART 8 "Renewal and Expiration of Practitioner License"
PART 9 "Inactive Status For Practitioner License"
PART 11 "License Reactivation; License Lapse"
PART 12 "Continuing Education"

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at 2550 Cerrillos Road, Santa Fe, New Mexico 87505; or call (505) 476-4604 or 476-4654; or access them in the "News" link on the Board's Website at www.rld.state.nm.us/b&c/rcb. All written comments, mailed to the Board office or e-mailed to RespiratoryCareBd@state.nm.us or must be submitted no later than Monday, September 30, 2008, in order for the Board members to receive the comments in their packets for review before the rule hearing. Persons wishing to present their comments at the hearing will need eight (8) copies of any comments or proposed changes for distribution to the Board and staff at the hearing.

A regular business meeting will follow the rule hearing during which action will be taken on the proposed rules. During the regular meeting, the Board may enter into Executive Session to discuss licensing matters.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4604 at least two weeks prior to the meeting or as soon as possible.

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 adopt the following regulations:

**Alternative Energy Product
Manufacturers Tax Credit Act**

Sections 7-9J-1 through 8 NMSA 1978

3.13.7.7 NMAC

(Definitions: "Subject to Depreciation" Defined)

3.13.7.8 NMAC

(Industrial Revenue Bonds)

3.13.7.9 NMAC

(Items Not "Manufacturing Equipment")

3.13.7.10 NMAC

(Items Which May Be Included as "Manufacturing Equipment")

3.13.7.11 NMAC

(Value of Qualified "Manufacturing Equipment")

3.13.7.12 NMAC

(Application of the Credit)

3.13.7.13 NMAC

(Carry Forward of Unused Credits)

3.13.7.14 NMAC

(Using the Credit)

3.13.7.15 NMAC

(Equivalent of One Full-Time Employee)

3.13.7.16 NMAC

(Reporting Number of Employees - Estimates)

Other Tax Credits Act Section 7-9G-2 NMSA 1978

3.13.8.8 NMAC

(Value of Eligible Generation Plant Costs)

3.13.8.9 NMAC

(Eligible Generation Plant Cost Must Be "Subject to Depreciation")

3.13.8.10 NMAC

(Application of the Credit)

3.13.8.11 NMAC

(Carry Forward of Unused Credits)

3.13.8.12 NMAC

(Using the Credit)

3.13.8.13 NMAC

(Limitation on Other Credits)

These proposals were placed on file in the Office of the Secretary on August 15, 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 November 14, 2008.

A public hearing will be held on the proposals on Wednesday, October 15, 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 October

15, 2008.

TITLE 3: TAXATION
CHAPTER 13: BUSINESS TAX CREDITS
PART 7: ALTERNATIVE ENERGY PRODUCT MANUFACTURERS TAX CREDIT

3.13.7.1 **ISSUING AGENCY:** Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630

[3.13.7.1 NMAC - N, XXX]

3.13.7.2 **SCOPE:** This part applies to all persons carrying on a manufacturing operation in New Mexico that produce alternative energy products and who may be eligible to obtain the alternative energy product manufacturers tax credit.

[3.13.7.2 NMAC - N, XXX]

3.13.7.3 **STATUTORY AUTHORITY:** Section 7-9J-1 through 8 and 9-11-6.2 NMSA 1978.

[3.13.7.3 NMAC - N, XXX]

3.13.7.4 **DURATION:** Permanent.

[3.13.7.4 NMAC - N, XXX]

3.13.7.5 **EFFECTIVE DATE:** XXX, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.13.7.5 NMAC - N, XXX]

3.13.7.6 **OBJECTIVE:** The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Alternative Energy Product Manufacturers Tax Credit Act.

[3.13.7.6 NMAC - N, XXX]

3.13.7.7 **DEFINITIONS:**

"SUBJECT TO DEPRECIATION" DEFINED: For purposes of Section 7-9J-2 NMSA 1978 "subject to depreciation" means the taxpayer's federal income tax return must include a depreciation expense with respect to the qualified expenditure for manufacturing equipment for which an alternative energy product manufacturer's tax credit is sought or claimed. Equipment depreciated under the accelerated cost recovery system, Internal Revenue Code Section 168, and property for which the taxpayer makes an election under Internal Revenue Code Section 179 is "subject to depreciation".

[3.13.7.7 NMAC - N, XXX]

3.13.7.8 **INDUSTRIAL REVENUE BONDS:** Expenditure made on

manufacturing equipment that is owned by a municipality or county in connection with an industrial revenue bond project is not "qualified equipment" for the purpose of the Alternative Energy Product Manufacturers Tax Credit Act.

[3.13.7.8 NMAC - N, XXX]

3.13.7.9 **ITEMS NOT "MANUFACTURING EQUIPMENT":**

Tangible personal property which is not a machine, mechanism or tool, or a component or fitting thereof, is not "manufacturing equipment" for the purpose of the Alternative Energy Product Manufacturers Tax Credit Act. Accordingly such items as furniture, shelving and supplies are not "manufacturing equipment". Equipment that is neither essential to nor used in conjunction with the manufacturing plant will not qualify for the alternative energy product manufacturers tax credit, even if that equipment is physically located in the plant. Nonqualifying equipment may include, but is not limited to: coffee makers, kitchen equipment used in an employee cafeteria and televisions or radios used in an employee lounge or in a reception area.

[3.13.7.9 NMAC - N, XXX]

3.13.7.10 **ITEMS WHICH MAY BE INCLUDED AS "MANUFACTURING EQUIPMENT":** The term "manufacturing operation" is defined as a plant where personnel perform production tasks "in conjunction with equipment not previously existing at the site" to produce alternative energy products.

"Manufacturing equipment" must be exclusively and directly employed in the manufacturing process and must be physically located in the plant and used in conjunction with the production of alternative energy products. Therefore, equipment used in conjunction with the production of alternative energy products may include, but is not limited to, such items as manufacturing process equipment, lights, boilers, air conditioners, smoke detectors and other equipment essential to maintaining the proper climate for the manufacturing process, packaging equipment used to put the manufactured product in marketable form, warehousing equipment and computers used to control the manufacturing process or to inventory and schedule the shipping of manufactured products.

[3.13.7.10 NMAC - N, XXX]

3.13.7.11 **VALUE OF QUALIFIED "MANUFACTURING EQUIPMENT":**

The value of qualified manufacturing equipment shall be the adjusted basis established for the equipment under the applicable provisions of the Internal Revenue Code of 1986.

[3.13.7.11 NMAC - N, XXX]

3.13.7.12 APPLICATION OF THE CREDIT:

A. The credit allowed by Section 7-9J-4 NMSA 1978 may not be applied against any local option gross receipts tax imposed by a county or municipality.

B. The credit may not be applied to a report period prior to the report period that includes the first day on which eligible generation plant costs were incurred and included on the application for which the credit was approved by the department.

[3.13.7.12 NMAC - N, XXX]

3.13.7.13 CARRY FORWARD OF UNUSED CREDITS:

Unused alternative energy product manufacturers tax credit may be carried forward for five years from the end of the calendar year in which the credit was first approved by the department.

[3.13.7.13 NMAC - N, XXX]

3.13.7.14 USING THE CREDIT

A. Any amount of alternative energy product manufacturers tax credit claimed and approved may be applied by the claimant only against the modified combined tax liability owed by the claimant. The credit amount may not be transferred to any other person, including an affiliate.

B. Examples:

(1) Corporation T sets up a manufacturing operation in New Mexico. T subsequently qualifies for \$50,000 in alternative energy product manufacturer's tax credit. After applying \$13,000 to its own modified combined tax liabilities, T creates a subsidiary corporation, S, to own and operate all of T's New Mexico business, including the manufacturing operation. T may not transfer the \$37,000 remaining authorized alternative energy product manufacturer's tax credit to S nor may S apply any of the remaining tax credit to S's modified combined tax liability. T, to the extent T still has modified combined tax obligations, may apply the \$37,000 balance against those obligations.

(2) When two or more corporations merge, the resultant corporation is a continuation of any predecessor corporation. When a business organization changes its form, as for example from a sole proprietorship to a corporation or from a corporation to a limited liability company, so that the resultant entity is a successor in business to the predecessor, the resultant entity shall be deemed a continuation of the predecessor for alternative energy product manufacturers tax credit purposes. In both cases, since there is no transfer, the resultant entity may claim any amount of approved but

unclaimed alternative energy product manufacturers tax credit held by a predecessor.

[3.13.7.14 NMAC - N, XXX]

3.13.7.15 EQUIVALENT OF ONE FULL-TIME EMPLOYEE:

To calculate the number of full-time-equivalent employees, add the average weekly hours worked or expected to be worked by all employees whose regular weekly work hours are or are expected to be less than 40 hours. Divide the total by 40 and round down to the nearest whole number. The rounded number plus the number of employees who work or are expected to work an average of 40 or more hours per week is the number of full-time equivalent employees.

[3.13.7.15 NMAC - N, XXX]

3.13.7.16 REPORTING NUMBER OF EMPLOYEES - ESTIMATES:

To meet the employment requirement, the credit claimant must report the number of full-time-equivalent employees employed on the day the credit is applied for. This number is to be compared with the number of full-time-equivalent employees on the same day in the prior year. Because complete employee data may not be available for the day on which the credit is applied for, a credit claimant may estimate the number of full-time-equivalent employees employed on the day the credit is applied for, provided that the claimant must provide the actual number of full-time-equivalent employees within forty-five days from the end of the calendar quarter in which the claim is applied for. The fact that an estimate is used in the claim must be clearly indicated. The department may withhold approval of the claim until the correct number is provided and will deny the claim if the correct number is not provided.

[3.13.7.16 NMAC - N, XXX]

HISTORY OF 3.13.7 NMAC: [RESERVED]

**TITLE 3: TAXATION
CHAPTER 13: BUSINESS TAX CREDITS
PART 8: OTHER TAX CREDITS**

3.13.8.1 ISSUING AGENCY:

Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630

[3.13.8.1 NMAC - N, XXX]

3.13.8.2 SCOPE: This part applies to all persons who own an interest in a qualified generating facility in New Mexico who may be eligible to obtain the advanced energy tax credit.

[3.13.8.2 NMAC - N, XXX]

3.13.8.3 STATUTORY AUTHORITY: Sections 7-9G-2 and 9-11-6.2 NMSA 1978.

[3.13.8.3 NMAC - N, XXX]

3.13.8.4 DURATION: Permanent.

[3.13.8.4 NMAC - N, XXX]

3.13.8.5 EFFECTIVE DATE: XXX, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.13.8.5 NMAC - N, XXX]

3.13.8.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Advanced Energy Tax Credit, per the Other Tax Credits Act.

[3.13.8.6 NMAC - N, XXX]

3.13.8.7 DEFINITIONS: Reserved.

[3.13.8.7 NMAC - N, XXX]

3.13.8.8 VALUE OF ELIGIBLE GENERATION PLANT COSTS:

The value of eligible generation plant costs pursuant to Section 7-9G-2 NMSA 1978 shall be the adjusted basis established for the qualified generating facility under the applicable provisions of the Internal Revenue Code of 1986.

[3.13.8.8 NMAC - N, XXX]

3.13.8.9 ELIGIBLE GENERATION PLANT COST MUST BE "SUBJECT TO DEPRECIATION":

For purposes of Section 7-9G-2 NMSA 1978 eligible generation plant costs must be subject to depreciation. "Subject to depreciation" means the taxpayer's federal income tax return must include a depreciation expense with respect to the eligible generation plant costs for which an advanced energy tax credit is sought or claimed. Equipment depreciated under the accelerated cost recovery system, Internal Revenue Code Section 168, and property for which the taxpayer makes an election under Internal Revenue Code Section 179 is "subject to depreciation".

[3.13.8.9 NMAC - N, XXX]

3.13.8.10 APPLICATION OF THE CREDIT:

A. The credit allowed by Section 7-9G-2 NMSA 1978 may not be applied against any local option gross receipts tax imposed by a county or municipality.

B. The credit may not be applied to a report period prior to the report period that includes the first day on which

eligible generation plant costs were incurred and included on the application for which the credit was approved by the department.

[3.13.8.10 NMAC - N, XXX]

3.13.8.11 CARRY FORWARD OF UNUSED CREDITS: Unused advanced energy tax credit allowed by Section 7-9G-2 NMSA 1978 may be carried forward for five years from the end of the calendar year in which the credit was approved by the department.

[3.13.8.11 NMAC - N, XXX]

3.13.8.12 USING THE CREDIT

A. Any amount of advanced energy tax credit claimed and approved may be applied by the claimant only against the gross receipts, compensating and withholding taxes owed by the claimant. The credit amount may not be transferred to any other person, including an affiliate.

B. Examples:

(1) Corporation T sets up a qualified generating facility in New Mexico. T subsequently qualifies for \$50,000 in advanced energy tax credit. After applying \$13,000 to its own gross receipts, compensating and withholding tax liabilities, T creates a subsidiary corporation, S, to own and operate all of T's New Mexico business, including the qualified generating facility. T may not transfer the \$37,000 remaining authorized advanced energy tax credit to S nor may S apply any of the remaining tax credit to S's gross receipts, compensating and withholding tax liability. T, to the extent T still has gross receipts, compensating and withholding tax obligations, may apply the \$37,000 balance against those obligations.

(2) When two or more corporations merge, the resultant corporation is a continuation of any predecessor corporation. When a business organization changes its form, as for example from a sole proprietorship to a corporation or from a corporation to a limited liability company, so that the resultant entity is a successor in business to the predecessor, the resultant entity shall be deemed a continuation of the predecessor for advanced energy tax credit purposes. In both cases, since there is no transfer, the resultant entity may claim any amount of approved but unclaimed advanced energy tax credit held by a predecessor.

[3.13.8.12 NMAC - N, XXX]

3.13.8.13 LIMITATION ON OTHER CREDITS: Expenditures for which a taxpayer claims the advanced energy tax credit pursuant to Section 7-9G-2 NMSA 1978 may not be used to qualify for or claim any other credit that may be applied against gross receipts tax, compensating tax or withholding tax.

[3.13.8.13 NMAC - N, XXX]

HISTORY OF 3.13.8 NMAC:
[RESERVED]

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 amend the following regulations:

Gross Receipts and Compensating Tax Act

3.2.20.14 NMAC Section 7-9-3.2 NMSA 1978

(Receipts from Granting Licenses to Use Real Property)

Motor Vehicle Code

18.19.5.117 NMAC Section 66-5-70 NMSA 1978

(Commercial Driver's License - Reciprocity)

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

Motor Vehicle Code

18.19.5.118 NMAC Section 66-5-8 NMSA 1978

(Instruction Permit - Purpose - Criteria)

These proposals were placed on file in the Office of the Secretary on August 15, 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 November 14, 2008.

A public hearing will be held on the proposals on Wednesday, October 22, 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 October 22, 2008.

3.2.20.14 RECEIPTS FROM GRANTING LICENSES TO USE REAL PROPERTY:

A. Receipts of any agency, institution, instrumentality or political subdivision of the state of New Mexico from granting licenses to use real property, other than admissions or the grantings of permission to participate in a recreational, athletic or entertainment activity, or to park vehicles, tie-down spaces or dock boats, are not receipts from a taxable activity. Such revenues are not governmental gross receipts.

B. Example 1: City X operates a parking garage open to the general public. It sells permits for use of designated parking spaces for an entire month. It also charges a fee for use of any undesignated spaces on a hourly basis. The revenues from the monthly permits and the hourly use charges are ~~not~~ governmental gross receipts.

C. Example 2: The commissioner of public lands receives fees from granting ranchers the right to graze livestock on public lands. These fees are not governmental gross receipts.

D. Example 3: University A rents its auditorium to a private group for a rock concert. The rental agreement calls for payment to A of a flat fee plus a percentage of the gate. A's receipts are receipts from the granting of a license to use real property and are not governmental gross receipts. If, in addition to the basic terms of the rental arrangement, A also agreed to furnish security, janitorial services and ticket selling services for additional fees, A's receipts from performing such services are not governmental gross receipts because these services are not refuse collection, refuse disposal, sewage or recreational, entertainment or athletic services.

[6/28/91, 10/2/92, 11/15/96; 3.2.20.14 NMAC - Rn, 3 NMAC 2.100.14, 4/30/01; A, XXX]

18.19.5.117 COMMERCIAL DRIVER'S LICENSE - RECIPROCITY

A. **COMMERCIAL DRIVER'S LICENSE - RECIPROCITY WITH CANADA:** Pursuant to agreements entered into by the United States, reciprocity is also extended to any person who holds a commercial driver's license issued by the national government of Canada or any of the provinces of Canada if the license is not suspended, revoked or canceled and if the person is not disqualified from driving a commercial motor vehicle or subject to an out-of-service order.

B. COMMERCIAL DRIVER'S LICENSE - MEXICAN DRI-

VER'S LICENSES: A Mexican national issued a licencia federal de conductor by the secretariat of communication and transport of the United Mexican States may operate a commercial vehicle in New Mexico ~~if the commercial vehicle is registered in Mexico~~.

[2/28/90, 8/20/93, 10/31/96; 18.19.5.117 NMAC - Rn, 18 NMAC 19.5.18.1 and 18 NMAC 19.5.18.2, 9/14/00; A, XXX]

18.19.5.118 INSTRUCTION PERMIT - PURPOSE - CRITERIA:

A. For purposes of 18.19.5.118 NMAC:

(1) "alternative test" means a test administered in a non-public school or by a home school operator to measure a student's proficiency in reading and math in the eighth grade; or it means an academic proficiency test administered at a public school to measure a minor student's proficiency in reading and math in the eighth grade;

(2) "IDEA" means the Individuals with Disabilities Education Improvement Act of 2004 [20 U.S. Code Sec. 1400 et seq.], which is a comprehensive federal law that addresses specially designed instruction, at no cost to the parent, to meet the unique needs of a child with disabilities;

(3) "IEP" means an individualized education program, which is a written statement designed to meet the unique educational needs of a child with a disability that is developed, reviewed, and revised in accordance with 34 CFR Sections 300.320 through 300.324;

(4) "minor" means a person under the age of eighteen (18) years, but at least fifteen (15) years old;

(5) "nearing an academic proficiency score in reading and math in the eighth grade" means attaining a minimum score in reading and math during a student's eighth grade as established by the laws, rules or procedures of the PED on the New Mexico standards based assessment;

(6) "New Mexico standards based assessment" means a system for testing students in various grades for their proficiency in the subject areas of mathematics, reading and language arts, writing, science and social studies. Pursuant to the Assessment and Accountability Act [22-2C-1 to 22-2C-11 NMSA 1978] and procedures of the PED, assessments on various subject areas that include science, mathematics and reading are administered annually to students in different grades;

(7) "ninety percent school attendance" means one of several indicators used pursuant to the Assessment and Accountability Act [22-2C-1 to 22-2C-11 NMSA 1978] and procedures of the PED to measure public school improvement, but would not include excused absences;

(8) "PED" means the public education department;

(9) "Section 504" means Section 504 of the Rehabilitation Act of 1973 [29 U.S. Code Section 794] and its implementing regulations, which provide that "no otherwise qualified individual with a disability shall, solely by reason of her or his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance; and

(10) "Section 504 plan" means the accommodation plan required if the individual has a mental or physical impairment that substantially limits one or more of the person's major life activities, including learning, but is not already receiving special education services under the eligibility requirements of the IDEA.

B. The director may issue an instruction permit to a minor under the provisions of Subsection D of Section 66-5-8 NMSA 1978. In order to motivate minors to attend school and succeed in their studies, beginning with applications submitted to the director on or after September 1, 2011, a minor applying for an instruction permit shall provide evidence of ninety percent school attendance during their ninth grade year and at least nearing an academic proficiency score in reading and math in the eighth grade on the New Mexico standards based assessment or on an alternative test.

C. A minor applying for an instruction permit must provide the following:

(1) satisfactory proof of identity number, identity and residency as set forth in 18.19.5.12 NMAC;

(2) proof of attendance in or completion of a driver education course that includes a DWI prevention and education program approved by the bureau or offered by a public school;

(3) a school compliance verification form approved by the director that shall include parental consent for the release of any educational information to the director; the school compliance verification form shall be certified by a school official and signed by a parent to indicate consent to release the minor's student information to the director; the form shall include proof that the applicant has:

(a) ninety percent school attendance, not including excused absences, during the ninth grade year or portion of the ninth grade year prior to applying for the instructional permit; and

(b) demonstrated at least nearing an academic proficiency score in reading and math in the eighth grade on the New Mexico standards based assessment or on an alternative test.

D. The school compliance verification form shall permit children with

disabilities as described in the IDEA and in federal and state regulations and children for whom Section 504 plans are in place to obtain certifications that consider the effect if any of their disabilities in meeting ninety percent school attendance during the ninth grade year or portion of the ninth grade year or demonstrating at least nearing an academic proficiency score in reading and math in the eighth grade. Any such certification must be based on a written IEP or Section 504 team recommendation contained in the IEP or Section 504 plan of a child with a disability. In making the recommendation to the person or official who enters the certification on the school compliance verification form where a child with a disability fails to satisfy the attendance or proficiency requirements discussed in this rule, the IEP or Section 504 team shall, pursuant to rules and procedures of the PED, consider whether a child's disability affected their ability to satisfy either or both the attendance or proficiency requirements.

E. In lieu of a school compliance verification form, an applicant may provide:

(1) proof of graduation from a high school; or

(2) proof of having received a general educational development certificate.

F. A minor enrolled in private school or in a home school shall submit satisfactory proof of identity number, identity and residency as set forth in 18.19.5.12 NMAC, proof of attendance, and proof of ninety percent school attendance and at least nearing an academic proficiency score in reading and math in the eighth grade New Mexico standards based assessment or on an alternative test, as established by the laws, rules or procedures of the PED. This evidence shall be submitted on a form approved by the director that shall include parental consent for the release of any educational information to the director.

G. Failure to demonstrate ninety percent school attendance will result in the minor being ineligible to be issued an instruction permit until six months from the date of application, unless an administrator of a non-public school or operator of a home school certify to their non-maintenance of attendance records.

H. Failure to demonstrate nearing an academic proficiency score in reading and math in the eighth grade New Mexico standards based assessment or on an alternative test will result in the minor being ineligible to be issued an instruction permit until six months from the date of application.

I. Failure to demonstrate both ninety percent school attendance and nearing an academic proficiency score in reading and math in the eighth grade New

Mexico standards based assessment or on an alternative test will result in the minor being ineligible to be issued an instruction permit until one year from the date of application, unless an administrator of a non-public school or operator of a home school certify to their non-maintenance of attendance records.

[18.19.5.118 NMAC - N, XXX]

**End of Notices and
Proposed Rules Section**

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Adopted Rules

ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

This is an amendment to 20.11.46 NMAC, Sections 2, 3, 5, 7, 8, 9, 10, 11, 12, 14, 15, 16, 18, 19, 20, 21 and 24. These regulatory changes were made in response to EPA's promulgation of amendments to the regional haze rule, effective 9/15/08.

20.11.46.2 SCOPE:

A. ~~[This part]~~ 20.11.46 NMAC is applicable to all geographic areas within Bernalillo county, New Mexico and within the jurisdiction of the Albuquerque-Bernalillo county air quality control board.

B. **Exempt:** ~~[This part]~~ 20.11.46 NMAC does not apply to sources within Bernalillo county that are located on Indian lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction.

[20.11.46.2 NMAC - N, 12/31/03; A, 9/15/08]

20.11.46.3 STATUTORY AUTHORITY:

~~[This part]~~ 20.11.46 NMAC is adopted pursuant to the authority provided in the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5; the Joint Air Quality Control Board Ordinance; Bernalillo County Ordinance No. 94-5, Sections 4 and 5; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Sections 9-5-1-3 and 9-5-1-4.

[20.11.46.3 NMAC - N, 12/31/03; A, 9/15/08]

20.11.46.5 EFFECTIVE DATE:

December 31, 2003, except where a later date is cited at the end of a section, or as provided in 20.11.46.10 NMAC. However, if the EPA disapproves the *Section 309 Regional Haze State Implementation Plan Element: Albuquerque-Bernalillo County, New Mexico* ~~[this entire Part]~~ 20.11.46 NMAC will no longer be effective on the date of official notification by the EPA to the Governor of New Mexico that the *Section 309 Regional Haze State Implementation Plan Element: Albuquerque-Bernalillo County, New Mexico* has been disapproved.

[20.11.46.5 NMAC - N, 12/31/03; A, 9/15/08]

20.11.46.7 DEFINITIONS:

In addition to the definitions in 20.11.46.7 NMAC, the definitions in 20.11.1 NMAC apply unless there is a conflict between def-

initions, in which case the definition in ~~[this part]~~ 20.11.46 NMAC shall govern.

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

B. "Account representative" means the individual who is authorized through an account certificate of representation to represent owners and operators of the WEB source with regard to matters under the WEB trading program or, for a general account, who is authorized through an account certificate of representation to represent the persons having an ownership interest in allowances in the general account with regard to matters concerning the general account.

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

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

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

F. "Allocate" means to assign allowances to a WEB source through Section ~~[F(1) of Chapter VI of the SO₂ milestones and backstop trading program]~~ C1 of the implementation plan element.

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

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

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

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

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

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

M. "Compliance certification" means a submission to the department by the account representative as required under Subsection B of 20.11.46.19 NMAC to report a WEB source's compliance or noncompliance with 20.11.46 NMAC.

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

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

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

Q. "Emission unit" or "unit" means any part of a stationary source that emits or would have the potential to emit any pollutant regulated pursuant to the Clean Air Act.

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

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

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

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

V. "New source set-aside" means a pool of allowances that are

available for allocation to new sources in accordance with the provisions of Section ~~[F(3) of Chapter VI of the SO₂ milestones and backstop trading program]~~ C1.3 of the implementation plan element.

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

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

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

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

AA. "Program trigger date" means the date that the department determines that the WEB trading program has been triggered in accordance with the provisions of Section ~~[D of Chapter VI of the SO₂ milestones and backstop trading program]~~ A2 of the implementation plan element.

BB. "Program trigger years" means the years shown in Table 3, column 3, ~~[of the SO₂ milestones and backstop trading program]~~ under Part C of the implementation plan element for the applicable milestone if the WEB trading program is triggered as described in [Chapter V(D) of the SO₂ milestones and backstop trading program] Section A of the implementation plan element.

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

DD. "Retired source"

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

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

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

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

HH. "Special reserve compliance account" means an account established in the allowance tracking system under Subsection A of 20.11.46.15 NMAC for the purpose of recording allowances that a WEB source might hold to demonstrate compliance with its allowance limitation for emission units that are monitored for SO₂ in accordance with Subsection B of 20.11.46.16 NMAC.

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

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

~~**JJ.] KK. "Ton"**~~ means 2000 pounds and, for any control period, any fraction of a ton equaling 1000 pounds or more shall be treated as one ton and any fraction of a ton equaling less than 1000 pounds shall be treated as zero tons.

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

~~**LL.] MM. "W E B source"**~~ means a stationary source that meets the applicability requirements of 20.11.46.11 NMAC.

~~**MM.] NN. "Western backstop sulfur dioxide (SO₂) trading program" or "WEB trading program"**~~ means all sections of 20.11.46 NMAC, but not Section 20.11.46.9 NMAC, triggered as

a backstop in accordance with the provisions in the ~~[SO₂ milestones and backstop trading program]~~ implementation plan element to ensure that regional SO₂ emissions are reduced.

[20.11.46.7 NMAC - N, 12/31/03; A, 9/15/08]

20.11.46.8 VARIANCES: No variances will be granted from requirements of ~~[this part]~~ 20.11.46 NMAC.

[20.11.46.8 NMAC - N, 12/31/03; A, 9/15/08]

20.11.46.9 EMISSION TRACKING REQUIREMENTS FOR SULFUR DIOXIDE EMISSION INVENTORIES:

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

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

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

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

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

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

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

(a) amount of fuel consumed;

(b) percent sulfur content of fuel and how the content was determined;

(c) quantity of product produced;

(d) emissions monitoring data;

(e) operating data; and

(f) how the emissions are calculated.

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

(7) retain records for a minimum of 10 years from the date of establishment, or if the record was the basis for an adjustment to the milestone, five years after the

date of an implementation plan revision, whichever is longer.

B. Reporting requirements.

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

~~(4)~~ (2) Sources for which a date for submitting an annual emission report is specified in a current operating permit issued under 20.11.42 NMAC, *Operating Permits*, shall submit such report on the date specified in the permit. The department shall provide a copy of the previous emissions report upon request by the owner or operator of such source.

C. Emissions report contents shall include:

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

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

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

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

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

(a) stack and exhaust gas parameters;

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

(c) schedule of operation;

(d) estimated actual emissions, including fugitive emissions and emissions occurring during maintenance, start-ups, shutdowns, upsets, and downtime, of sulfur oxides, in tons per year, and a description of the methods utilized to make such estimates, including calculations;

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

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

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

[20.11.46.9 NMAC - N, 12/31/03; A,

9/15/08]

20.11.46.10 WEB TRADING PROGRAM TRIGGER:

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

B. 20.11.46.20 NMAC, *Special Penalty Provisions for the Year 2018 Milestone*, shall become effective on January 1, 2018 and shall remain effective until the provisions of 20.11.46.20 NMAC have been fully implemented. [20.11.46.10 NMAC - N, 12/31/03; A, 9/15/08]

20.11.46.11 WEB TRADING PROGRAM APPLICABILITY:

A. General applicability: 20.11.46 NMAC applies to any stationary source or group of stationary sources that are located on one or more contiguous or adjacent properties and which are under the control of the same person or persons under common control, belonging to the same industrial grouping, and that are described in Paragraphs (1) through (4) of Subsection B of ~~[20.11.46.10 NMAC]~~ 20.11.46.11 NMAC. A stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group (i.e., all have the same two-digit code) as described in the *standard industrial classification manual*, 1987.

B. The following are WEB sources.

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

(2) All stationary sources not meeting the criteria of Paragraph (1) of Subsection B of 20.11.46.11 NMAC, that have actual SO₂ emissions of 100 tons or more per year in the program trigger years or any subsequent year. The fugitive emissions of a stationary source shall not be considered in determining whether it is a WEB source unless the source belongs to one of the following categories of stationary source:

(a) coal cleaning plants (with thermal dryers);

(b) kraft pulp mills;

(c) portland cement plants;

(d) primary zinc smelters;

(e) iron and steel mills;

(f) primary aluminum ore reduction plants;

(g) primary copper smelters;

(h) municipal incinerators capable of charging more than 250 tons of refuse per day;

(i) hydrofluoric, sulfuric, or nitric acid plants;

(j) petroleum refineries;

(k) lime plants;

(l) phosphate rock processing plants;

(m) coke oven batteries;

(n) sulfur recovery plants;

(o) carbon black plants (furnace process);

(p) primary lead smelters;

(q) fuel conversion plants;

(r) sintering plants;

(s) secondary metal production plants;

(t) chemical process plants;

(u) fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(v) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(w) taconite ore processing plants;

(x) glass fiber processing plants;

(y) charcoal production plants;

(z) fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

(aa) any other stationary source category, which as of August 7, 1980 is being regulated under Section 111 or 112 of the Clean Air Act.

(3) A new source that begins operation after the program trigger date and has the potential to emit 100 tons or more of SO₂ per year.

(4) The department may determine on a case-by-case basis, with concurrence from the EPA administrator, that a source defined in Paragraph (2) of Subsection B of 20.11.46.11 NMAC is not a WEB source if the source:

(a) in each of the previous five years had actual SO₂ emissions of less than 100 tons per year, and

(b) had actual SO₂ emissions of 100 tons or more in a single year due to a temporary emission increase that was caused by a sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, failure of process equipment, or a failure to operate in a normal or usual manner;

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

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

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

(5) A temporary emission increase due to poor maintenance or careless operation does not meet the criteria of ~~[this section]~~ 20.11.46.11 NMAC.

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

D. Application for retired source exemption:

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

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

(b) name of account representative;

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

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

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

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

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

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

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

compliance account to cover all SO₂ emissions prior to the date the source was permanently retired.

(c) A retired source that is still in existence but no longer emitting SO₂ shall, for a period of five years from the date the records are created, retain records demonstrating the effective date of the retired source exemption for purposes of ~~[this part]~~ 20.11.46 NMAC.

(4) Resumption of operations.

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

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

(ii) if the source is not required to obtain a new source review permit or operating permit under 20.11.41 NMAC, 20.11.42 NMAC, 20.11.60 NMAC or 20.11.61 NMAC prior to resuming operation, then the source shall submit registration information as described in Subsection A of 20.11.46.13 NMAC and a copy of the retired source exemption to the department at least ~~[ninety]~~ 90 days prior to resumption of operation.

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

(5) Loss of future allowances: A WEB source that is retired and that does not apply to the department for a retired source exemption within 90 days of the date that the source is retired shall forfeit any unused and future allowances. The abandoned allowances shall be retired by the tracking system administrator. [20.11.46.11 NMAC - N, 12/31/03; A, 9/15/08]

20.11.46.12 ACCOUNT REPRESENTATIVE FOR WEB SOURCES:

Each WEB source must identify one account representative and may also identify an alternate account representative who may act on behalf of the account representative. Any representation, action, inaction or submission by the alternate account representative will be deemed to be a representation, action, inaction or submission by the account representative.

A. Identification and certification of an account representative.

(1) The account representative and any alternate account representative shall be appointed by a written agreement that makes the representations, actions,

inactions or submissions of the account representative and any alternate account representative binding on the owners and operators of the WEB source. A copy of the agreement shall be provided to the department.

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

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

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

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

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

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

(3) Upon receipt by the department of the complete certificate, the account representative and any alternate account representative represents and, by his or her representations, actions, inactions, or submissions, legally binds each owner and operator of the WEB source in all matters pertaining to the WEB trading program. The owners and operators shall be bound by any decision or order issued by the department regarding the WEB trading program.

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

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

B. Requirements and responsibilities.

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

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

C. Changing the account representative or owners and operators.

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

(2) Changes in owners and operators.

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

include such change.

(b) In the event a new owner or operator of a WEB source is not included in the list of owners and operators submitted in the certificate, such new owner or operator shall be deemed to be subject to and bound by the certificate, the representations, actions, inactions, and submissions of the account representative of the WEB source, and the decisions, orders, actions, and inactions of the department as if the new owner or operator were included in such list. [20.11.46.12 NMAC - N, 12/31/03; A, 9/15/08]

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

A. The tracking system administrator shall record the allowances for each WEB source in the compliance account for a WEB source once the allowances are allocated by the department under Section ~~[F1 of Chapter VI of the SO₂ milestones and backstop trading program]~~ C1 of the implementation plan element. If applicable, the tracking system administrator shall also record a portion of the SO₂ allowances in a WEB source's special reserve compliance account for any allowances held in accordance with Subsection B of 20.11.46.16 NMAC. Under no circumstances shall allocations be made that would exceed the allocations available.

B. The tracking system administrator shall assign a serial number to each allowance in accordance with Section ~~[F2 of the SO₂ milestones and backstop trading program]~~ C1.2 of the implementation plan element.

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

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

E. Early reduction bonus allocation: Any WEB source that, between ~~[2003]~~ 2008 and the program trigger year, reduces permitted annual SO₂ emissions to a level that is below the floor level allocation established for that source in Section ~~[F1 of Chapter VI of the SO₂ milestones and backstop trading program]~~ C1 of the

implementation plan element may apply to the department for an early reduction bonus allocation. The application shall be submitted no later than 90 days after the program trigger date. Any WEB source that applies and receives early reduction bonus allocations shall retain the records referenced below for a minimum of five years after the early reduction bonus allowance is certified in accordance with Section ~~[F1(d) of Chapter VI of the SO₂ milestones and backstop trading program]~~ C1.1(a)(3) of the implementation plan element. The application for an early reduction bonus allocation shall contain the following information:

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

(2) copies of emissions monitoring reports, for one year prior to the beginning of the credit generating period and for the period the WEB source was generating the early reductions, that document the actual annual SO₂ emissions; and the emissions monitoring reports during the credit generating period must demonstrate that the actual annual SO₂ emissions were below the floor level allocation established for that source in Section F1 ~~[of Chapter VI of the SO₂ milestones and backstop trading program]~~ C1 of the implementation plan element;

(3) demonstration that the floor level established for the source in accordance with Section ~~[F1 of Chapter VI of the SO₂ milestones and backstop trading program]~~ C1 of the implementation plan element was calculated using data that are consistent with the new monitoring methodology under Subsection A of 20.11.46.16 NMAC; and if new monitoring techniques change the floor level for the source, then a demonstration of the new floor level based on new monitoring techniques shall be included in the application.

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

(1) A new WEB source or an existing WEB source that has increased production capacity through a permitted change in operations under 20.11.41 NMAC, 20.11.60 NMAC or 20.11.61 NMAC may apply to the department for an allocation from the new source set-aside, as

outlined in Section ~~[E3 of Chapter VI of the SO₂ milestones and backstop trading program]~~ C1.3 of the implementation plan element. Under no circumstances shall allocations be made that would exceed the allocations available.

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

(b) An existing WEB source is eligible to apply for an annual allocation equal to the permitted annual SO₂ emission limit for that source that is attributable to any amount of production capacity that is greater than the permitted production capacity for that source as of January 1, ~~[2003]~~ 2008.

(c) A source that has received a retired source exemption under Subsection D of 20.11.46.11 NMAC is not eligible to apply for an allocation from the new source set-aside.

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

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

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

[20.11.46.14 NMAC - N, 12/31/03; A, 9/15/08]

20.11.46.15 ESTABLISHMENT OF ACCOUNTS:

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

(1) the name, mailing address, e-mail address, telephone number, and fac-

simile number of the account representative; for a compliance account, include a copy of the account certificate of representation of the account representative and any alternate as required in Paragraph (2) of Subsection A of 20.11.46.12 NMAC; and for a general account, include the account certificate of representation of the account representative and any alternate as required in Paragraph (2) of Subsection C of 20.11.46.15 NMAC;

(2) the WEB source or organization name;

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

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

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

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

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

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

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

(b) the organization name;

(c) the following certification statement: "I certify that I was selected as the account representative or alternate account representative, as applicable, by an agreement binding on all persons who have an ownership interest in allowances in the general account with regard to matters concerning the general account. I certify that I

have all the necessary authority to carry out my duties and responsibilities under the WEB trading program on behalf of said persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the department regarding the general account."

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

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

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

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

binding on the new account representative and all persons having ownership interest with respect to allowances held in the general account.

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

[20.11.46.15 NMAC - N, 12/31/03; A, 9/15/08]

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

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

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

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

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

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

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

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

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

NMAC in the same manner as if the unit was a new unit.

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

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

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

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

(c) any other type of unit without add-on SO₂ control equipment, if no control level was assumed for the WEB source in establishing the floor level (and reducible allocation) provided in Section ~~[F1 of Chapter VI of the SO₂ milestones and backstop trading program]~~ C1 of the implementation plan element.

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

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

(b) consistent with the emission estimation methodology used to determine the floor level (and reducible allocation) for the source in accordance with Section ~~[F1 of Chapter VI of the SO₂ milestones and backstop trading program]~~ C1 of the implementation plan element, the portion of the WEB source's overall allowance allocation that is attributable to any unit(s) covered by Paragraph (2) of Subsection B of 20.11.46.16; and

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

(3) For each new unit at an existing WEB source for which the WEB source seeks to comply with this Subsection B of 20.11.46.16 NMAC, and for which the account representative applies for an allocation under the new source set-aside provisions of Subsection F of 20.11.46.14 NMAC, the account representative shall

submit a modified notice under Paragraph (2) of Subsection B of 20.11.46.16 NMAC, that includes such new SO₂ emitting unit(s). The modified notice shall be submitted in accordance with the compliance dates in Paragraph (1) of Subsection M of 20.11.46.16 NMAC, but no later than the date on which a request must be submitted under Paragraph (1) of Subsection F of 20.11.46.14 NMAC for allocations from the set-aside.

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

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

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

with 20.11.46.19 NMAC.

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

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

C. For any monitoring that the WEB source uses under 20.11.46.16 NMAC (including Paragraph B of Section 20.11.46.16 NMAC), the WEB source (and, as applicable, the account representative) shall implement, certify, and use such monitoring in accordance with 20.11.46.16 NMAC, and shall record and report the data from such monitoring as required in 20.11.46.16 NMAC. In addition, the WEB source (and, as applicable, the account representative) shall not:

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

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

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

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

(a) during a period when the unit is exempt from the requirements of 20.11.46.16 NMAC, including retirement of

a unit as addressed in Paragraph (3) of Subsection A of 20.11.46.16 NMAC;

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

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

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

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

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

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

plan ~~[in accordance with the compliance deadline specified in Subsection M of 20.11.46.16 NMAC]~~ within 90 days of the replacement, modification, or change.

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

F. Initial monitoring plan: The account representative shall submit an initial monitoring plan for each SO₂ emitting unit (or group of units sharing a common methodology) that, except as otherwise specified in an applicable provision in 20.11.46.21 NMAC, contains the following information:

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

(a) plant name and location;

(b) plant and unit identification numbers assigned by the department;

(c) type of unit (or units for a group of units using a common monitoring methodology);

(d) identification of all stacks or pipes associated with the monitoring plan;

(e) types of fuel(s) fired (or sulfur containing process materials used in the SO₂ emitting unit), and the fuel classification of the unit if combusting more than one type of fuel and using a 40 CFR Part 75 methodology;

(f) type(s) of emissions controls for SO₂ installed or to be installed, including specifications of whether such controls are pre-combustion, post-combustion, or integral to the combustion process;

(g) maximum hourly heat input capacity, or process throughput capacity, if applicable;

(h) identification of all units using a common stack; and

(i) indicator of whether any stack identified in the plan is a bypass stack;

(2) for each unit and parameter required to be monitored, identification of monitoring methodology information, consisting of monitoring methodology, monitor locations, substitute data approach for the methodology, and general identification of quality assurance procedures; and if the proposed methodology is a site-specific methodology submitted pursuant to Subparagraph (d) of Paragraph (2) of Subsection A of 20.11.46.16 NMAC, the description under Paragraph (2) of

Subsection D of 20.11.46.16 NMAC shall describe fully all aspects of the monitoring equipment, installation locations, operating characteristics, certification testing, ongoing quality assurance and maintenance procedures, and substitute data procedures;

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

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

G. Detailed monitoring

plan: The account representative shall submit a detailed monitoring plan that, except as otherwise specified in an applicable ~~provisions~~ provision in 20.11.46.21 NMAC or 20.11.46.22 NMAC, shall contain the following information:

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

(a) manufacturer, model number and serial number;

(b) component or system identification code assigned by the facility to each identifiable monitoring component, such as the analyzer or probe;

(c) designation of the component type and method of sample acquisition or operation (e.g., in situ pollutant concentration monitor or thermal flow monitor);

(d) designation of the system as a primary or backup system;

(e) first and last dates the system reported data;

(f) status of the monitoring component; and

(g) parameter monitored;

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

(a) hardware components that perform emission calculations or store data for quarterly reporting purposes (provide the manufacturer and model number); and

(b) software components (provide the identification of the provider and model or version number);

(3) explicit formulas for each measured emissions parameter, using com-

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

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

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

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

(a) identification of the parameter;

(b) default, maximum, minimum, or constant value, and units of measure for the value;

(c) purpose of the value;

(d) indicator of use during controlled and uncontrolled hours;

(e) types of fuel;

(f) source of the value;

(g) value effective date and hour;

(h) date and hour value is no longer effective (if applicable); and

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

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

(a) the upper and lower boundaries of the range of operation (as defined in Section 6.5.2.1 of Appendix A to 40 CFR

Part 75), or thousands of lb/hr of steam, or ft/sec (as applicable);

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

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

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

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

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

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

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

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

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

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

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

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

or separate schematic diagrams shall be used to describe groups of units using a common stack;

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

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

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

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

(a) parameter monitored;

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

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

(d) submission status of the data;

(e) monitoring system identification code;

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

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

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

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

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

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

(a) the results of the analysis performed to qualify as a low mass emissions unit under [Section] 40 CFR 75.19(c) [of 40 CFR Part 75]; this report shall include either the previous three years actual or projected emissions; and the following items shall be included: a) current calendar year of application; b) type of qualification; c) years one, two, and three; d) annual measured, estimated or projected SO₂ mass emissions for years one, two, and three; and e) annual operating hours for years one, two, and three;

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

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

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

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

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

(3) for each gas-fired unit the WEB source shall include the following in

the monitoring plan: current calendar year, fuel usage data as specified in the definition of gas-fired in [Section] 40 CFR 72.2 [of 40 CFR Part 72], and an indication of whether the data are actual or projected data.

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

J. Certification and recertification:

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

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

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

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

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

(d) both at the time of the initial certification or recertification application submission and at the time of the audit, if an audit of any monitoring certified under 20.11.46 NMAC, and a review of the initial certification or recertification application, reveal that any system or component should not have been certified or recertified because it did not meet a particular performance specification or other requirement of 20.11.46 NMAC, the department will issue a notice of disapproval of the certification status of such system or component; for the purposes of Paragraph (2) of Subsection J of 20.11.46.16 NMAC, an audit shall be either a field audit of the facil-

ity or an audit of any information submitted to the department regarding the facility; by issuing the notice of disapproval, the certification status is revoked prospectively, and the data measured and recorded shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the WEB source completes subsequently approved initial certification or recertification tests in accordance with the procedures in Subsection J of 20.11.46.16 NMAC; and the WEB source shall apply the substitute data procedures in Subsection L of 20.11.46.16 NMAC to replace, prospectively, all of the invalid, non-quality-assured data for each disapproved system or component.

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

L. Substitute data procedures:

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

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

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

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

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

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

M. Compliance deadline:

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

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

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

(c) for any new WEB source, the monitoring plan shall be included with the permit application under 20.11.41 NMAC, 20.11.42 NMAC, 20.11.60 NMAC or 20.11.61 NMAC.

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

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

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

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

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

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

(5) For each applicable control

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

N. Record keeping:

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

(2) The WEB source shall keep records of all operating hours, quality assurance activities, fuel sampling measurements, hourly averages for SO₂, stack flow, fuel flow, or other continuous measurements, as applicable, and any other applicable data elements specified in 20.11.46.16 NMAC, 20.11.46.21 NMAC or in 20.11.46.22 NMAC. The WEB source shall maintain the applicable records specified in 40 CFR Part 75 for any SO₂ emitting unit that uses a 40 CFR Part 75 monitoring method to meet the requirements of 20.11.46.16 NMAC.

O. Reporting.

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

(2) **Annual report.** Based on the quarterly reports, each WEB source shall submit an annual statement of total annual SO₂ emissions for all SO₂ emitting units at the source. The annual report shall identify the total emissions for all units monitored in accordance with Subsection A of

20.11.46.16 NMAC and the total emissions for all units with emissions estimated in accordance with Subsection B of 20.11.46.16 NMAC. The annual report shall be submitted within 60 days after the end of a control period.

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

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

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

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

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

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

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

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

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

[20.11.46.16 NMAC - N, 12/31/03; A, 9/15/08]

20.11.46.18 USE OF ALLOWANCES FROM A PREVIOUS YEAR:

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

or transferred to another account.

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

C. If flow control procedures for the current control period have been triggered as outlined in Section ~~[F(9)(b) of Chapter VI of the SO₂ milestones and backstop trading program]~~ C4.2 of the implementation plan element, then the use of allowances that were allocated for any previous year shall be limited as follows:

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

(2) the number determined in Paragraph (1) of Subsection C of 20.11.46.18 NMAC shall be multiplied by the flow control ratio established in accordance with Section ~~[F(9)(b) of the SO₂ milestones and backstop trading program]~~ C4.2 of the implementation plan element to determine the number of allowances that were allocated for a previous year that can be used without restriction for the current control period;

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

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

[20.11.46.18 NMAC - N, 12/31/03; A, 9/15/08]

20.11.46.19 COMPLIANCE:

A. Compliance with allowance limitations:

(1) In accordance with ~~Paragraph~~

~~(2) Paragraphs (2) and (3)~~ of Subsection A of 20.11.46.19 NMAC and 20.11.46.18 NMAC, the WEB source shall hold allowances, as of the allowance transfer deadline in the WEB source's compliance account (together with any current control year allowances held in the WEB ~~[source]~~ source's special reserve compliance account under Subsection B of 20.11.46.16 NMAC) in an amount not less than the total SO₂ emissions for the control period from the WEB source, as determined under the monitoring and reporting requirements of 20.11.46.16 NMAC.

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

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

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

(d) If the WEB trading program is triggered in accordance with the 2013 review procedures in Section ~~[D(7) of Chapter VI of the SO₂ milestones and backstop trading program]~~ A4 of the implementation plan element, the first control period for each source that is a WEB source on or before the program trigger date is the year 2018.

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

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

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

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

(a) the total annual SO₂ emissions for all SO₂ emitting units at the source that are monitored under Subsection B of 20.11.46.16 NMAC, as reported by the

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

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

(c) if the comparison in Subparagraph (b) of Paragraph (3) of Subsection A of 20.11.46.19 NMAC results in emissions that exceed the allowances held in the source's compliance account, the source has exceeded its allowance limitation and the excess emissions are subject to the allowance deduction penalty in Subsection C of 20.11.46.19 NMAC.

(4) Other than allowances in a special reserve compliance account for units monitored under Subsection B of 20.11.46.16 NMAC, to the extent consistent with 20.11.46.18 NMAC, allowances shall be deducted for a WEB source for compliance with the allowance limitation as directed by the WEB source's account representative. Deduction of any other allowances as necessary for compliance with the allowance limitation shall be on a first-in, first-out accounting basis in the order of the date and time of their recording in the WEB source's compliance account, beginning with the allowances allocated to the WEB source and continuing with the allowances transferred to the WEB source's compliance account from another compliance account or general account. The allowances held in a special reserve compliance account pursuant to Subsection B of 20.11.46.16 NMAC shall be deducted as specified in Subparagraph (a) of Paragraph (3) of

Subsection A of 20.11.46.19 NMAC.

B. Certification of compliance:

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

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

(a) identification of each WEB source;

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

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

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

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

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

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

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

(e) if applicable, whether any SO₂ emitting unit for which the WEB source is not required to monitor in accordance with Paragraph (3) of Subsection A of 20.11.46.16 NMAC remained permanently retired and had no emissions for the entire applicable period; and

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

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

(1) Allowance deduction [~~penalties~~] penalty:

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

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

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

D. Liability:

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

(2) General liability:

(a) Any provision of the WEB trading program that applies to a source or

an account representative shall apply also to the owners and operators of such source.

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

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

[20.11.46.19 NMAC - N, 12/31/03; A, 9/15/08]

20.11.46.20 SPECIAL PENALTY PROVISIONS FOR YEAR 2018 MILESTONE:

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

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

(2) The tracking system administrator shall record the allowances for the 2018 control period for each WEB source in the source's compliance account once the department allocates the 2018 allowances under Section ~~F(1) and G(1) of Chapter VI of the SO₂ milestones and backstop trading program]~~ C1 and D1 of the implementation plan element.

(3) The allowance transfer deadline is midnight pacific standard time on May ~~30~~ 31, 2021 (or if this date is not a business day, midnight of the first business day thereafter). WEB sources may transfer allowances as provided in Subsection A of 20.11.46.17 NMAC until the allowance transfer deadline.

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

(5) ~~[An allowance deduction penalty and financial penalty shall be assessed and levied in accordance with Subsection D of 20.11.46.18 NMAC,~~

~~Paragraph (4) of Subsection A of 20.11.46.19 NMAC and Subsection C of 20.11.46.19 NMAC except that SO₂ emissions shall be determined under Paragraph (4) of Subsection A of 20.11.46.20 NMAC.] In accordance with Subsection D of 20.11.46.18 NMAC, and Paragraph (4) of Subsection A of 20.11.46.20 NMAC, the department shall seek at least the minimum financial penalty of \$5000 per ton of SO₂ emissions in excess of the WEB source's allowance limitation.~~

~~(a) Any source may resolve its excess emissions violation by agreeing to a streamlined settlement approach where the source pays a penalty of \$5000 per ton or partial ton of excess emissions, and payment is received within 90 calendar days after the issuance of a notice of violation.~~

~~(b) Any source that does not resolve its excess emissions violation in accordance with the streamlined settlement approach in Subparagraph (a) of Paragraph (5) of Subsection A of 20.11.46.20 NMAC will be subject to formal enforcement action, in which the director shall seek a financial penalty for the excess emissions based on New Mexico's statutory maximum civil penalties.~~

~~(6) Each ton of SO₂ emissions in excess of a source's allowance limitation is a separate violation and each day of a control period is a separate violation.~~

B. If the program has been triggered and the provision in Subsection A of 20.11.46.20 is implemented the provisions in Subsection C of 20.11.46.20 NMAC shall ~~[continue to]~~ apply for each year after the 2018 emission year until:

(1) the first control period under the WEB trading program under Subparagraph (a) of Paragraph (1) of Subsection A of 20.11.46.19 NMAC; or

(2) the department determines, in accordance with Section ~~D(6)(j) of Chapter VI of the SO₂ milestones and backstop trading program]~~ A3.10 of the implementation plan element, that the 2018 SO₂ milestone has been met.

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

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

~~(2) the allowance transfer deadline is midnight pacific standard time on March 1 of each year (or if this date is not a~~

business day, midnight of the first business day thereafter) following the end of the specific emissions year. WEB sources may transfer allowances as provided in Subsection A of 20.11.46.17 NMAC until the allowance transfer deadline.

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

~~(4) an allowance deduction penalty and financial penalty shall be assessed and levied in accordance with Subsection D of 20.11.46.18 NMAC, Paragraph (4) of Subsection A of 20.11.46.19 NMAC, and Subsection C of 20.11.46.19 NMAC, except that SO₂ emissions shall be determined under Paragraph (3) of Subsection C of 20.11.46.20 NMAC.] Special penalty provisions for the 2018 milestone for 2019 control period and each control period thereafter as provided under Subsection B of 20.11.46.20 NMAC include the following:~~

~~(1) for the 2019 control period, the allowance transfer deadline is midnight Pacific Standard Time on May 31, 2021 (or if this date is not a business day, midnight of the first business day thereafter); WEB sources may transfer allowances as provided in Subsection A of 20.11.46.17 NMAC until the allowance transfer deadline;~~

~~(2) a WEB source must hold allowances allocated for the 2019 control period, including those transferred into the compliance account by an allowance transfer correctly submitted by the allowance transfer deadline, in an amount not less than the WEB source's total SO₂ emissions for the 2019 control period; emissions are determined using the pre-trigger monitoring provisions in Part B of the Implementation Plan, and 20.11.46.9 NMAC;~~

~~(3) in accordance with Subsection D of 20.11.46.18 NMAC, and Paragraph (4) of Subsection A of 20.11.46.20 NMAC, the department shall seek at least the minimum financial penalty of \$5000 per ton of SO₂ emissions in excess of the WEB source's allowance limitation;~~

~~(a) any source may resolve its excess emissions violation by agreeing to a streamlined settlement approach where the source pays a penalty of \$5000 per ton or partial ton of excess emissions, and payment is received within 90 business days after the issuance of a notice of violation;~~

~~(b) any source that does not~~

resolve its excess emissions violation in accordance with the streamlined settlement approach in Paragraph (5) of Subsection A of 20.11.46.20 NMAC will be subject to formal enforcement action, in which the department shall seek a financial penalty for the excess emissions based on New Mexico's statutory maximum civil penalties;

(4) each ton of SO₂ emissions in excess of a source's allowance limitation is a separate violation and each day of a control period is a separate violation;

(5) for each control period after 2019 that the special penalty is assessed, the dates and deadlines in Paragraphs (1) through (4) of Subsection C of 20.11.46.20 NMAC above will be adjusted forward by one year.
[20.11.46.20 NMAC - N, 12/31/03; A, 9/15/08]

20.11.46.21 SO₂ MONITORING OF FUEL GAS COMBUSTION DEVICES:

A. Applicability.

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

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

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

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

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

(c) gases generated by fluid coking burners;

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

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

B. Monitoring requirements.

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

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

device.

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

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

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

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

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

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

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

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

$$E_t = (C_S)(Q_f)(K); \text{ where:}$$

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

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

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

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

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

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

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

75.

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

$$E_t = (E_m)(Q_t)/(Q_m); \text{ where:}$$

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

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

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

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

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

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

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

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

input to all applicable fuel gas combustion devices using the following equation:

$$E_t = (E_m)(Q_t)/(GCV) / 10^6; \text{ where:}$$

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

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

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

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

10^6 = Conversion from Btu to million Btu.

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

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

(1) the owner or operator shall comply with the initial testing and calibration requirements in performance specification 2 in Appendix B of 40 CFR Part 60 and Subparagraph (b) of Paragraph (1) of Subsection B of 20.11.46.21 NMAC for each CFGMS;

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

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

D. Quality assurance/quality control requirements.

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

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

(3) A quality assurance and quality control plan shall be developed and implemented for each CFGMS in compliance with Sections 1 and 1.1 of Appendix B

to 40 CFR Part 75, and the following:

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

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

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

(d) perform a relative accuracy test audit once every four operating quarters; calculate the relative accuracy as described in Appendix A to 40 CFR Part 75; and an out of control period occurs whenever the relative accuracy is greater than 20.0 percent of the mean value of the reference method measurements;

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

E. Missing data procedures.

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

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

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

(4) For any period in which valid

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

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

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

(2) if the provisions of Paragraph (2) or Paragraph (3) of Subsection B of 20.11.46.21 NMAC are used, provide documentation and an explanation to demonstrate that the SO₂ emission rate from the monitored unit is representative of the rate from non-monitored units.

[20.11.46.21 NMAC - N, 12/31/03; A, 9/15/08]

20.11.46.24 SEVERABILITY: If any section, subsection, sentence, phrase, clause or wording of [this part] 20.11.46 NMAC or the federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court or the EPA, the decision shall not affect the validity of remaining portions of [this part] 20.11.46 NMAC.

[20.11.46.24 NMAC - N, 12/31/03; A, 9/15/08]

NEW MEXICO DEPARTMENT OF GAME AND FISH

**TITLE 19 N A T U R A L
RESOURCES AND WILDLIFE
CHAPTER 31 H U N T I N G A N D
FISHING
PART 6 M I G R A T O R Y
GAME BIRD**

19.31.6.1 ISSUING AGENCY:
New Mexico Department of Game and Fish.

[19.31.6.1 NMAC - Rp, 19.31.6.1 NMAC, 8-29-2008]

19.31.6.2 SCOPE: Hunters of migratory game birds. Additional requirements may be found in Chapter 17 NMSA 1978 and Chapters 30 and 32 through 36 of Title 19.

[19.31.6.2 NMAC - Rp, 19.31.6.2 NMAC, 8-29-2008]

19.31.6.3 STATUTORY AUTHORITY: 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds, and fish.

[19.31.6.3 NMAC - Rp, 19.31.6.3 NMAC, 8-29-2008]

19.31.6.4 DURATION: August 29, 2008 - March 31, 2009.

[19.31.6.4 NMAC - Rp, 19.31.6.4 NMAC, 8-29-2008]

19.31.6.5 EFFECTIVE DATE: August 29, 2008 unless later date is cited at end of individual sections.

[19.31.6.5 NMAC - Rp, 19.31.6.5 NMAC, 8-29-2008]

19.31.6.6 OBJECTIVE: Establishing seasons on dove, band-tailed pigeon, sandhill crane, American coot, common moorhen, common snipe, ducks, geese, sora, Virginia rail, and setting falconry seasons for migratory game birds.

[19.31.6.6 NMAC - Rp, 19.31.6.6 NMAC, 8-29-2008]

19.31.6.7 DEFINITIONS: Areas, species, non-toxic shot, and possession limit defined.

A. "Adult/youth" (A/Y) as used herein, shall mean that hunt designation where the adult and youth are permitted to hunt together.

B. "Arrows" shall mean only those arrows or bolts having broadheads with steel cutting edges.

C. "Baiting" shall mean the placing, exposing, depositing, distributing, or scattering of any salt, grain, scent or other feed on or over areas where hunters are attempting to take migratory game birds.

D. "Bernardo north duck hunt area" (BND) shall mean that area north of U.S. 60 on Bernardo waterfowl management area (WMA).

E. "Bow" shall mean compound, recurve, or long bow. Sights on bows shall not project light nor magnify.

F. "Central flyway" shall mean that portion of New Mexico east of the continental divide, with the exception of the Jicarilla Apache Indian reservation.

G. "Crossbows" shall mean a device with a bow limb or band of flexible material that is attached horizontally to a stock and has a mechanism to hold

the string in a cocked position. Sights on crossbows shall not project light nor magnify.

H. "Dark goose" shall mean Canada goose or greater white-fronted goose.

I. "Department" shall mean the New Mexico department of game and fish.

J. "Department offices" shall mean department offices in Santa Fe, Albuquerque, Raton, Las Cruces, or Roswell.

K. "Director" shall mean the director of the New Mexico department of game and fish.

L. "Dove north zone" (north zone) shall mean that portion of New Mexico north of I-40 from the Arizona-New Mexico border to Tucumcari and U.S 54 at its junction with I-40 at Tucumcari to the New Mexico-Texas border.

M. "Dove south zone" (south zone) shall mean that portion of New Mexico south of I-40 from the Arizona-New Mexico border to Tucumcari and U.S 54 at its junction with I-40 at Tucumcari to the New Mexico-Texas border.

N. "Eastern New Mexico sandhill crane hunt area" (eastern) shall mean that area in the following counties: Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt.

O. "Electronic motion decoys" shall mean decoys such as spinning wing decoys that operate by electric motors or electronic controls.

P. "Established road" is defined as follows:

(1) a road, built or maintained by equipment, which shows no evidence of ever being closed to vehicular traffic by such means as berms, ripping, scarification, reseeding, fencing, gates, barricades or posted closures;

(2) a two-track road completely void of vegetation in the tracks which shows use prior to hunting seasons for other purposes such as recreation, mining, logging, and ranching and shows no evidence of ever being closed to vehicular traffic by such means as berms, ripping, scarification, reseeding, fencing, gates, barricades or posted closures.

Q. "Estancia valley sandhill crane hunt area" (EV) shall mean that area beginning at Mountainair bounded on the west by N.M. highway 55 north to N.M. 337, north to N.M. 14, and north to Interstate 25; on the north by Interstate 25 east to U.S. 285; on the east by U.S. 285 south to U.S. 60; and on the south by U.S. 60 from U.S. 285 west to N.M. 55 in Mountainair.

R. "Falconry" shall mean hunting migratory game birds using raptors.

S. "License year" shall mean the period from April 1 through March 31.

T. "Light geese" shall mean snow geese, blue phase snow geese, and Ross's geese.

U. "Light goose conservation order" shall mean those methods, bag and possession limits, and dates approved by the U. S. fish and wildlife service (USFWS) towards reducing over-abundant light goose populations.

V. "Middle Rio Grande valley dark goose hunt area" shall mean Sierra, Socorro and Valencia counties.

W. "Middle Rio Grande valley sandhill crane hunt area" (MRGV) shall mean Valencia and Socorro counties.

X. "Migratory game bird" shall mean band-tailed pigeon, Eurasian-collared dove, mourning dove, white-winged dove, sandhill crane, American coot, common moorhen, common snipe, ducks, geese, sora, and Virginia rail.

Y. "Modern firearms" shall mean center-fire firearms, not to include any fully automatic firearms. Legal shotguns shall be only those shotguns capable of being fired from the shoulder.

Z. "Muzzle-loader or muzzle-loading firearms" shall mean those rifles and shotguns in which the charge and projectile are loaded through the muzzle. Only blackpowder, pyrodex or equivalent blackpowder substitute may be used. Use of smokeless powder is prohibited. Legal muzzle-loader shotguns shall be only those shotguns capable of being fired from the shoulder.

AA. "Non-toxic shot" shall mean that non-toxic shot approved for use by the USFWS.

BB. "North zone" shall mean that portion of the Pacific flyway north of I-40 from the Arizona-New Mexico border to the continental divide; and that portion of the central flyway north of I-40 from the continental divide to Tucumcari and U.S. 54 at its junction with I-40 at Tucumcari to the New Mexico-Texas border.

CC. "Pacific flyway" shall mean that portion of New Mexico west of the continental divide including the Jicarilla Apache Indian reservation.

DD. "Permanent mobility limitation" shall mean an individual that permanently has: restricted movement in both arms, or is restricted to the use of a walker, wheelchair, or two crutches to walk, or has a combination of disabilities that cause comparable substantial functional limitations. EXCEPTION: For the purposes of hunting migratory game birds from a vehicle, mobility limitation individuals are

those that have permanently lost one or both legs.

EE. "Possession limit" shall mean twice the daily bag limit one can have in their ownership, except where otherwise defined.

FF. "Protected species" shall mean any of the following animals:

(1) all animals defined as protected wildlife species and game fish under Section 17-2-3 New Mexico Statutes Annotated 1978 Compilation;

(2) all animals listed as endangered species or subspecies as stated in regulation(s) set by the state game commission.

GG. "Regular band-tailed pigeon hunting area" (regular BPHA) shall mean that portion of New Mexico not included in the southwest band-tailed pigeon hunt area.

HH. "Retention" or "retain" shall mean the holding of in captivity.

II. "South zone" shall mean that portion of the Pacific flyway south of I-40 from the Arizona-New Mexico border to the continental divide; and that portion of the central flyway south of I-40 from continental divide to Tucumcari and U.S. 54 at its junction with I-40 at Tucumcari to the New Mexico-Texas border.

JJ. "Southwest band-tailed pigeon hunting area" (southwest BPHA) shall mean that portion of New Mexico both south of U.S. 60 and west of I-25.

KK. "Southwest New Mexico sandhill crane hunt area" (SW) shall mean that area bounded on the south by the New Mexico/Mexico border; on the west by the New Mexico/Arizona border north to Interstate 10; on the north by Interstate 10 east to U.S. 180, north to N.M. 26, east to N.M. 27, north to N.M. 152, and east to Interstate 25; on the east by Interstate 25 south to Interstate 10, west to the Luna county line, and south to the New Mexico/Mexico border.

LL. "State game commission owned properties" shall mean all department owned or managed waterfowl management areas, wildlife management areas, Sandhills Prairie conservation area and lesser prairie-chicken areas.

MM. "Unlimited" shall mean there is no set limit on the number of permits or licenses established for the described hunt areas.

NN. "Waterfowl management area" (WMA) shall mean Bernardo, Brantley, Casa Colorada, Charette lake, Jackson lake, La Joya, McAllister lake, Salt lake, Seven Rivers, Tucumcari, and W.S. Huey state game commission owned or managed waterfowl management areas.

OO. "Wildlife manage-

ment area" shall mean Big Hatchet, Colin Neblett, E.S. Barker, Humphries, Marquez, Rio Chama, Sargent, Socorro-Escondida, and Water Canyon wildlife management areas, the Sandhills Prairie conservation area, and state game commission owned lesser prairie-chicken areas.

PP. "Youth" shall mean those less than 18 years of age except where otherwise defined.

QQ. "Youth waterfowl hunting days" shall mean the special seasons where only those under 16 years of age may hunt ducks and geese. A supervising adult must accompany the youth hunter.

[19.31.6.7 NMAC - Rp, 19.31.6.7 NMAC, 8-29-2008]

19.31.6.8 LICENSE AND APPLICATION REQUIREMENTS:

A. License: It shall be unlawful to hunt migratory game birds without having purchased a valid license for the current license year. Valid licenses are general hunting, or general hunting and fishing, or junior general hunting, or junior general hunting and fishing, or senior or handicapped general hunting, or senior or handicapped general hunting and fishing, or small game, or junior or senior small game and fishing, or non-resident small game, and temporary small game 4-day licenses. A migratory bird permit number shall be required. A habitat stamp is required for those hunting on US forest service and bureau of land management properties. Hunters from 18 through 69 years of age must also purchase a habitat management and access validation except for resident 100% disabled veterans. Waterfowl hunters 16 years of age and older are required to have on their possession a federal migratory bird hunting and conservation stamp (duck stamp).

(1) For band-tailed pigeon hunting and falconry: in addition to a valid license, a free band-tailed pigeon permit obtained from department offices or website shall be required.

(2) For MRGV dark goose hunting: in addition to a valid license, a free MRGV dark goose permit obtained from department offices or website shall be required.

(3) For waterfowl hunting on Bernardo WMA and La Joya WMA: in addition to a valid license, a free Bernardo/La Joya WMA permit obtained from the department website or offices shall be required.

(4) For eastern sandhill crane hunting and falconry: in addition to a valid license, a free federal sandhill crane hunting permit shall be required. Applicants shall apply in person to one of the department offices, or by mail only to the Santa Fe office. Applicants shall submit their name,

address, and the number of their valid hunting license.

(5) For Estancia valley crane, middle Rio Grande valley crane, and southwest sandhill crane hunting, and Bernardo WMA light goose, and Bernardo WMA youth-only waterfowl hunting: in addition to a valid license, a special permit obtained by drawing shall be required.

(6) For Estancia valley sandhill crane falconry hunting: in addition to a valid license, falconers shall have in their possession a special permit obtained from only the Santa Fe and Albuquerque offices. Up to 5 permits may be issued on a first come basis.

B. Valid dates of license or permit: All permits or licenses shall be valid only for the dates, legal sporting arms, bag limit and area specified by the hunt code printed on the permit or license.

C. Applications: Applications for Bernardo WMA light goose, Bernardo WMA youth-only light goose, Bernardo WMA youth-only waterfowl, EV sandhill crane, MRGV sandhill crane, and SW sandhill crane hunt permits shall be submitted on the appropriate application form or department website.

(1) For permits issued by drawing, an eight-dollar application fee shall be required by each applicant per application submitted.

(2) No more than four persons may apply per application.

(3) It shall be unlawful to submit more than one application per species per year, unless otherwise specifically allowed by rule. Those submitting more than one application per species will result in the rejection of all applications for that species.

(4) Applications may be returned to the sender if such applications are not on the proper form or do not supply adequate information.

(5) Applicants may apply for a first, second and third choice of seasons if applicable. A maximum of one permit per species hunt code will be awarded to successful applicants unless otherwise specifically allowed by rule.

(6) All applications must be mailed to the Santa Fe office or submitted via the department website unless otherwise specifically allowed by rule.

(a) A person desiring a band-tailed pigeon, MRGV dark goose, or Bernardo/La Joya WMA permit shall apply in person at one of the department offices, by mail to the Santa Fe office only, or via the department website. Applicants shall submit their name, mailing address, and the number from their valid hunting license.

(b) A person desiring an EV sandhill crane falconry permit shall apply in person to only the department's Albuquerque or Santa Fe offices, or by mail to the Santa

Fe office only.

(7) The application deadline date for the Bernardo WMA youth-only waterfowl; and EV, MRGV, and SW sandhill crane hunt permits shall be the second Wednesday in September.

(a) For the Bernardo WMA youth-only waterfowl hunt permits, no more than three persons may apply per application;

(b) up to two hunt choices may be awarded by drawing for the Bernardo youth only waterfowl permits;

(c) if any permits are available after the drawing, a person may submit a new application at one of the department offices; up to 2 hunt choices may be awarded; hunters may have a maximum of 4 Bernardo youth-only waterfowl permits per license year; and

(d) only two applications per hunt code will be drawn, or issued after the drawing for Bernardo youth only waterfowl permits.

(8) The deadline date for application for the Bernardo WMA light goose hunt permits shall be the second Wednesday in November.

(9) If applications for permits exceed the number of available permits, as herein established, the available permits shall be allotted by means of a random public drawing in the Santa Fe office of the department of game and fish.

(10) If any permits remain after the original deadline, the director may authorize a new deadline. A person who is not awarded a permit for which he applied may submit a new application for a permit if such permits remain available.

(11) To obtain an eastern sandhill crane permit, applicants shall apply in person to one of the department offices, or by mail only to the Santa Fe office. Applicants shall submit their name, mailing address, and the number from their valid hunting license.

D. Youth hunts: Only applicants who have not reached their 18th birthday by the opening day of the hunt are eligible to apply for or participate in a youth only hunt. EXCEPTION: During the youth waterfowl hunt days only those who have not reached their 16th birthday may hunt waterfowl.

[19.31.6.8 NMAC - Rp, 19.31.6.8 NMAC, 8-29-2008]

19.31.6.9 MANNER AND METHODS FOR MIGRATORY GAME BIRDS:

A. Season and hours: Migratory game birds may be hunted or taken only during open seasons and only during the period from one-half hour before sunrise to sunset, unless otherwise specifi-

cally allowed by rule.

(1) On wildlife management areas, the lesser prairie-chicken areas, and the Sandhills Prairie conservation area hunting hours shall be from one-half hour before sunrise to sunset.

(2) On waterfowl management areas (WMA)s and the Bottomless Lakes overflow, hunting hours shall mean from one-half hour before sunrise to 1:00 p.m. For hunting September teal on Bernardo and La Joya WMAs hunting hours are from one-half hour before sunrise to sunset.

(3) During the light goose conservation order hunt dates, hunting hours shall mean from one-half hour before sunrise to one-half hour after sunset.

B. Bag limit: It is unlawful for any person to hunt for or take more than one daily bag limit allowed by regulation, unless otherwise specifically allowed by rule.

(1) There shall be no daily bag or possession limit for Eurasian-collared dove.

(2) There shall be no daily bag or possession limit for light geese during the light goose conservation order hunt dates.

C. Seizure: Any conservation officer or other officer authorized to enforce game laws and regulations shall seize the carcasses of any migratory game bird that are illegally obtained.

D. Use of bait: It shall be unlawful for anyone to take or attempt to take any migratory game bird by use of bait such as grain, salt or other feed.

E. Live animals: It shall be unlawful to use live animals as a blind or decoy in taking or attempting to take any migratory game bird.

F. Use of calling devices: It shall be unlawful to use any electrically or mechanically recorded calling device in taking or attempting to take any migratory game bird, unless otherwise specifically allowed by rule. During the light goose conservation order hunt dates, electronic calling devices are allowed.

G. Killing out-of-season: It shall be unlawful to kill any migratory game bird out-of-season.

H. Legal sporting arms and ammunition:

(1) The following are legal sporting arms for migratory game birds:

(a) shotguns firing shot, shotguns shall not be capable of holding no more than three shells;

(b) muzzle-loading shotguns firing shot;

(c) bows and arrows;

(d) crossbows for individuals that qualify with a permanent mobility limitation; and

(e) during the light goose conservation order hunt dates, as listed herein, shotguns capable of holding more than three

shells are lawful.

(2) Non-toxic shot use is required for hunting:

(a) all migratory game bird species, excluding dove, band-tailed pigeons, and eastern sandhill cranes; and

(b) on all state game commission owned lands.

(3) Use of lead shot: It shall be unlawful for any person hunting migratory game birds, other than dove, band-tailed pigeon and eastern sandhill crane, to hunt with or be in possession of any shotgun shells loaded with toxic shot or for any person using a muzzleloader to be in possession of lead shot.

I. Drugs and explosives:

It shall be unlawful to use any form of drug on an arrow or use arrows driven by explosives.

J. Proof of species or sex:

(1) One fully feathered wing must remain attached to all migratory game birds, except dove and band-tailed pigeon, until the bird has arrived at the personal abode of the possessor or storage facility.

(2) All Eurasian-collared dove in possession must have an identifiable feathered wing attached until the bird has arrived at the personal abode of the possessor or storage facility. Any harvested dove without an identifiable wing attached, will count towards the daily dove bag and possession limits.

K. Possession or sale of migratory game bird: It shall be unlawful to possess, sell, or offer for sale all or part of any migratory game bird except as provided below:

(1) License or permit: A person may possess migratory game bird or parts thereof that they have lawfully taken (killed) under license or permit.

(2) Game taken by another: Any person may have in their possession or under their control any migratory game bird or parts thereof that have been lawfully taken by another person, if they possess a written statement which shall be provided by the donor of the migratory game bird, or parts thereof, and which shall contain the following:

(a) the kind and number of game parts donated;

(b) the date and county where the game was lawfully taken;

(c) the donor's name, address, and the number of the hunting license under which the game was lawfully taken; and

(d) the date and place of the donation.

(3) Retention of live animals: It shall be unlawful to retain migratory game bird in a live condition except under permit or license issued by the director for the fol-

lowing purposes:

- (a) zoos open for public display;
- (b) in class A parks;
- (c) in projects for scientific research and propagation;
- (d) a rehabilitation permit;
- (e) under a falconry permit, only those birds listed on the permit;
- (f) under a scientific collection permit, one may collect and possess only those migratory game bird species listed on the permit; and
- (g) in transit through New Mexico when the transporter can demonstrate proof of legal possession of the migratory game bird being transported.

(4) Sale of game animal parts: It shall be unlawful to sale or barter any parts or feathers from migratory game birds.

(5) Falconry provisions for possession: the falconry hunter shall not retain nor possess any migratory game bird of bird taken by a raptor except those species of protected birds taken during open falconry season.

L. Release of wildlife: It shall be unlawful for any person or persons to release, intentionally or otherwise, or cause to be released in this state any migratory game bird, without first obtaining a permit from the department of game and fish.

M. Use of vehicles and roads in hunting migratory game birds:

(1) Roads: It shall be unlawful to shoot at, wound, take, attempt to take, or kill any migratory game bird on, from, or across any graded paved, or maintained public road and including the areas lying within right-of-way fences or 40 feet from the edge of the pavement or maintained surface, in absence of right-of-way fences.

(2) Vehicles, boats, aircraft: It shall be unlawful to shoot at any migratory game bird from within a motor vehicle, power boat, sailboat, or aircraft. EXCEPTION - Migratory game birds may be taken from a motor-driven boat (or other craft with attached motor) or sailboat when resting at anchor or fastened within or immediately alongside a fixed hunting blind or is used solely as a means of picking up dead birds.

(3) Harassing migratory game birds: It shall be unlawful, at any time, to pursue, harass, harrass, drive, or rally any migratory game bird by use of or from a motor-driven vehicle, powerboat, sailboat, or aircraft.

(4) Vehicle off of established road: During the seasons established for any migratory game bird, it shall be unlawful to drive or ride in a motor vehicle, which is driven off an established road when the vehicle bears a licensed hunter, fisherman or trapper. EXCEPTION: 1) Snowmobiles; 2) All landowners, lessees or their employ-

ees, while on their owned or leased lands in connection with legitimate agricultural activities.

(5) Closed roads: During the seasons established for any migratory game bird, it shall be unlawful to knowingly occupy, drive, or cause to be driven any motor vehicle on a closed road when the vehicle bears a licensed hunter, angler or trapper.

(6) Mobility impaired:

(a) Shooting from a vehicle: The holder of a mobility impaired card is authorized to shoot at and kill migratory game birds during their respective open seasons from a stationary motor-driven vehicle that is not on a public road or highway. The director may issue permits to shoot from a stationary vehicle to applicants who provide certification that the applicant is disabled in accordance with the American Disability Act. Such certification shall be signed by an M.D. or O.D. licensed to practice in the applicant's state of residence.

(b) Driving off established roads: Holders of a mobility impaired card may, with permission of the landowner, lessee, or land management agency, drive off established roads to hunt for or take migratory game birds, during open seasons.

(c) Assistance for mobility impaired hunter: The holder of a mobility impaired card may be accompanied by another person to assist in reducing to possession any migratory game bird which has clearly been wounded by the licensed mobility impaired hunter. Persons assisting in reducing to possession any wounded migratory game birds shall be fully licensed.

N. Lands and waters owned, administered, controlled, or managed by the state game commission:

(1) Posting of signs: The state game commission may prohibit, modify, condition, or otherwise control the use of areas under its control by posting of signs as may be required in any particular area.

(2) Violating provisions of posted signs: It shall be unlawful to violate the provisions of posted signs on areas under the control of the state game commission.

(3) Trespass on state game commission owned lands: It shall be unlawful to hunt migratory game birds, camp, or trespass upon state game commission owned lands unless otherwise specifically allowed by rule.

(4) State waterfowl management areas and wildlife management areas open, species that can be hunted, and days open for hunting: Use of vehicles will be restricted to designated areas.

(a) The Brantley WMA (excluding the Seven Rivers waterfowl management area portion, as posted) shall be open for all migratory game bird hunting during

established statewide seasons, except the old McMillan lake spillway arm of Brantley lake extending from the mouth of South Seven Rivers draw north to the railroad trestle shall be closed to all hunting from January 1 through February 28.

(b) Bernardo WMA: Those hunting waterfowl on Bernardo WMA shall have in their possession a free Bernardo/La Joya WMA permit obtained from the department website or offices.

(i) That portion of the Bernardo WMA south of US-60 is open to teal hunting each day of the September teal season and the youth waterfowl days. That portion of the Bernardo WMA north of US-60 is open to only youth hunters during each day of the September teal season and the youth waterfowl days.

(ii) That portion of Bernardo WMA east of the unit 7 drain, 600 feet south of US-60 and portions north of US-60, shall be open only on Monday, Wednesday, and Saturday to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons, unless otherwise specifically allowed by rule.

(iii) That portion of Bernardo WMA west of the unit 7 drain, 600 feet south of US-60 and portions north of US-60, shall be open only on Sunday and Thursday to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons, unless otherwise specifically allowed by rule.

(iv) Designated posted areas of Bernardo WMA north of US-60 are open during the light goose conservation order. Areas east of the unit 7 drain shall be open on Monday, Wednesday, and Saturday; areas west of the unit 7 drain shall be open on Sunday and Thursday.

(v) Designated areas open for Bernardo youth waterfowl hunts are: north of highway U.S. 60, between U.S. 60 and the posted closure areas. Areas east of the unit 7 drain shall be open on Monday, Wednesday, and Saturday; areas west of the unit 7 drain shall be open on Sunday and Thursday.

(c) The Big Hatchet mountain wildlife management area shall be open for dove hunting during established seasons.

(d) The Charette lake WMA shall be open each day of the youth waterfowl days; and on Monday, Wednesday, and Saturday to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons. Charette lake WMA is closed during the September teal season.

(e) The Edward Sargent, W. A. Humphries, Rio Chama, Urraca, Colin Neblett, Water canyon, Marquez, and Elliot S. Barker wildlife management areas shall

be open for hunting dove and band-tailed pigeon during established seasons.

(f) The portion of Jackson lake WMA west of NM-170 shall be open on Mondays, Wednesdays, and Saturdays to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe. The portion of Jackson lake WMA east of NM-170 shall be open to falconry only migratory game bird hunting during established seasons.

(g) The lesser prairie-chicken management areas and Sandhills Prairie conservation area shall be open to hunt dove during established seasons.

(h) La Joya WMA: Those hunting waterfowl on La Joya WMA shall have in their possession a free Bernardo/La Joya WMA permit obtained from the department website or offices.

(i) The entire La Joya WMA shall be open to teal hunting each day of the September teal season and each day of the youth waterfowl days.

(ii) That portion of La Joya WMA north of the main east/west entrance road and west of the railroad tracks shall be open on Saturdays, Mondays, and Wednesdays to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons, unless otherwise specifically allowed by rule.

(iii) That portion of La Joya WMA south of the main east/west entrance road and west of the railroad tracks shall be open on Sundays and Thursdays to hunt ducks, geese, Virginia rail, Sora, common moorhen, American coot, and common snipe during established seasons, unless otherwise specifically allowed by rule.

(iv) That portion of La Joya WMA east of the railroad tracks shall be open to hunt dove, ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons.

(i) The McAllister Lake WMA shall be open each day of the youth waterfowl days; and on Monday, Wednesday, and Saturday to hunt ducks, light geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons.

(j) The Salt Lake WMA shall be open to teal hunting each day of the September teal season and youth waterfowl days; and open on Monday, Wednesday, and Saturday for ducks, geese, Virginia rail, sora, common moorhen, American coot and common Snipe during established seasons.

(k) The Seven Rivers WMA shall be open each day of the youth waterfowl days; and for migratory game bird hunting in designated areas as posted only on Monday, Wednesday, and Saturday during

established statewide seasons.

(l) The Socorro-Escondida wildlife management area shall be open for migratory game bird hunting.

(m) The Tucumcari WMA shall be open each day of the September teal and youth waterfowl days; and on Saturday, Sunday, and Wednesday to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons.

(n) The William S. Huey WMA shall be open for dove hunting only on Monday, Wednesday, and Saturday during established statewide seasons.

(5) The Sandia ranger district of the Cibola national forest shall be open to archery only migratory game bird hunting during established seasons.

O. Areas closed to migratory game bird hunting: The following areas shall remain closed to hunting, except as permitted by regulation.

(1) All wildlife management areas.

(2) Rio Grande wild and scenic river area.

(3) Sub-Unit 6B (Valles Caldera national preserve).

(4) Sugarite canyon state park.

(5) Valle Vidal area.

(6) The old McMillan lake spillway arm of Brantley lake extending from the mouth of South Seven Rivers draw north to the railroad trestle shall be closed to all hunting from January 1 through February 28.

(7) That portion of the stilling basin below Navajo dam lying within a line starting from N. M. 511 at the crest of the bluff west of the Navajo dam spillway and running west along the fence approximately 1/4 mile downstream, southwest along the fence to N. M. 511 to the Navajo dam spillway, across the spillway, and to the crest of the bluff.

(8) Areas within Valencia county may be closed to migratory game bird hunting that meets the following criteria:

(a) The discharge of a shotgun in the area has been identified by department personnel as a public safety risk because of its proximity to an inhabited area. For the purpose of this section, "public safety risk" shall be defined as a reasonable potential risk of injury at an occupied place of residence; and

(b) The discharge of a shotgun in the area is not prohibited by any other statute, rule, regulation or ordinance.

(c) These areas shall be designated by posting of signs and identified on the department website.

P. Regulations pertaining to boats, other floating devices, and motors:

(1) On Bernardo, La Joya, Salt lake and Jackson lake WMAs only boats and other floating devices using no motors shall be permitted during waterfowl season.

(2) On Tucumcari WMA, only boats and other floating devices using electric motors or with motors that are not in use shall be permitted.

(3) On Charette and McAllister lakes boats and other floating devices with or without motors shall be permitted; provided, however, that boats or floating devices shall not be operated at greater than normal trolling speed.

(4) Department of game and fish personnel or persons authorized by the director may use gasoline powered outboard motors on all lakes mentioned in this chapter while performing official duties.

Q. Electronic motion decoys: It shall be unlawful to use electronic motion decoys while hunting waterfowl on those portions of Bernardo WMA, north of US highway 60.

[19.31.6.9 NMAC - Rp, 19.31.6.9 NMAC, 8-29-2008]

19.31.6.10 SPECIES, OPEN AREAS, SEASON DATES, AND DAILY BAG LIMITS:

A. 2008-2009 season; all dates are 2008 unless otherwise specified:

[See Table on following page]

SPECIES	OPEN AREAS	SEASON OPEN	DAILY BAG LIMIT
Dove: Mourning and white-winged dove	north zone	Sept. 1-Oct.30	15 (singly or in aggregate)
	south zone	Sept. 1-30 & Dec. 1-30	15 (singly or in aggregate)
Eurasian-collared dove	statewide	Sept. 1-Dec. 30	no bag or possession limit
Band-tailed pigeon (free permit required)	southwest BPHA	Oct. 1-20	5
	regular BPHA	Sept. 1-20	5
Sandhill crane (free permit required)	eastern	Oct. 31 - Jan. 31, 2009	3
Sandhill crane (special draw permit required)	MRGV	Nov. 1-2	3 (6 per season)
	EV	Nov. 1-9	3
	Southwest	Nov. 1-9	3
	MRGV	Nov. 22-23	3 (6 per season)
	MRGV	Dec. 6-7	3 (6 per season)
	Southwest	Jan. 3-4, 2009	3 (6 per season)
MRGV	Jan. 10-11, 2009	3 (6 per season)	
			(possession -6, regular and special seasons combined)

CENTRAL FLYWAY

<u>SPECIES</u>	<u>SEASON DATES</u>	<u>DAILY BAG LIMIT</u>
September teal: blue-winged teal, green-winged teal, and cinnamon teal	Sept. 20-28	4 (singly or in the aggregate)
Youth waterfowl days: north zone	Oct. 4-5	6 (singly or in the aggregate) -- that consists of no more than 5 mallard (of which only 2 may be female mallard, (Mexican-like ducks are included towards the mallard bag limit)); 2 scaup; 2 redhead; 2 wood duck, 2 hooded mergansers, 1 pintail, 1 canvasback
Youth waterfowl days: south zone	Oct. 18-19	same as north zone
Ducks: north zone	Oct. 11 - Jan. 14, 2009	6 (singly or in the aggregate) -- that consists of no more than 5 mallard (of which only 2 may be female mallard, (Mexican-like ducks are included towards the mallard bag limit)); 2 scaup; 2 redhead; 2 wood duck; 2 hooded mergansers
pintail and canvasback	Oct. 11 - Nov. 18	1 pintail and 1 canvasback may be part of the aggregate bag
south zone	Oct. 22 - Jan. 25, 2009	same as north zone

pintail and canvasback	Dec. 18 - Jan. 25, 2009	1 pintail and 1 canvasback may be part of the aggregate bag
American coot	same as above zone dates	15
Common moorhen	Oct. 4 - Dec. 12	1
Common snipe	Oct. 11 - Jan. 25, 2009	8
Virginia rail & sora	Sept. 20 - Nov. 28	10 daily (singly or in the aggregate)
Dark goose: Canada & white-fronted geese (regular season closed in Bernalillo, Sandoval, Sierra, Socorro, and Valencia counties)	Oct. 17 - Jan. 31, 2009	4
Special MRGV season (free permit required)	Jan. 3 - Jan. 25, 2009	1 (1 per season)
Light goose: Ross's & snow geese	Oct. 17 - Jan. 31, 2009	20/80 possession
Light goose conservation order	Feb. 1, 2009 - Mar. 10, 2009 <u>PACIFIC FLYWAY</u>	no bag or possession limit

SPECIES**SEASON DATES****DAILY BAG LIMIT**

Youth waterfowl days	Oct. 4-5	same as regular season below including scaup
Ducks:	Oct. 13 - Jan. 25, 2009	7 (singly or in the aggregate) -- that consists of no more than 2 female mallard; 2 redhead; 1 pintail
scaup	Nov. 01 - Jan. 25, 2009	2 daily
canvasback	season closed	
American coot & common moorhen	Oct. 13 - Jan. 25, 2009	12 daily (singly or in the aggregate)
Common snipe	Oct. 11 - Jan. 25, 2009	8
Virginia rail & sora	Sept. 20 - Nov. 28	10 daily (singly or in the aggregate)
Goose: north zone	Sept. 20 - Oct. 5 and Oct. 27 - Jan. 25, 2009	3 dark geese, 10 light geese
south zone	Oct. 11 - Jan. 25, 2009	2 dark geese, 10 light geese

B. Light goose conservation measures: Under the director's discretion with the verbal concurrence of the state game commission chairman or his designee, the department may implement the light goose conservation measures approved by the U.S. fish and wildlife service (USFWS). Methods, bag and possession limits, and dates allowed shall be those as approved by the USFWS. [19.31.6.10 NMAC - Rp, 19.31.6.10 NMAC, 8-29-2008]

19.31.6.11 FALCONRY SEASONS:

A. Species that can be taken, open areas, and hunting seasons; 2008-2009 season, all dates are 2008 unless otherwise specified:

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

(2) The season for band-tailed pigeon shall be September 1 through December 16 for the regular hunting area and October 1 through January 15, 2009 for the southwest hunting area. A free permit is required.

(3) The season for sandhill crane shall be in the eastern New Mexico sandhill crane hunt area and shall be open from October 17 through January 31, 2009. A free permit is required.

(4) The season for sandhill crane in the Estancia valley shall be November 1 through December 30. A special season permit is required.

(5) Duck: Central flyway seasons shall be open in the North zone - September 20-28, October 4-5, and October 11 through January 14, 2009; South zone - September 20-28, October 18-19, and October 22 through January 25, 2009. Pacific flyway seasons shall be as follows: October 4-5, and October 13 through January 25, 2009.

(6) Light goose: Central flyway seasons shall be open October 17 through January 31, 2009. Pacific flyway season shall be north zone - September 20 through October 5, and October 27 through January 25, 2009; south zone - October 11 through January 25, 2009.

(7) Dark goose: Central flyway seasons shall be open October 17 through January 31, 2009. Pacific flyway season shall be north zone - September 20 through October 5, and October 27 through January 25, 2009; south zone - October 11 through January 25, 2009.

(8) Common snipe: Central and Pacific flyways seasons shall be: October 11 through January 25, 2009.

(9) Common moorhen: Central flyway season shall be: October 4 through January 18, 2009. Pacific flyway season shall be: October 11 through January 25, 2009.

(10) Sora and Virginia rails: Central and Pacific flyways seasons shall be: September 20 through January 4, 2009.

B. Daily bag limits: shall be three birds (singly or in the aggregate) and possession limits shall be six birds (singly or in the aggregate) as established herein.

(1) There is no daily bag or possession limit on Eurasian-collared dove.

(2) Season limit for sandhill crane in the Estancia valley shall be 9 birds.

[19.31.6.11 NMAC - Rp, 19.31.6.11 NMAC, 8-29-2008]

19.31.6.12 REQUIREMENTS AND PERMITS FOR BERNARDO LIGHT GOOSE HUNT:

A. Up to 24 permits at Bernardo WMA, per hunting day, will be available. Applications submitted for the LTG-O-102 hunt must have a minimum of one youth hunter and one hunter over 18 years of age.

B. Hunt packages for the Bernardo light goose hunts.

LTG-O-101 12/31

LTG-O-102 1/24/09

LTG-O-103 1/26/09

C. Only 30 rounds per hunter will be allowed at the blinds when participating on the Bernardo WMA light goose special permit hunts.

[19.31.6.12 NMAC - Rp, 19.31.6.12 NMAC, 8-29-2008]

19.31.6.13 REQUIREMENTS AND PERMITS FOR BERNARDO YOUTH-ONLY LIGHT GOOSE HUNT:

A. Up to 12 permits will be available for the December 29 (YLG-O-101) youth-only light goose hunt at Bernardo WMA.

B. Only 30 rounds per hunter will be allowed at the blinds when participating on the Bernardo WMA light goose special permit hunts.

[19.31.6.13 NMAC - Rp, 19.31.6.13 NMAC, 8-29-2008]

19.31.6.14 REQUIREMENTS AND PERMITS FOR THE SPECIAL MIDDLE RIO GRANDE VALLEY DARK GOOSE

SEASON: Unlimited permits obtained at department offices or website will be available to hunt dark geese in Valencia, Socorro, and Sierra counties, with a daily bag limit of one dark goose and a season limit of one dark goose.

[19.31.6.14 NMAC - Rp, 19.31.6.14 NMAC, 8-29-2008]

19.31.6.15 YOUTH WATERFOWL HUNTING DAYS: Requirements for youth hunters to participate in this hunt are as follows:

A. Youth hunters must be under 16 years old.

B. An adult, at least 18 years old, must accompany the youth hunter in the field (the adult may not hunt ducks; but may participate in other seasons that are open on the special youth day).

C. Only ducks and coots may be taken by the youth hunter (sandhill cranes, geese or any other migratory game bird species may not be taken unless the season is open).

[19.31.6.15 NMAC - Rp, 19.31.6.15 NMAC, 8-29-2008]

19.31.6.16 REQUIREMENTS AND HUNT CODES FOR THE SPECIAL BERNARDO YOUTH WATERFOWL HUNT AREA:

A. The Bernardo WMA ponds north of highway U.S. 60 will be open for waterfowl hunting to groups consisting of a minimum of a youth hunter, under 18 years of age, and a supervising adult.

B. Requirements for blind selection:

- (1) Blind selection during the September teal season and federal youth waterfowl days including weekends is on a first come basis. Once all blinds are selected, no other hunters may enter the area.
 - (2) Blind selection on weekdays between October 25 through December 12 and January 5-23, 2009 is on a first come basis. Once all blinds are selected, no other hunters may enter the area.
 - (3) Blind selection on all weekends and weekdays between December 18 through January 4, 2009 will be available by permit only issued by drawing.
 - (a) up to two hunt choices may be awarded by drawing; and
 - (b) if any permits are available after the drawing, a person may submit a new application at one of the department offices; up to 2 hunt choices may be awarded; hunters may have a maximum of 4 Bernardo youth-only permits per license year; and
 - (c) only two applications per hunt code will be drawn, or issued after the drawing.
- C.** 2008-2009 season, hunt codes and permits available:

Hunt Date	Hunt Code	No. of permits	Hunt Date	Hunt Code	No. of permits
October 25	BNY-0-101	6	December 23	BNY-0-120	6
October 26	BNY-0-102	6	December 24	BNY-0-121	6
November 1	BNY-0-103	6	December 25	BNY-0-122	6
November 2	BNY-0-104	6	December 26	BNY-0-123	6
November 8	BNY-0-105	6	December 27	BNY-0-124	6
November 9	BNY-0-106	6	December 28	BNY-0-125	6
November 15	BNY-0-107	6	December 29	BNY-0-126	6
November 16	BNY-0-108	6	December 30	BNY-0-127	6
November 22	BNY-0-109	6	December 31	BNY-0-128	6
November 23	BNY-0-110	6	January 1	BNY-0-129	6
November 29	BNY-0-111	6	January 2	BNY-0-130	6
November 30	BNY-0-112	6	January 3	BNY-0-131	6
December 6	BNY-0-113	6	January 4	BNY-0-132	6
December 7	BNY-0-114	6	January 10	BNY-0-133	6
December 13	BNY-0-115	6	January 11	BNY-0-134	6
December 14	BNY-0-116	6	January 17	BNY-0-135	6
December 20	BNY-0-117	6	January 18	BNY-0-136	6
December 21	BNY-0-118	6	January 24	BNY-0-137	6
December 22	BNY-0-119	6	January 25	BNY-0-138	6

D. Designated areas open for Bernardo youth waterfowl hunts are: north of highway U.S. 60, between U.S. 60 and the posted closure areas.

- (1) That portion of Bernardo WMA east of the unit 7 drain, shall be open only on Monday, Wednesday, and Saturday to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons.
- (2) That portion of Bernardo WMA west of the unit 7 drain, shall be open only on Sunday and Thursday to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons.

E. Use of motorized motion decoys is prohibited.
 [19.31.6.16 NMAC - Rp, 19.31.6.16 NMAC, 8-29-2008]

19.31.6.17 HUNT CODES AND PERMITS NUMBERS FOR THE SPECIAL ESTANCIA VALLEY, MIDDLE RIO GRANDE VALLEY, AND SOUTHWEST NEW MEXICO SANDHILL CRANE SEASONS:

A. Eight separate sandhill crane seasons are scheduled with up to a total of 440 permits available. The permits will be allocated by season as follows: 2008-2009 season:

Season Dates	Hunt Code	Hunt Location	No. of permits
November 1-2	SCR-0-101	MRGV	75
November 1-9	SCR-0-102	EV	50
November 22-23	SCR-0-103	MRGV	70
December 6-7	SCR-0-104	MRGV	65
November 1-9	SCR-0-105	SW	60
January 10-11, 2009	SCR-0-106	MRGV	65
January 3-4, 2009	SCR-0-107	SW	50
November 1 though December 30	SCR-6-108	EV falconry	5

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

C. All EV, MRGV, SW sandhill crane hunters, and EV falconers are required to submit a special permit sandhill crane harvest report to the department within 5 days after the end of their hunt. Hunters and falconers that do not submit a questionnaire within five

days of the close of their hunt will be considered ineligible to receive a sandhill crane permit the following year.

[19.31.6.17 NMAC - N, 8-29-2008]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.34.3 NMAC, Section 13, effective August 29, 2008.

19.34.3.13 USE OF WILDLIFE MANAGEMENT AREAS:

A. It shall be unlawful to conduct any activity on a WMA unless provided for by regulation, permit or agreement.

B. It shall be unlawful to operate any motorized vehicle or bicycle off of established roads or on closed roads within WMA's, except as allowed by the director of the department of game and fish through permit or regulation, or any county, state or federal law enforcement officer in the discharge of his/her official duties.

C. It shall be unlawful for any person 18 years of age or older to enter a WMA pursuant to a GAIN activity approved by the director for the property without having in their possession a current license, annual GAIN permit, temporary 5-day GAIN permit, a valid park permit issued for a state park associated with that wildlife management area, or special activity GAIN permit; **AND** a habitat management and access validation (HMAV).

D. It shall be unlawful to deface or remove rocks, minerals, plants, firewood or man made feature from any WMA unless specifically allowed by regulation.

E. It shall be unlawful for any person to excavate, injure, destroy, or remove any cultural resource or artifact from any WMA.

F. It shall be unlawful to violate the provisions of posted signs on areas under the control of the state game commission.

G. It shall be unlawful to camp in excess of 9 consecutive days, except by licensed hunters and their guests concurrent with their permitted hunt.

H. It shall be unlawful to have an open fire unless contained in a metal fireplace or charcoal grill.

I. It shall be unlawful to use or possess any hay or feed on WMA's that is not certified as weed free.

J. It shall be unlawful to conduct a commercial activity on an WMA without first obtaining a commercial permit as described in 19.34.3.14 NMAC.

K. Nothing in this rule shall prevent employees or contract workers

from performing administrative duties on properties owned or controlled by the New Mexico state game commission.

L. These restrictions are subject to terms and conditions imposed on state parks pursuant to agreements between the state game commission and energy minerals and natural resources department.

M. It shall be unlawful to possess dogs or other pets on any commissioned-owned property that are not leashed. Exception: dogs may be unleashed for hunting purposes during established seasons only and only on commissioned-owned properties where use of dogs for hunting purposes is allowed by rule.

[19.34.3.13 NMAC - N, 03/31/08; A, 08/29/08]

NEW MEXICO PUBLIC REGULATION COMMISSION

The New Mexico Public Regulation Commission, repeals its rule entitled Utility Division Procedures, 17 NMAC 1.2 (filed December 14, 1998) and replaces it with the new rule 17.1.2 NMAC, Utility Applications, effective September 1, 2008.

The New Mexico Public Regulation Commission repeals 18.1.2 NMAC, Transportation Division Procedures (filed December 10, 2002), effective September 1, 2008.

NEW MEXICO PUBLIC REGULATION COMMISSION

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION CHAPTER 2 ADMINISTRATIVE PROCEDURES PART 2 PUBLIC REGULATION COMMISSION RULES OF PROCEDURE

1.2.2.1 ISSUING AGENCY: Public Regulation Commission.
[1.2.2.1 NMAC - N, 9-1-08]

1.2.2.2 SCOPE: This rule applies to all utility division, transportation division, fire marshal division, and corporations bureau proceedings other than rule-makings conducted by the commission. Other rules governing specialized proceedings or matters shall govern in the event of a conflict with this rule.
[1.2.2.2 NMAC - N, 9-1-08]

1.2.2.3 STATUTORY AUTHORITY: Sections 8-8-4, 8-8-16, 53-18-1, 53-19-66, 59A-52-15, 59A-52-16, 60-

2C-3, 62-8-3, 62-13-2, 62-14-9.1, 62-14-10, 63-7-23, 63-9-11, 63-9A-5.1, 63-9A-11, 63-9B-5, 63-9H-10, 65-2A-4, 65-2A-36, 65-6-4, and 70-3-13 NMSA 1978.

[1.2.2.3 NMAC - N, 9-1-08]

1.2.2.4 DURATION: Permanent.

[1.2.2.4 NMAC - N, 9-1-08]

1.2.2.5 EFFECTIVE DATE: September 1, 2008, unless a later date is cited at the end of a section.

[1.2.2.5 NMAC - N, 9-1-08]

1.2.2.6 OBJECTIVE: The purpose of this rule is to establish procedures for handling matters before the commission concerning its regulation of utilities, telecommunications providers, motor carriers, railroads, fire marshal-regulated entities, corporations, owners and operators of gas and hazardous liquid pipelines and underground facilities, excavators, and one-call notification systems subject to the jurisdiction of the commission in New Mexico.

[1.2.2.6 NMAC - N, 9-1-08]

1.2.2.7 DEFINITIONS: In addition to the definitions contained in Sections 3-29-2, 8-8-2, 53-4-1, 53-6-3, 53-8-2, 53-11-2, 53-19-2, 53-20-2, 60-2C-2, 62-3-3, 62-14-2, 63-9-2, 63-9A-3, 63-9H-3, 65-2A-3, 65-6-2, and 70-3-12 NMSA 1978, as used in this rule:

A. advisory staff means persons hired by the commission pursuant to Section 8-8-13 NMSA 1978, but who do not represent staff in proceedings before the commission;

B. applicant means any party on whose behalf an application is made for approval or authorization of the commission;

C. chief clerk means the person appointed by the chief of staff pursuant to Section 8-8-5 NMSA 1978 to serve as director of the administrative services division pursuant to Section 8-8-7 NMSA 1978;

D. chief of staff means the person appointed by the commission pursuant to Section 8-8-5 NMSA 1978;

E. commenter means a person who enters into the record of a proceeding before the commission or presiding officer a comment on the grounds of public or private interest, but who is not a party to the proceeding;

F. complainant means a person who complains of anything done or omitted to be done in violation of any law, rule, or order administered or promulgated by the commission;

G. corporations means domestic and foreign corporations, limited liability companies, cooperative associa-

tions, sanitary projects act associations, water users associations, waterworks corporations, and foreign business trusts as those terms are defined in Section 3-29-2 and Chapter 53, NMSA 1978, unless exempted by law from commission regulation;

H. document means, except as otherwise used in the provisions of this rule governing discovery, any submission in a formal proceeding which is not a pleading or which is required to be filed by commission rule or order outside a formal proceeding;

I. electronic means relating to technology having electrical, digital, magnetic, wireless, telephonic, optical, electromagnetic or similar capabilities;

J. file, filed, or filing means delivery or transmittal to the chief clerk or the chief clerk's designee and acceptance by the chief clerk or the chief clerk's designee of an order, notice, pleading, or document to be kept on file in their official capacity;

K. fire marshal-regulated entities means persons whose activities are regulated by the provisions of Sections 59A-52-1 through 59A-52-25 NMSA 1978, or the Fireworks Licensing and Safety Act, Sections 60-2C-1 through 60-2C-11 NMSA 1978;

L. formal proceedings means all matters other than rulemakings to which case numbers are assigned and which are entered on the commission's docket for decision by the commission;

M. hearing examiner means a person employed by the commission as a hearing examiner, or a commissioner or advisory staff member designated by the commission as the hearing examiner to conduct any hearing or investigation which the commission is authorized to conduct;

N. informal proceedings means any matters handled outside a formal proceeding by the commission or its staff, including informal complaints;

O. intervenor means a person permitted by the commission or presiding officer to participate as a party in a proceeding pursuant to 1.2.2.23 NMAC;

P. mediator means a person assigned by the commission to facilitate resolution of disputes pending informally or formally before the commission by assisting parties in their communications and meetings, identification and exploration of issues, and development of bases for agreements;

Q. party means a person who initiates a commission proceeding by filing an application, petition or complaint, or whom the commission or presiding officer names as a respondent, or whom the commission or presiding officer grants

leave to intervene; unless the context indicates otherwise, the term "party" may also refer to counsel of record for a party; staff shall have the status of a party, without being required to file a motion to intervene, but shall not have a right to appeal;

R. petitioner means any party on whose behalf a petition is made for approval, determination, consent, certification, or authorization of the commission;

S. pleading means an application, petition, complaint, answer, motion, response to motion, exception, or other formal written statement filed in any formal proceeding;

T. presiding officer means a commissioner taking such actions as are permitted under 1.2.2.29 and 1.2.2.30 NMAC or the hearing examiner designated to preside over a proceeding;

U. proceeding means a formal proceeding;

V. public hearing means a portion of a proceeding, open to the public and conducted by the commission or presiding officer, that affords an opportunity to present such evidence, argument, or other appropriate matters as the commission or presiding officer deems relevant or material to the issues;

W. regulated entity means a utility, telecommunications provider, motor carrier, fire marshal-regulated entity, railroad, or owner or operator of gas and hazardous liquid pipelines and underground facilities or one-call notification system subject to the jurisdiction of the commission;

X. respondent means any party against whom any complaint is filed or any party subject to the jurisdiction of the commission to whom the commission issues notice instituting a proceeding, investigation, or inquiry of the commission;

Y. staff means all persons, other than hearing examiners and advisory staff, employed by the commission; and

Z. telecommunications provider shall have the meaning given in Paragraph (2) of Subsection A of 63-7-23 NMSA 1978.

[1.2.2.7 NMAC - Rp, 17 NMAC 1.2.7, 9-1-08]

1.2.2.8 GENERAL PROVISIONS:

A. Public records: The commission's policy is to allow full and complete access to public records in accordance with the Inspection of Public Records Act, Section 14-2-1 NMSA 1978 *et seq.* Except when the commission or presiding officer directs otherwise, all pleadings, orders, communications, exhibits, or other documents shall become matters of public record as of the day and time of their filing.

The commission shall permit any person to examine any such public record, unless subject to a protective order, or otherwise protectable under the Inspection of Public Records Act. Under no circumstances will any person be allowed to take original commission records from commission premises. Arrangements to examine records or to obtain copies of records must be made through the chief clerk or the chief clerk's designee.

B. Protective orders:

(1) Any person moving for an order to protect pleadings, documents or classes of documents from disclosure bears the burden of establishing their right, if any, to such protection. A motion for an order to protect documents or information from disclosure shall be supported by an affidavit. The affidavit shall:

(a) satisfy the claimant's burden of making a *prima facie* showing that protection is appropriate, and, if protection is sought for pleadings or documents that are to be filed, that protection is consistent with the Inspection of Public Records Act, including protectable trade secrets;

(b) be executed by the claimant or a person employed by the claimant who is sufficiently knowledgeable about the grounds on which protection is sought that they can defend such claim if it is challenged; and

(c) explain with particularity the injury which would result from disclosure of the information for which protection is sought.

(2) If the commission or presiding officer deems it necessary, or if any party files a motion to compel, the commission or presiding officer may require the party seeking the protective order to file the documents or information which are the subject of the motion in a properly identified sealed container. The container may be opened by the commission or presiding officer prior to ruling on the motion for a protective order only for purposes of making an *in camera* inspection.

(3) The commission or presiding officer may, in ruling on the motion, provide that the documents or information not be disclosed or that they be disclosed only in a designated manner or to designated persons. Any order granting a motion for a protective order in whole or in part shall include clear and specific instructions to the chief clerk or chief clerk's designee regarding the limitations placed on disclosure of the documents or information subject to the order and a reminder that sanctions may be imposed under applicable laws for its violation. The protective order shall set forth the conditions for protection and disclosure of information subject to protection under the Inspection of Public Records Act to parties

to the proceeding. The order shall be included in the appropriate publicly available file in lieu of the documents or information which are the subject of the protective order.

(4) The period of time during which disclosure is limited shall be two years from the date of the final order in the case, provided that the movant may request that the protective order specify a different period of protection. The movant may, prior to expiration of the protective order, move for an order extending the period of protection of the documents or information.

(5) Nothing in this rule shall be construed as waiving or altering any requirement placed upon the commission for timely disclosure and copying of public records under the Inspection of Public Records Act.

C. Fees:

(1) All application fees or other charges required by law shall be paid to the commission at the time of filing or at the time the charge is incurred.

(2) No pleading or document will be accepted without payment of required fees and submission of the required number of copies by the filing party, unless the commission or presiding officer directs otherwise.

(3) Except as otherwise provided by Sections 53-2-1, 53-8-87 and 65-2A-36 NMSA 1978, and 12.3.1 NMAC, the fee for paper copies of papers, testimony, or records, shall be the charge set by the state records center for similar types of copies.

(4) The fee for copies of papers, testimony, or records on electronic storage media shall be the same charge set by the state records center for paper copies of the same.

(5) The fee for cassette or CD-ROM copies of audio recordings of informal and formal proceedings, if available, is \$10 per cassette or CD-ROM.

(6) For paper copies of pleadings or documents that are not retrievable on electronic storage media maintained by the commission, the chief clerk or chief clerk's designee may charge a document search and preparation fee based on the hourly rate charged by the state records center for document preparation in 1.13.2 NMAC.

D. Waiver of rules: Upon the commission's or presiding officer's own motion or by motion of the staff or any party showing good cause and such notice as the commission or presiding officer may deem proper, the commission or presiding officer may waive the application of any procedural provision of this rule, except when precluded by law.

E. Construction and amendment: These rules, and any rules incorporated by reference, shall be so construed as to secure just and speedy determi-

nation of the issues.

F. Docket: The commission shall maintain a docket of all proceedings, and each new proceeding shall be assigned an appropriate docket number. The docket is open to public inspection.

G. Calendar of public hearings: The commission shall maintain a public hearing calendar. The public hearing calendar is open to public inspection.

H. Address of the commission: Persons shall submit filings in proceedings related to utilities and telecommunications providers to the records office located at the utility division's address. Persons shall submit filings in proceedings related to motor carriers, railroads, fire marshal-regulated entities, corporations, and owners and operators of gas and hazardous liquid pipelines and underground facilities, excavators, and one-call notification systems to the records office located at the transportation division's address.

(1) Utility division.

(a) Street address: Marian Hall, 224 E. Palace Avenue, Santa Fe, New Mexico 87501-2013.

(b) Mailing address: Public Regulation Commission, Utilities Division, P.O. Box 1269, Santa Fe, New Mexico 87504-1269.

(2) Transportation division:

(a) Street address. P.E.R.A. Building, 1120 Paseo de Peralta, Santa Fe, New Mexico, 87504.

(b) Mailing address. Public Regulation Commission, (indicate appropriate division or bureau), P.O. Box 1269, Santa Fe, NM 87504-1269.

I. Office days and hours: The offices of the commission are open from 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m., Monday through Friday, legal holidays excepted.

J. Identification of communications: Communications shall contain the name, address, e-mail address, if available, and telephone number of the communicator and an appropriate reference to any commission cases pertaining to the subject of the communication.

K. Current information required: In all cases, persons shall keep the information required by Subsection J of this section current, and when updating the information, shall indicate the case numbers of all docketed cases in which the person is a party or otherwise included on the certificate of service.

L. Computation of time: The time within which an act is to be done as provided in any rule or order promulgated by the commission or order issued by the presiding officer, when expressed in days, shall be computed by excluding the day of the act or event from which the time begins to run and including the last, except that if

the last day be Saturday, Sunday, or a legal holiday, the act may be done in the next succeeding business day.

M. Extensions of time: Except as otherwise provided by law, the time by which any person is required or allowed to act under any statute, rule, or order may be extended by the commission or presiding officer for good cause, upon a motion made before the expiration of the period prescribed or previously extended. The filing of the motion does not toll the running of the time period prescribed.

N. Classification of parties: Parties to proceedings before the commission shall be classified as applicants, petitioners, complainants, respondents, or intervenors.

[1.2.2.8 NMAC - Rp, 17 NMAC 1.2.8, 9-1-08]

1.2.2.9 PRACTICE BEFORE THE COMMISSION: (See 18.60.4.11 NMAC for matters involving owners and operators of gas and hazardous liquid pipelines and underground facilities, excavators, and one-call notification systems.)

A. An individual may appear as a party in person or by an attorney licensed to practice law in New Mexico at either informal or formal proceedings.

B. Entities other than an individual may appear as a party at informal proceedings by an officer or employee of the entity.

C. Commenters may appear in person or by an attorney at any proceeding.

D. Except as provided in this section, entities other than an individual must be represented by an attorney licensed to practice law in New Mexico at all formal proceedings.

E. An attorney licensed in a jurisdiction other than New Mexico may appear at public hearings before the commission or presiding officer provided such non-resident attorney files a motion *pro hac vice* and is associated with and accompanied by an attorney licensed in New Mexico.

F. The following entities may be represented at all formal proceedings as provided:

(1) if the party is the United States, it may be represented as provided in 40 U.S.C. Section 481(a)(4) and 486(d);

(2) if the party is an association of residential customers of an investor-owned public utility or an association of residential members of a rural electric cooperative, it may be represented by an officer or employee thereof who has been authorized to appear on behalf of the association;

(3) if the party is a class C or class D water utility as defined in General Provisions for Water Utilities, 17.12.1

NMAC, or is a sewer utility subject to the requirements of procedures for review of rates proposed by sewer utilities having annual operating revenues averaging less than \$500,000 over any consecutive three-year period, 17.13.970 NMAC, and:

(a) if such a water or sewer utility is a corporation whose voting shares are held by a single shareholder or closely knit group of shareholders all of whom are natural persons active in the conduct of the business, it may be represented by an officer or general manager who has been authorized to appear on behalf of the corporation, or;

(b) if such a water or sewer utility is a general partnership; and the partnership has fewer than ten partners, whether limited or general, except that a husband and wife are treated as one partner for this purpose; and all partners, whether limited or general, are natural persons; it may be represented by a general partner who has been authorized to appear on behalf of the general partnership;

(4) if the party is a water and sanitation district governed by the Water and Sanitation District Act, Section 73-21-1 NMSA 1978 *et seq.*, it may be represented by an officer or employee of the water and sanitation district who has been authorized by the water and sanitation district to appear on its behalf;

(5) if the party is a utility submitting an application relating to securities pursuant to Subsection B of Section 62-6-8 NMSA 1978, it may be represented by an officer or employee of the utility who has been authorized by the utility to appear on its behalf; however, upon a finding by the commission or the presiding officer that there is good cause to hold a public hearing on such an application, the applying utility shall be represented in that proceeding by an attorney licensed to practice law in New Mexico.

G. The commission or presiding officer may require any person claiming to represent any other person or entity as allowed by this rule to provide such verification or corroboration of their claimed representational authority as the commission or presiding officer may deem necessary.

H. Nothing in this rule shall be construed to prohibit a party from being represented in a formal proceeding by an attorney licensed to practice law in New Mexico when such representation is desired by a party or is required by law. [1.2.2.9 NMAC - Rp, 17 NMAC 1.2.9, 9-1-08]

1.2.2.10 FILING AND SERVICE:

A. Filing: A pleading or document is considered filed on the date

stamped by the commission. Any pleading or document received after regular business hours will be stamped and considered filed on the next regular business day.

B. Rejection:

(1) Pleadings and documents which are not in substantial compliance with these or other commission rules, orders of the commission or presiding officer, or applicable statutes may be rejected within thirty (30) days after filing.

(2) If rejected, such papers will be returned with an indication of the deficiencies therein. Acceptance of a pleading or document for filing is not a determination that the pleading or document complies with all requirements of the commission or presiding officer and is not a waiver of such requirements.

(3) The chief of staff of the commission is authorized to reject pleadings and documents under this rule and to sub-delegate such authority.

(4) Pleadings or documents that have been rejected shall not be entered on the commission's docket for decision.

C. Service Generally:

(1) Except as otherwise provided by rule or order, all pleadings, orders, notices, and documents filed in a proceeding shall be promptly served upon those persons described in Paragraph (4) of Subsection C of 1.2.2.10 NMAC by the person filing the orders, notices, pleadings, or documents. Service shall be made by depositing the pleading, order, notice, or document in the U.S. mail, postage prepaid, using first class or express mail, by delivering the pleading, order, notice, or document to a commercial courier service for delivery, by hand delivery, or by electronic transmission in accordance with other rules governing electronic service promulgated by the commission. The date of service shall be the date of deposit in the mail, delivery to a commercial courier service, hand delivery, or electronic transmission.

(2) A certificate of service listing, by name, each person served and describing the manner and date of service shall be filed with or attached to the pleading, order, notice, or document being filed and all copies served or filed, unless otherwise directed by the commission or presiding officer.

(3) Service of pleadings, orders, notices, and documents on the staff's or a party's named attorney is valid service upon staff or the party for all purposes in the proceeding unless the commission or presiding officer directs otherwise.

(4) Service of pleadings, orders, notices, and documents shall be made upon all persons included on the official service list. The official service list is the most recent service list issued by the commission

or presiding officer in the proceeding.

(a) A service list shall include parties and staff or their counsel of record and shall be issued by the commission or presiding officer in all proceedings after the deadline for intervention has passed in the proceeding, and may be revised from time to time.

(b) The commission or presiding officer shall serve all service lists upon staff and the parties to the proceeding promptly upon issuance of the list.

(c) Prior to the issuance of an official service list, all pleadings, orders, notices, and documents filed in a proceeding shall be served by the person filing the orders, notices, pleadings, or documents upon all other parties in the proceeding, persons who have pending motions to intervene, staff, and as otherwise required by commission rule or order.

D. Electronic service:

Electronic service shall be effectuated in accordance with other rules of the commission governing electronic filing and service.

E. Amendments and withdrawal of pleadings and supporting documents:

(1) Except in the case of formal complaints, pleadings may be amended or withdrawn only with leave of the commission or presiding officer and upon such conditions as the commission or presiding officer may deem appropriate.

(2) Formal complaints may be amended without leave at any time prior to the issuance of the probable cause determination required by this rule.

(3) Amendments to any pleading shall not broaden the scope of the issues originally filed unless the commission or presiding officer exercises the discretion to allow such an amendment.

(4) Upon any amendment or withdrawal of a pleading allowed, the commission or presiding officer may require a supplementary public notice.

(5) Direct testimony and exhibits filed may be amended or withdrawn only with leave of the commission or presiding officer, who may take into consideration, among other things, any delay or prejudice to the commission, its staff, or the parties which would result from the granting of the motion. The commission or presiding officer may grant or deny the motion or grant the motion only upon such conditions as are deemed appropriate. Upon any amendment or withdrawal allowed, the commission or presiding officer may require a supplementary public notice.

[1.2.2.10 NMAC - Rp, 17 NMAC 1.2.28, 9-1-08]

1.2.2.11 PLEADINGS: Pleadings shall be in writing, shall state

their object, and shall be signed by the party or staff representative seeking authorization or relief from the commission or by their attorney.

A. Contents: All pleadings shall be paginated and shall contain:

(1) a clear and concise statement of the authorization or other relief sought;

(2) in the case of initial pleadings, the exact legal name, mailing address, and telephone number of each party or the staff representative seeking the authorization or relief; the address or principal place of business of such party or staff; and the name, mailing address, and telephone number of the party's or staff's attorney, if any;

(3) a concise and explicit statement of the facts which said party or the staff is prepared to prove by competent evidence and upon which the commission is expected to rely in granting the authorization or other relief sought; and

(4) a table of contents, if more than ten pages.

B. Supporting exhibits: All pertinent and relevant data, exhibits, illustrations, and prepared testimony, if required by this or any other rule or order of the commission or presiding officer, must be filed along with the pleading.

(1) If supporting exhibits consist of tables or graphs, the specific formulae and equations used to derive the tables or graphs shall be attached as part of the supporting exhibit.

(2) Failure to submit all direct testimony and exhibits in support of a proposed tariff change, application, or petition at the time of filing, if required by rule or order of the commission or presiding officer, may result in a rejection of the pleading or document without prejudice.

(3) Likewise, failure to comply with an order of the presiding officer requiring the filing of testimony and exhibits may result in the rejection of the pleading or document without prejudice.

C. Form and size: All pleadings shall be typed or machine printed on paper eight and one-half (8-1/2) inches wide and eleven (11) inches long. The impression shall be on only one side of the paper and shall be double-spaced. Footnotes and quotations may be single-spaced. Pleadings shall be fastened only on the left side. Reproductions may be made by any process provided that all copies are clear and permanently legible.

D. Interrogatories: Written interrogatories and written answers to interrogatories, shall conform to the form and size requirements of this rule, except that they may be single-spaced unless the commission or presiding officer otherwise directs.

E. Electronic form: Any pleading or supporting document may addi-

tionally be presented in electronic form at the option of the party or staff making a filing, and shall be presented in electronic form if the commission or presiding officer so orders. All diskettes, CD-ROMs or other electronic storage media submitted pursuant to this rule shall be compatible with the commission's current computer capabilities. Diskettes, CD-ROMs and other electronic storage media shall contain the exact electronic image of the document or pleading being replicated. Unless otherwise ordered by the commission or presiding officer, the contents of all filed diskettes, CD-ROMs and other electronic storage media shall be physically or electronically protected from alteration or deletion. All diskettes, CD-ROMs or other electronic storage media filed shall have affixed thereto a label containing the appropriate caption and case number, the title of the pleading or document, the name of the party or staff making the filing, and space for date-stamping.

F. Title and docket number: All pleadings filed shall show the caption for the proceeding, the docket number, and the title of the pleading. Pleadings initiating new proceedings shall leave a space for the docket number.

G. Construction: All pleadings shall be liberally construed and errors or defects therein which do not mislead or affect the substantial rights of staff and the parties involved shall be disregarded.

H. Copies: The party or staff filing a pleading shall provide the commission with one (1) original plus five (5) conformed copies of the pleading unless the commission or presiding officer directs otherwise. The commission or presiding officer may require the filing of additional paper copies.

[1.2.2.11 NMAC - Rp, 17 NMAC 1.2.10, 9-1-08]

1.2.2.12 MOTIONS:

A. Motions generally:

(1) Motions may be made at any time during the course of a proceeding. Notwithstanding the foregoing, if the grounds for a motion are known to the movant prior to public hearing, the motion shall be made prior to public hearing except upon good cause shown. The commission discourages any delay in the filing of a motion once grounds for the motion are known to the movant.

(2) Any motion made prior to public hearing must be made in writing. Motions made orally during a public hearing must, if the commission or presiding officer requires, also be filed in writing.

(3) Motions must clearly state the relief sought, the grounds therefor, whether the motion is opposed, and if so, by whom.

(4) All motions not specifically

acted upon shall be deemed disposed of consistent with the final order of the commission in the proceeding. Motions based on factual allegations that do not appear of record shall be supported by affidavit filed along with the motion.

B. Motions to dismiss:

Staff or a party to a proceeding may at any time move to dismiss a portion or all of a proceeding for lack of jurisdiction, failure to meet the burden of proof, failure to comply with the rules of the commission, or for other good cause shown. The presiding officer may recommend dismissal or the commission may dismiss a proceeding on their own motion.

C. Responses to motions:

(1) Response times:

(a) On motions made thirteen (13) or more days prior to a public hearing, staff and parties wishing to respond must respond in writing within thirteen (13) days of service of the motion or before the public hearing commences, whichever occurs first.

(b) On motions made subsequent to a public hearing, unless the motion is a motion for rehearing filed pursuant to Subsection F of 1.2.2.37 NMAC, staff and parties wishing to respond must respond in writing within thirteen (13) days of service of the motion.

(c) On motions made within thirteen (13) days of or during a public hearing, responses shall be made within such time as directed by the commission or presiding officer.

(d) Replies to responses shall not be filed without leave of the commission or presiding officer. Replies to responses shall be filed within thirteen (13) days of service of the response, or such other time period as the commission or presiding officer may prescribe.

(e) Notwithstanding the foregoing, staff and parties wishing to respond to motions pertaining to discovery requests or the answers thereto, including but not limited to motions to compel, motions for sanctions and motions for protective orders, must respond to the motion within eight (8) days of service of the motion unless the commission or presiding officer directs otherwise.

(2) Failure to make a timely response shall be deemed a waiver of the right to respond.

(3) Written responses based on factual allegations that do not appear of record shall be supported by affidavit filed along with the response.

D. Briefs:

Motions seeking extensions of time or continuances and like motions directed to the discretion of the commission or presiding officer in procedural matters need not be accompanied by briefs. Unless otherwise provided in this rule or waived by the commission or presid-

ing officer, other motions must be accompanied by a brief, including points and authorities, addressed to the issues raised by the motion. Responses to a motion should similarly be accompanied by a brief, including points and authorities.

E. Opposed and unopposed motions:

(1) The movant shall make a good faith effort to determine whether a contemplated motion will be opposed.

(2) If a motion will not be opposed, the movant shall so state in the motion, shall accompany the motion with a proposed order, and need not file a brief in support of the motion. The proposed order must be signed by all parties and staff unless the motion seeks an extension of time or a continuance or is similarly directed to the discretion of the commission or presiding officer in procedural matters.

(3) Opposed motions shall state affirmatively that concurrence of other parties and staff has been requested but denied or shall state why no request for concurrence was made. Proposed orders need not be submitted with opposed motions unless the commission or presiding officer directs otherwise.

F. Oral argument:

(1) Motions will be decided without oral argument or public hearing unless the commission or presiding officer directs otherwise.

(2) Oral argument or public hearing may be conducted by telephone conference call at the discretion of the commission or presiding officer.

(3) Staff and parties waive the opportunity to request oral argument or an evidentiary public hearing on a motion unless the request is stated in the motion or response to the motion.

[1.2.2.12 NMAC - Rp, 17 NMAC 1.2.12, 9-1-08]

1.2.2.13 COMPLAINTS:

A. Complaints: The commission or staff shall not accept a complaint from a person until the person has made a good faith effort to resolve the complaint directly with the regulated entity, unless the complaint is health or safety related.

(1) For informal complaints, staff or any commissioner may waive this requirement.

(2) For formal complaints, the commission may waive this requirement for good cause.

B. In forma pauperis: Staff or the commission shall authorize the commencement, prosecution, defense, and investigation of any complaint filed by an individual without payment of fees and costs or security by the person if the individual makes an affidavit that they are

unable to pay such costs or security, as may be provided by law.

C. Alternative dispute resolution: The commission may order the following mechanisms to resolve complaints or streamline matters before the commission:

(1) settlement conferences;

(2) mediation;

(3) arbitration;

(4) other dispute resolution means, including consent calendars; and

(5) the use of staff decisions.

[1.2.2.13 NMAC - Rp, 17 NMAC 1.2.16, 9-1-08]

1.2.2.14 INFORMAL COMPLAINTS:

Informal complaints are ordinarily handled by the consumer relations division through the informal complaint process outlined in this section, but from time to time, any and all commission employees or commissioners may receive complaints and inquiries from consumers and constituents and provide assistance to them consistent with their job duties and management direction. Any commission employee who receives an informal complaint should notify the consumer relations division. Informal complaints against owners and operators of gas and hazardous liquid pipelines and underground facilities and one-call notification systems, or fire marshal-regulated entities shall be submitted directly, as appropriate, to the transportation division or fire marshal division.

A. Initiation:

(1) A person may initiate an informal complaint by letter, facsimile transmission, electronic mail, or other writing, via the commission's web site at www.nmprc.state.nm.us, by telephone, or in person at the offices of the consumer relations division of the commission.

(2) Staff shall assist persons making informal complaints by telephone or in person in creating a written record.

(3) The staff shall endeavor to resolve informal complaints by correspondence or conference with the persons affected.

(4) Informal complaints will not arrest the running of any limitations period.

B. Contents:

(1) A written informal complaint shall set forth:

(a) the name, telephone number (if any), and address of the complainant;

(b) the name and address of the person against whom such complaint is made;

(c) the nature of the complaint in a clear and concise manner;

(d) a brief statement of the facts forming the basis of such complaint; and

(e) the relief requested.

(2) The complaint shall also state whether the complainant has pursued all remedies with the regulated entity.

(3) The written complaint need not be in affidavit form.

(4) If the informal complaint does not initially contain the information described in this paragraph, a member of the staff will contact the complainant to attempt to obtain the missing data.

C. Without prejudice: The filing of an informal complaint shall not preclude the complainant from filing a formal complaint at any time. The submission of an informal complaint is not a prerequisite to filing a formal complaint.

D. Commission investigation of complaint:

(1) Upon receipt of an informal complaint the commission shall, when appropriate, advise the regulated entity within a reasonable period of time that a complaint has been submitted against it. The commission shall provide the regulated entity with a copy of a written informal complaint prior to requiring a response from the regulated entity.

(2) The staff shall review and investigate the complaint and shall advise the complainant and the regulated entity of the results of the investigation within sixty (60) days. The commission may extend the time for good cause.

(3) If the complaint is against a motor carrier and is safety related, and the motor vehicle weighs 10,001 pounds or more, staff shall also refer the complaint to the motor transportation division.

E. Choice of procedure: If staff is unable to resolve an informal complaint to the satisfaction of the parties, either party may within five (5) days after receipt of the results of the investigation:

(1) request mediation;

(2) request arbitration; or

(3) file a formal complaint.

[1.2.2.14 NMAC - Rp, 17 NMAC 1.2.17, 9-1-08]

1.2.2.15 FORMAL COMPLAINTS:

Formal complaints shall conform to the requirements of this rule governing pleadings, except that the requirements of this rule shall be liberally construed with respect to pro se parties. A formal complaint shall be accompanied by the \$25.00 filing fee required in Subsection B of Section 62-13-2 NMSA 1978. Pursuant to Section 62-13-2.1 NMSA 1978, the commission may order that the filing fee be refunded if the commission dismisses the complaint for lack of probable cause and determines that the complainant filed the complaint in good faith. The filing of a formal complaint shall commence a formal proceeding. A formal complaint shall allege

that a regulated entity has violated a law, rule, order, tariff, certificate of public convenience and necessity, or operating authority promulgated or enforced by the commission. A formal complaint may be filed by e-mail or facsimile transmission pursuant to other rules of the commission governing electronic filing and service.

A. Contents: A formal complaint shall contain:

(1) a clear and concise statement of the relief sought;

(2) a concise and explicit statement of the facts which the complainant alleges show a violation;

(3) a statement of any laws, rules, orders, tariffs, certificates of public convenience and necessity, or operating authorities alleged to have been violated;

(4) the exact legal and "doing business as" name, mailing address, and telephone number of the complainant and his or her attorney if any;

(5) the exact legal name, mailing address, and telephone number of the respondent, if known; and

(6) the following statement signed by the complainant, "The factual allegations in the complaint are true and correct to the best of my knowledge and belief," or an affidavit sworn by the complainant.

B. Discontinuance of service prohibited: A utility or telecommunications provider shall not discontinue service to a customer or issue a notice of discontinuance of service relative to the matter in dispute once a formal complaint has been filed, except as otherwise authorized by law or commission rule. Charges which are not in dispute must continue to be paid on time and in full by the complainant or be subject to other applicable commission rules regarding disconnection or discontinuance of service.

C. Service of complaints; answer:

(1) Upon receipt of a formal complaint that is in substantial compliance with this rule, within a reasonable period of time the commission shall cause a copy of the complaint to be served on the respondent accompanied by a notice from the commission calling upon the respondent to answer the complaint in writing within twenty (20) days of service of the complaint. For good cause, the commission or presiding officer may order the answer to be filed in a shorter or longer time. The notice shall also state that the commission may impose administrative fines or other sanctions if the commission finds merit to the complaint. The answer may contain an offer to satisfy the complaint as provided in Subsection D of 1.2.2.15 NMAC. The commission or presiding officer shall further serve the respondent with notice of any amendments to the

complaint.

(2) Motions for an extension of time to answer a complaint shall comply with the requirements of this rule.

(3) If an amendment to a complaint is filed before the answer is filed, the respondent's time within which to answer shall be ten (10) days from the date of service of the amendment or the period set forth in the notice, whichever period is longer.

D. Satisfaction of complaint: If the respondent desires to satisfy the complaint, they shall submit to the commission in the answer a statement of the relief which they are willing to give, a copy of which shall be contemporaneously served upon the complainant. Upon acceptance of this offer by the complainant and notice to the commission, the complaint may be dismissed. If there is a partial settlement of the case with dismissal in part, the complainant may proceed with the remaining issues. If the commission dismisses a complaint in whole or in part because the complaint has been satisfied, the commission may continue or initiate further proceedings if the issues raised in the complaint involve a general matter of public interest.

E. Contents of answers: The answer shall state in short and plain terms a respondent's defenses to each claim asserted and shall admit or deny the averments upon which the complainant relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of an averment, the answer shall so state and this shall have the effect of a denial. Respondent may challenge jurisdiction and address whether probable cause exists in the answer.

F. Disposition of complaint. Upon the filing of an answer, the commission shall evaluate jurisdiction and probable cause, and may, as appropriate:

(1) grant the relief requested in whole or in part;

(2) dismiss the complaint in whole or in part;

(3) set further proceedings on the complaint or on the remaining issues in the complaint; or

(4) designate a hearing examiner to preside over the complaint or over the remaining issues in the complaint.

G. Notice of public hearing: When a public hearing is required by law or commission rule, at least twenty (20) days prior to an initial public hearing on the merits of any complaint, a notice of such initial public hearing shall be mailed to the respondent and the complainant by the commission or presiding officer. No public hearing shall be held until after the commission has determined that probable cause exists for the complaint. If it is determined that the subject matter of the complaint

involves a matter of general public interest, the commission or presiding officer may require that a notice of the public hearing:

(1) be published at least twenty (20) days prior to the public hearing in a newspaper of general circulation available in the county where the complaint originated, or

(2) be given in such other manner as the commission or presiding officer may deem proper under the circumstances; costs of publication shall be borne by the respondent.

H. Participation of staff: The commission or presiding officer may require that staff participate at any stage in the proceeding.

I. Dismissal at any time: The commission shall dismiss a complaint upon a finding of no jurisdiction or probable cause.

[1.2.2.15 NMAC - Rp, 17 NMAC 1.2.18, 9-1-08]

1.2.2.16 SETTLEMENT CONFERENCES:

A. Purpose:

(1) The purposes of a settlement conference are to provide a forum for the parties and staff to work together to informally resolve complaints and other matters in dispute, expedite the public hearing process, and assist parties and staff in reaching a settlement at the earliest possible stage.

(2) Nothing in this rule shall be construed to limit or discourage voluntary settlement negotiations among staff and the parties to any proceeding. When deemed appropriate, the commission may order a settlement conference.

(3) The parties and staff may at any time move for an order designating a mediator to assist in the resolution of issues in controversy, or if the commission deems it appropriate, the commission may on its own motion designate a mediator. If the commission designates a mediator, the mediator shall meet the criteria of Subsection B of 12.2.17 NMAC and shall have the powers and duties described in Subsections B through D of 1.2.2.16 NMAC, as well as the power to pursue other alternative dispute resolution techniques consistent with the objective of facilitating a voluntary resolution among staff and the parties of all or some of the issues in controversy.

B. Notice of mediated settlement conference:

(1) If a mediator is appointed, the mediator shall notify the parties and staff of the time and place of the settlement conference.

(a) The notice will direct the parties and staff to send the mediator, but not other parties or staff, their settlement posi-

tions and other necessary information that could facilitate the settlement conference.

(b) In addition the mediator may require counsel to have their clients present at the settlement conference or accessible by telephone.

(c) Settlement conferences will be held at commission offices unless otherwise directed by the mediator.

(d) The settlement conference shall be held within twenty (20) days of the date of the notice unless good cause is shown for an extension.

(2) Nothing in this rule shall be construed to limit additional settlement conferences. The commission or presiding officer may suspend the procedural schedule in the case until the settlement conference is complete.

C. Result of settlement conference:

(1) If the parties and staff have agreed upon a settlement, then a stipulation shall be issued in accordance with the provisions of this rule governing stipulations. The stipulation shall be submitted to the assigned hearing examiner to be certified or to the commission in accordance with this rule.

(2) If the parties and staff are unable to reach an agreement through mediation, then the mediator shall issue a statement that the settlement conference was held and the case shall proceed.

D. Inadmissibility of settlement offers: Offers of settlement and statements made in furtherance of them made in the course of a settlement conference are privileged and, except by agreement among all parties and staff, shall not be admissible as evidence in any formal public hearing before the commission or presiding officer nor disclosed by the mediator voluntarily or through compulsory process.

E. Proceeding not automatically stayed: Conducting a settlement conference or conferences shall not stay a formal proceeding unless the commission or presiding officer issues an order holding the procedural schedule in abeyance.

[1.2.2.16 NMAC - Rp, 17 NMAC 1.2.19, 9-1-08]

1.2.2.17 MEDIATION:

A. Designation of mediator: If any of the parties or staff makes a request for mediation, or on its own motion, the commission may, in its discretion, designate a mediator consistent with Subsection B of 1.2.2.17 NMAC.

B. Requirements:

(1) The mediator may be a permanent or temporary employee of the commission or another state agency or any other individual who is qualified in the matter to

be mediated and is acceptable to the parties and staff. If the parties request a mediator who is not an employee of the commission, the commission shall not approve the request unless the parties agree in writing to bear as their own the costs of obtaining the mediator's services.

(2) The mediator shall not be the hearing examiner who is assigned to the case.

(3) The mediator shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and staff at the time the mediator is assigned by the commission and unless all parties agree that the mediator may serve.

(4) The mediator shall not subsequent to serving as a mediator participate in the proceeding as a hearing examiner, advisory staff, staff counsel or expert witness, or as an attorney, expert witness, or representative of any party to the proceeding.

C. The mediator may be assigned by the commission at the same time as the commission assigns the case to a hearing examiner. The mediator shall not discuss the mediation conference with any commissioner or hearing examiner hearing the case.

D. The mediator shall notify the parties and staff by telephone or mail of the time and place of the mediation conference, which will be held at commission offices unless otherwise directed by the mediator. The notice may direct the parties and staff to send the mediator, but not other parties or staff, their settlement positions and other necessary information that could facilitate the mediation conference, including the results of staff's investigation of the complaint.

E. If the parties are able to reach a settlement of their dispute, in appropriate cases the mediator shall assist the parties in preparing a written agreement to reflect that resolution. If the parties are unable to reach a complete settlement of their dispute, the mediator shall advise the parties that they may request arbitration or file a formal complaint.

[1.2.2.17 NMAC - Rp, 17 NMAC 1.2.20, 9-1-08]

1.2.2.18 ARBITRATION:

A. A complainant may request arbitration of any dispute. The complainant's request shall be in writing to the commission and shall include a concise statement of the grounds for the complaint, the remedy sought, and an acknowledgment that the complainant has read 1.2.2.19 NMAC and agrees to be bound by its terms.

B. A utility or telecommunications provider shall not discontinue

service to a customer or issue a notice of discontinuance relating to the matter in dispute once the matter is in arbitration, except as otherwise authorized by law or commission rule. Charges which are not in dispute must continue to be paid on time and in full by the complainant or be subject to other applicable commission rules regarding disconnection or discontinuance of service.

C. The commission or its authorized representative shall forward the request for arbitration to the respondent together with a copy of Subsection A of 1.2.2.13 NMAC and 1.2.2.15 NMAC and require that the respondent submit a written response within ten (10) days of the date of the commission's letter forwarding the request.

D. If the respondent agrees to arbitration of the dispute, the respondent shall include in the response to the complainant's request a concise statement of respondent's position with regard to the merits of the complaint and an acknowledgment that the respondent has read 1.2.2.19 NMAC and agrees to be bound by its terms. If the respondent will not agree to arbitration, the respondent shall so state in the response.

E. If the respondent either fails to respond to a request for arbitration or does not agree to arbitration, the complainant retains the right to proceed with a formal complaint.

F. Requirements: If both the complainant and the respondent agree to arbitration, the commission shall designate an arbitrator.

(1) The arbitrator may be a permanent or temporary employee of the commission or another state agency or any other individual who is qualified in the subject matter to be arbitrated and is acceptable to the parties to the complaint.

(2) The designated arbitrator shall have no official, financial or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties at the time of the commission's designation and all parties agree that the arbitrator may serve.

(3) The parties shall be required to indicate their consent in writing to the designated arbitrator within ten (10) days of the date of the commission's letter of designation.

(4) If the parties request an arbitrator who is not an employee of the commission, the commission shall not approve the request unless the parties agree in writing to bear the costs as their own pursuant to Section 8-8-4.

G. Any employee of the commission designated to arbitrate the matter under these provisions shall not participate in a subsequent proceeding on the com-

plaint as a hearing examiner, advisory staff, staff counsel, or expert witness or as an attorney, expert witness, or representative of any party to the proceeding.

H. The commission may assign docket numbers to arbitration proceedings for purposes of record management but the proceeding remains an informal proceeding under this rule.

[1.2.2.18 NMAC - Rp, 17 NMAC 1.2.21, 9-1-08]

1.2.2.19 ARBITRATION PROCEDURES:

A. Timeline for resolution:

(1) Once designated and approved by the parties, the arbitrator shall proceed to render a decision in the arbitration proceeding within a reasonable period of time, not to exceed ninety (90) days, unless otherwise ordered by the commission or presiding officer.

(2) If the arbitrator at any time determines that it is unlikely that the dispute can be resolved without substantially affecting the interests of other ratepayers or the public, the arbitrator may so inform the parties and staff and terminate the proceeding without prejudice to the complainant's right to file a formal complaint.

B. Arbitration procedures:

(1) A disinterested person qualified in the matter to be arbitrated may be appointed by the commission.

(2) The arbitrator shall fix a time and place for an informal public hearing and shall serve notice of the public hearing on both parties and on staff at least ten (10) days in advance of the public hearing.

(3) The arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence and shall have the power to administer oaths.

(4) The parties and staff may offer such evidence and produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute.

(5) The arbitrator shall decide the relevancy and materiality of the evidence offered, and conformity to the New Mexico rules of evidence or to the rules of evidence contained in this rule is not necessary.

(6) No stenographic or electronic record will be made of the testimony at public hearing unless requested by a party, who shall bear the cost of the record, or by staff.

C. Discovery: Discovery will be permitted but only with leave of the arbitrator who shall not allow discovery which unduly complicates, burdens, or impedes the expeditious and informal nature of the proceeding.

D. Investigation:

Whenever the arbitrator deems it necessary to make an inspection or investigation in connection with the arbitration, the arbitrator shall so advise the parties and staff, who may be present at the inspection or investigation. In the event that one or both of the parties or the staff are not present, the arbitrator shall make an oral or written report to the parties and staff and afford them an opportunity to comment.

E. Decision: At the close of or soon after the public hearing, the arbitrator will issue a brief written decision. Findings of fact and conclusions of law are not necessary. The arbitrator's decision will be binding on the parties and can be implemented by the commission to the extent such implementation is necessary. However, the decision will not be a decision of the commission and shall have no precedential effect.

F. Inadmissibility of settlement offers: Unless agreed to by all the parties and staff, no statements, admissions, or offers of settlement made during the course of arbitration proceedings shall be admissible as evidence in any formal proceeding nor shall the arbitrator disclose the same voluntarily or through discovery or compulsory process. Nothing in this section, however, shall preclude the arbitrator from issuing a brief written decision describing their conclusions and the bases for them.

G. Commission not bound: Nothing in this rule shall be construed to mean that the commission has waived its review of any decision or that the commission consents to be bound by arbitration.

[1.2.2.19 NMAC - Rp, 17 NMAC 1.2.22, 9-1-08]

1.2.2.20 FORMAL STIPULATIONS:

The commission recognizes that the parties to a proceeding and staff may reach compromises and settle some or all issues. Settlement stipulations shall be binding only if approved by the commission.

A. Uncontested stipulations:

(1) If the staff and all parties enter into a stipulation settling some or all of the issues in a proceeding, the stipulation shall be filed and a copy presented to the presiding officer. If the proceeding is before the commission *en banc*, the commission may in its discretion assign a hearing examiner to preside over any public hearing to be conducted on the stipulation.

(2) When filed and presented, the stipulation must be accompanied in rate cases by a reconciliation statement showing the dollar impact of the settlement and the resulting rates. This statement shall contain the information listed in Subsection F of

1.2.2.36 NMAC.

(3) Upon receipt of a stipulation which would settle substantive issues, the commission or presiding officer shall conduct a public hearing to determine whether the stipulation should be approved by the commission, provided that in extraordinary cases, for good cause shown, the commission or presiding officer may forego a public hearing. The proponents of the stipulation have the burden of supporting the stipulation with sufficient evidence and legal argument to allow the commission to approve it.

(4) In the event the parties and staff enter into a settlement of one or more issues but not of the entire case, the commission or presiding officer may in their discretion combine the public hearing on the settlement stipulation with the public hearing on the contested issues.

(5) In cases heard by a hearing examiner rather than the commission, the hearing examiner may:

(a) decide that the settlement stipulation should not be certified to the commission at all, in which event the hearing examiner may indicate to the parties and staff whether additional evidence or legal argument in support of the stipulation or amendments to the stipulation might meet the hearing examiner's reservations about the stipulation; or

(b) certify the settlement stipulation to the commission for its review; the certification shall include a recommended disposition of the stipulation, whether the recommendation be positive or negative or otherwise suggest a manner of disposition; exceptions to the certification may be filed within ten (10) days after the date the settlement stipulation is certified to the commission, unless the commission or presiding officer directs otherwise.

B. Contested stipulations:

(1) If some, but not all, of the parties to a proceeding, including staff, enter into a stipulation seeking to dispose of some or all of the issues in the proceeding, the stipulation shall be filed and copies presented to the presiding officer and served on the parties or staff opposing the stipulation. If the proceeding is before the commission *en banc*, the commission may in its discretion assign a hearing examiner to preside over any public hearing to be conducted on the stipulation. When filed and presented, the stipulation must be accompanied in rate cases by a reconciliation statement showing the dollar impact of the settlement and the resulting rates. This statement shall contain the information listed in Subsection F of 1.2.2.36 NMAC.

(2) Parties or staff opposing the stipulation shall file statements briefly setting forth the grounds upon which they

oppose the stipulation in writing within five (5) days after the stipulation is served, or orally at the public hearing, whichever occurs first. Responses by staff or parties supporting the stipulation shall be made as directed by the commission or presiding officer.

(3) The commission or presiding officer shall schedule the stipulation for public hearing and review unless it is determined that the nature and extent of the opposition is such that hearing the stipulation will not materially conserve commission, staff, and party resources. In the event this determination is made, the commission or presiding officer may refuse to entertain the stipulation. The commission or presiding officer also has the discretion to combine a public hearing on a contested stipulation with the public hearing on the merits of any substantive issues not addressed by the stipulation.

(4) A public hearing shall be conducted to determine whether the stipulation shall be approved by the commission. The proponents of the stipulation have the burden of supporting the stipulation with sufficient evidence and legal argument to allow the commission to approve it. At the public hearing all parties and staff shall be allowed an opportunity to present evidence and cross-examine opposing witnesses on the stipulation.

(5) In cases heard by a hearing examiner rather than the commission the hearing examiner may:

(a) decide that the settlement stipulation should not be certified to the commission at all, in which event the hearing examiner may indicate to the parties and staff whether additional evidence or legal argument in support of the stipulation or amendments to the stipulation might meet the hearing examiner's reservations about the stipulation; or

(b) certify the settlement stipulation to the commission for its review; the certification shall include a recommended disposition of the stipulation, whether the recommendation be positive or negative or otherwise suggest a manner of disposition; exceptions to the certification may be filed within ten (10) days after the date the settlement stipulation is certified to the commission, unless the commission or presiding officer directs otherwise.

C. Inadmissibility of settlement offers and rejected settlements: Statements, admissions, or offers of settlement made during the course of negotiations of settlements are privileged. No such statements, admissions, or offers of settlement shall be admissible as evidence in any formal public hearing, nor disclosed by any mediator designated pursuant to this rule either voluntarily or through compulsory

process, unless agreed to by all the parties and staff. If a stipulation is not approved by the commission, the terms of the proposed settlement are also inadmissible unless their admission is agreed to by all the parties and staff. Nothing in this subsection shall preclude proponents of a contested settlement stipulation from offering that stipulation into the record for purposes of its consideration by the commission or presiding officer.

D. Precedential effect:

Unless the commission explicitly provides otherwise in the order approving the stipulation, approval of a stipulation does not constitute commission approval of or precedent regarding any principle or issue in the proceeding.

[1.2.2.20 NMAC - Rp, 17 NMAC 1.2.23, 9-1-08]

1.2.2.21 PETITIONS FOR DECLARATORY ORDERS:

A. Petition: Any person may petition the commission for a declaratory order to terminate a controversy or to remove an uncertainty with respect to the applicability to the petitioner of any statute or rule administered by the commission or any commission order. Petitions for declaratory orders shall comply with the requirements for pleadings set forth in this rule and shall further set forth:

(1) the statute, rule, or order of which an interpretation is requested;

(2) the nature of the controversy or uncertainty which is the subject of the petition;

(3) the manner in which the controversy or uncertainty affects the petitioner;

(4) a complete statement of the facts and grounds prompting the petition; and

(5) the names and addresses of any other persons directly involved in the controversy or directly affected by the uncertainty.

B. Brief and affidavits:

(1) A petition for a declaratory order shall be accompanied by a brief in which the petitioner sets forth their position and all facts and arguments known in support of and in opposition to that position.

(2) The petition shall also be accompanied by affidavits attesting to the facts alleged in the petition or brief.

(3) Failure to comply with these requirements will be grounds for summary dismissal of the petition.

C. Commission procedure:

(1) Upon the filing of a petition for a declaratory order, the commission shall decide whether it will, in its absolute discretion, entertain the petition in whole or

in part. If the commission decides to entertain the petition in whole or in part, the commission or the presiding officer shall order the petitioner to give such notice of the proceeding as is deemed appropriate and will proceed to consider the matter with or without public hearing.

(2) The commission may at any time during the proceeding, in its absolute discretion, determine not to issue a declaratory order, in which case the commission shall so notify the parties and staff.

[1.2.2.21 NMAC - Rp, 17 NMAC 1.2.24, 9-1-08]

1.2.2.22 INVESTIGATIONS BY COMMISSION:

A. Investigations by the commission: The commission may at any time investigate any matter within its jurisdiction.

B. Proceedings filed by the commission of its own motion:

Formal proceedings may be initiated by the commission to consider any matter within its jurisdiction against any person either by notice, order to show cause, order to cease and desist, or other process. In such cases the notice, order to show cause, or other appropriate process shall contain:

(1) specifications of all the matters to be considered and such specifications shall fairly indicate what the respondent is to meet;

(2) a demand for such information and disclosures as the commission may deem necessary to the question under investigation;

(3) notice of the time within which such information and disclosures must be filed;

(4) the time and place set for public hearing; and

(5) if the commission deems necessary, the manner of notice to the public or to ratepayers.

[1.2.2.22 NMAC - Rp, 17 NMAC 1.2.25, 9-1-08]

1.2.2.23 INTERVENORS AND COMMENTERS:

A. Intervention: Any person other than staff and the original parties to a proceeding who desires to become a party to the proceeding may move in writing for leave to intervene in the proceeding.

(1) The motion for leave to intervene shall indicate the nature of the movant's interest in the proceeding.

(2) The motion shall also comply with the provisions of this rule governing pleadings except that the motion shall indicate the facts relied upon as grounds for intervention.

(3) Motions for leave to intervene shall be served on all existing parties and

other proposed intervenors of record.

B. Deadline for filing motions to intervene: In proceedings concerning applications relating to securities, unless the commission or presiding officer orders otherwise, the motion must be filed before the commencement of the public hearing. In all other proceedings motions to intervene must be filed as directed by the commission or presiding officer in the proceeding.

C. Objections to intervention: Objections to motions for leave to intervene must be in writing and filed within thirteen (13) days after the service of the motion or at the time of public hearing, whichever is earlier.

D. Disposition of motions to intervene:

(1) Unless the commission or presiding officer, on their own motion, denies a motion for leave to intervene, all timely motions for leave to intervene not objected to by any party or by staff within thirteen (13) days of service of the motion for leave to intervene shall be deemed allowed, provided that the commission or presiding officer, on their own motion after notice and public hearing, may thereafter terminate the party status of any intervenor.

(2) Where a timely motion for leave to intervene is contested, the commission or presiding officer may grant the intervention if it appears after consideration that the motion discloses that:

(a) the movant possesses a substantial interest in the subject matter of the public hearing;

(b) participation of the movant is substantially in the public interest; or

(c) the intervention presents no undue prejudice to the other parties.

(3) Whenever a motion to intervene is permitted to be filed out of time, the commission or presiding officer may deny the motion or grant the motion with limitations on grounds including, but not limited to:

(a) failure to set forth sufficient grounds for intervention;

(b) disruption of the proceeding resulting from the intervention;

(c) prejudice or hardship to existing parties or staff; or

(d) undue broadening of the issues.

(4) Except as otherwise ordered, a grant of an untimely motion to intervene must not be a basis for delaying or deferring any procedural schedule established prior to the grant of the motion.

(5) Intervenors who are granted party status are bound by the agreements reached and orders entered in the proceeding prior to their intervention. The commission and the presiding officer will not allow the broadening of issues unless the public

interest requires it or no undue prejudice or hardship will result to other parties to the proceeding or to staff.

(6) Notwithstanding the provisions of Paragraphs (1) through (3) of Subsection D of 1.2.2.23 NMAC, where there are two (2) or more intervenors or proposed intervenors having substantially like interests and positions the commission or presiding officer may, to avoid unnecessary delay or duplication of effort and expense, limit the number of intervenors in the proceeding.

(7) A proposed intervenor shall become party to the proceeding once the motion to intervene is deemed allowed or otherwise granted under this rule. Intervenors shall have the same rights as other parties to the proceeding.

E. Withdrawal of intervenors: An intervenor can withdraw by filing notice and must serve the withdrawal on all parties and staff.

F. Commenters: Commenters shall be entitled to make an oral statement or submit a written statement for the record, but such statement shall not be considered by the commission as evidence. All interested persons are afforded the opportunity to have input into cases which affect them. The commission encourages ratepayer input and the purpose of this rule is to facilitate participation. However, commenters are not parties and shall not have the right to introduce evidence, to examine or cross-examine witnesses, to receive copies of pleadings and documents, to appeal from any decisions or orders, or to otherwise participate in the proceeding other than making their comments.

[1.2.2.23 NMAC - Rp, 17 NMAC 1.2.26, 9-1-08]

1.2.2.24 PROCEDURAL ORDERS:

A. Contents: In rate cases and in other proceedings as may be appropriate, the commission or presiding officer shall issue a procedural order or orders setting forth:

(1) any deadlines the commission or presiding officer may set for the completion of discovery;

(2) deadlines for the filing of staff and intervenor testimony;

(3) any requirements for the filing, service, or presentation of pleadings, discovery requests, discovery responses, testimony, exhibits, or other documents in electronic form; in all instances written or electronic submissions shall be filed in accordance with the requirements of this rule and other applicable commission rules, unless otherwise ordered by the commission or presiding officer;

(4) procedures for the prompt

argument and disposition of procedural and discovery motions appropriate to the proceeding; these procedures may, notwithstanding the provisions of this rule governing motions, include a shortened time for written responses to motions, the use of oral argument in lieu of written responses, or other mechanisms to expedite the decision-making process;

(5) the date, time, and place of any pre-hearing conference;

(6) the date, time, and place of the public hearing on the merits; and

(7) any other relevant dates.

B. Modification of procedural orders: The commission or presiding officer may modify procedural orders on their own motion or on motion of staff or a party when necessary.

C. Notice of public hearing:

(1) Reasonable notice shall be given to all parties of the time and place of every public hearing scheduled by the commission or presiding officer.

(2) The commission or presiding officer may require that public notice also be given. When public notice is required, it shall be published in a newspaper having general circulation in the area affected by the filed pleadings at least twenty (20) days prior to the date of the public hearing, unless otherwise provided by rule, or if the commission or presiding officer finds that circumstances warrant shorter notice. The party who is required to publish notice shall cause to be filed, on or before the date of public hearing, an affidavit of publication of a responsible officer of the newspaper making such publication. The party required by the commission or presiding officer to publish the notice shall bear the cost of such publication.

[1.2.2.24 NMAC - Rp, 17 NMAC 1.2.27, 9-1-08]

1.2.2.25 DISCOVERY:

A. Commission policy: The commission favors prompt and complete disclosure and exchange of information and encourages informal arrangements among the parties and staff for this exchange. It is further the commission's policy to encourage the timely use of discovery as a means toward effective presentations at public hearing and avoidance of the use of cross-examination at public hearing for discovery purposes.

B. Discovery procedures: Techniques of pre-hearing discovery permitted in state civil actions, such as interrogatories, requests for admissions, depositions, and requests for production of documents may be employed by staff or by any party. Upon experiencing any difficulties in obtaining discovery, staff and the parties may seek relief from the commission or pre-

siding officer by filing a proper motion. Nothing in this rule shall preclude the commission or the presiding officer from obtaining information by order or preclude staff from obtaining information in any lawful manner.

C. Applicability of rules of civil procedure: Discovery in commission proceedings shall be governed by the New Mexico rules of civil procedure for the district courts applicable to discovery, except where such rules are inconsistent with this rule. Any references to "the court" in those rules shall be deemed to mean "the commission or presiding officer" for purposes of commission proceedings.

D. Depositions:

(1) The commission, the presiding officer, staff, and parties shall have the right to take the testimony of any witnesses by deposition and compel through the commission's subpoena powers the attendance of witnesses and the production of books, documents, papers, and accounts.

(2) Depositions may be taken and on-site inspections may be performed upon commencement of the proceeding and without prior approval of the commission or presiding officer.

(3) Notices or requests for depositions or on-site inspections shall be served on staff and on all parties unless the commission or presiding officer directs otherwise.

(4) All parties and staff may participate in any depositions, or in any on-site inspections requested by a party or staff under Subsection F of 1.2.2.25 NMAC, unless the commission or presiding officer directs otherwise.

E. Interrogatories: The staff and parties may serve upon staff or any party written interrogatories to be answered by staff or the party served, or if the party served is a public or private corporation, by any officer or agent who shall furnish such information as is available to the party.

(1) Interrogatories may be served after commencement of any proceeding and without leave of the commission or presiding officer.

(2) The interrogatories shall be answered separately and fully in writing under oath and each answer shall be signed by the person or persons making it unless otherwise ordered by the commission or presiding officer.

(3) Unless objected to, answers to interrogatories shall be served in the manner provided in Subsection H of 1.2.2.25 NMAC within fifteen (15) days after the service of the interrogatories unless the commission or presiding officer enlarges or shortens the time, or unless the party or staff submitting the interrogatories and the party or staff to which the interrogatories are

directed agree to a different period of time, notice of which agreement shall be filed and served on staff and all other parties. Any such agreements shall not affect the authority of the commission or presiding officer to govern commission proceedings as provided by law.

(4) Within fifteen (15) days after service of interrogatories, staff or a party may make written objections, duly served as provided in Subsection H of 1.2.2.25 NMAC. Written objections shall:

(a) identify the interrogatory or subject matter objected to and stating with particularity the reasons for the objections; and

(b) include copies or complete restatements of the interrogatory or interrogatories objected to, and a description of the facts and circumstances and the legal authority purporting to justify the objection.

(5) The service of objections shall not excuse the answering party or staff from answering remaining interrogatories or subparts of interrogatories to which no objection is stated.

(6) Answers to interrogatories to which objection is made shall be deferred until a determination has been made on such objections.

F. Production of documents and things and entry upon land for inspection and other purposes: The commission, the presiding officer, staff, and parties may serve upon any party or upon staff requests for the production or inspection of documents or things within staff's or that party's possession, custody, or control, either consolidated with interrogatories or alone. The commission, presiding officer, staff, and parties may serve on any other party a request to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection, measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, either consolidated with the interrogatories or alone.

(1) A request may be served upon commencement of the proceeding and without leave of the commission or presiding officer.

(2) The request shall specify a reasonable time, place, and manner of making the inspection and performing related acts, or of copying the documents, or specify that copies of the designated documents be sent to the requesting party or staff in lieu of an inspection.

(3) The request shall set forth the property or items to be inspected, either by individual item or by category, and shall describe each item and category with reasonable particularity.

(4) The requestor shall specify a date for the production or inspection, which date shall be not less than fifteen (15) days after the date the request is served unless the commission or presiding officer enlarges or shortens the time or unless the party or staff submitting the request for production of documents and the party or staff to which the request is directed agree to a different period of time, notice of which agreement shall be filed and served on staff and all other parties. Any such agreements shall not affect the authority of the commission or presiding officer to govern commission proceedings as provided by law. If no time is specified production shall be due fifteen (15) days after service of the request.

(5) Within fifteen (15) days after service of a request for production staff or a party may serve written objections in the form and manner provided in Subsections E and H of 1.2.2.25 NMAC. The objector shall produce as requested all documents or things which are not the subject of an objection.

G. Requests for admissions: The commission, presiding officer, staff, or parties may serve upon any party or upon staff requests for the admission of facts or the genuineness of documents. Copies of documents shall be served with the request.

(1) Requests may be served upon commencement of the proceeding and without leave of the commission or presiding officer.

(2) Answers to requests for admissions shall be served within fifteen (15) days after service of the request unless the commission or presiding officer enlarges or shortens the time, or unless the party or staff submitting the request for admissions and the party or staff to which the request is directed agree to a different period of time, notice of which agreement shall be filed and served on staff and all other parties. Any such agreements shall not affect the authority of the commission or presiding officer to govern commission proceedings as provided by law.

(3) Written objections to a request prepared in the form and manner provided in Subsection E of 1.2.2.25 NMAC shall be filed and served as provided in Subsection H of 1.2.2.25 NMAC within fifteen (15) days of service of the requests. The filing and service of objections shall not excuse the answering party or staff from answering the remaining requests to which no objection is stated.

H. Filing and service: Interrogatories, requests for production or inspection of documents and things or entry upon lands for inspection and other purposes, and requests for admissions and other written discovery requests shall be served

upon the party or staff to which such discovery is directed. Written answers, responses or objections to discovery requests shall be served on the party or staff making such requests.

(1) Discovery requests and responses, or objections thereto, and deposition transcripts, shall not be routinely filed. However, the party or staff making a discovery request shall file a certificate indicating the date of service.

(2) Unless the commission or presiding officer directs otherwise, interrogatories, requests for production or inspection of documents and things or entry upon lands for inspection and other purposes, requests for admissions and other written discovery requests or notices, as well as written responses or objections thereto, shall be served on any other party, or staff, which requests copies of such discovery requests, notices, responses or objections.

(3) Parties or staff desiring copies of the written discovery materials of other parties or of staff may request copies either in one blanket request for all discovery materials throughout the proceeding or by request specific to the discovery activity in question.

(4) At the option of the party or staff making a discovery request or response, any such request or response including objections may additionally be presented in electronic form. Discovery requests or responses, including objections, shall be presented in electronic form in addition to or in lieu of other applicable service or filing requirements of this rule if the commission or presiding officer so orders pursuant to Subsection A of 1.2.2.24 NMAC, or pursuant to other commission rules governing electronic filing and service. The commission or presiding officer shall not require electronic filing or service by any party who does not have such capability.

I. Supplementation of responses to discovery requests: A party or staff who has responded to a request for discovery is under a duty reasonably and promptly to amend or supplement their previous response if they obtain information which they would have been required to provide in such response if the information had been available to them at the time they served the response.

J. Motions to compel or for sanctions:

(1) Staff or a party may move for an order compelling discovery or for sanctions for failure to comply with an order directing that discovery be had as provided in the New Mexico rules of civil procedure for the district courts. In addition to the sanctions provided in those rules, the commission may impose the penalties set forth in applicable law, for failure to comply with

an order of the commission or presiding officer.

(2) Any motion for an order compelling discovery shall include copies or complete restatements of the discovery requests or notices to which the movant seeks compelled responses or related relief, along with copies of any responses or objections to the subject discovery requests or notices, and any other pertinent materials. An original and four (4) copies of motions to compel shall be filed and copies shall be served on staff and all other parties to the proceeding.

(3) No motion to compel, or any other motion regarding any discovery dispute, shall be considered unless accompanied by a statement that the participants made a good faith effort to resolve the dispute and were unable to do so.

K. Order for protection of staff, parties, or witnesses: The commission or presiding officer may issue such orders for the protection of staff, parties, or witnesses from annoyances, embarrassment, or oppression as may be just and proper under the circumstances.

[1.2.2.25 NMAC - Rp, 17 NMAC 1.2.28, 9-1-08]

1.2.2.26 PRE-HEARING CONFERENCES:

A. General:

(1) It is the policy of the commission to encourage the use of pre-hearing conferences as a means of making more effective use of hearing time and to otherwise aid in the disposition of the proceeding or the settlement thereof. Having the issues clearly delineated in advance of public hearing and the ground rules for the conduct of the public hearing well understood may be particularly beneficial in cases heard by the commission *en banc* and in such complex or multi-party proceedings as the rate cases of the major utilities, motor carriers, and telecommunications providers.

(2) The commission or presiding officer may, with reasonable written notice, require that all parties and staff attend one or more pre-hearing conferences for the purpose of formulating and simplifying the issues in the proceeding or addressing other matters that may expedite orderly conduct and disposition of the proceeding. Such matters may include but are not limited to:

- (a) details of the procedural schedule;
- (b) the necessity or desirability of amendments to the pleadings;
- (c) the possibility of obtaining admissions of fact and documents which will avoid unnecessary proof;
- (d) limitations on the number of witnesses or time allocated to particular witnesses or issues at public hearing;
- (e) procedures at the public hear-

ing;

(f) the distribution of written testimony and exhibits to staff and the parties prior to the public hearing;

(g) the consideration of any outstanding motions; or

(h) the status of any settlement negotiations and, if appropriate, identification of any interest in and resources to support professional assistance therewith or other alternative means of dispute resolution.

B. Attendance:

(1) All parties and staff shall attend a pre-hearing conference fully prepared for a productive discussion of all matters noticed for the conference and motions outstanding at the time of the conference and fully authorized to make commitments with respect thereto or take positions thereon. Preparation should include advance study of all materials filed and materials obtained through formal and informal discovery and, if feasible, advance informal communication among the parties and staff to ascertain the extent to which the parties and staff will be able to agree on the matters which have been noticed for conference and on any pending motions.

(2) Failure of any party or staff to attend or be prepared for a pre-hearing conference without good cause shown shall constitute a waiver of any objection to any agreement reached or to any order or ruling made as a result of the conference.

(3) Offers of settlement and statements made in furtherance thereof, made in the course of a pre-hearing conference or at any other time, are privileged and, except by agreement among all the parties and staff, shall not be used against participating parties or staff before the commission.

C. Submission of proposed pre-hearing orders: The commission or presiding officer may, in the order convening a pre-hearing conference, direct that each party and the staff file and serve on all other parties and staff a proposed pre-hearing order which shall identify all issues the party or staff proposes to address at public hearing, whether in their case in chief or on cross-examination, set forth the party's or staff's position on each issue and identify the witnesses who will address each issue. The commission or presiding officer may also require the parties and staff to address in their proposed pre-hearing orders any matters designated in the order convening the conference, such as:

- (1) all factual stipulations to which the parties and staff have agreed or which the party or staff submitting the statement proposes for consideration by the parties and staff;
- (2) all procedural questions or problems the party or staff desires to raise at the pre-hearing conference and the resolu-

tion proposed;

(3) any proposal the party or staff wishes to make for the scheduling of testimony at public hearing; or

(4) the amount of time the party or staff desires for the cross-examination of the different witnesses at public hearing.

D. Pre-hearing orders:

(1) Subsequent to a pre-hearing conference the commission or presiding officer may issue a pre-hearing order reciting the action taken and agreements reached at the conference. The order may also identify the issues to be tried at public hearing.

(2) The commission or presiding officer may direct one or more of the parties or staff to prepare the form of pre-hearing order. If so directed the preparer shall serve it on the remaining parties and staff at the time they file it. Objections to the proposed form of order shall be filed within thirteen (13) days of service of the form unless the commission or presiding officer directs otherwise.

(3) The pre-hearing order shall control the subsequent course of the proceeding and may by its terms limit the issues to be heard to those designated therein, provided that the commission or presiding officer may enlarge or modify the issues or otherwise amend the pre-hearing order when the public interest or justice so requires.

E. Recessing public hearing for conference: In any proceeding, the commission or presiding officer may in their discretion call the parties and staff together for a conference prior to the taking of testimony or may recess the public hearing for such a conference. The results of the conference shall be stated on the record. [1.2.2.26 NMAC - Rp, 17 NMAC 1.2.29, 9-1-08]

1.2.2.27 INTERIM RELIEF:

Requests for interim relief may be included in a complaint, petition, application, or other pleading filed by any party. The title of the pleading must clearly indicate that such relief is requested.

A. Contents: Except as provided in Sections 65-2A-11 and 70-3-16 NMSA 1978, in addition to the usual contents of a pleading, the pleading must allege such extraordinary facts of immediate and irreparable injury as would justify the commission's exercise of discretion by granting interim relief prior to a final decision.

B. Affidavits or testimony and exhibits: Any pleading requesting interim relief shall be accompanied by affidavit or testimony in support of the request. Any relevant exhibits in the possession of the party making the request should be appended to the affidavit or affidavits or testimony.

C. Notice: Copies of the pleading in which interim relief is requested and the testimony, affidavits, and exhibits filed in support thereof shall be served upon staff and upon all parties.

D. Public Hearing: Except as provided in Section 70-3-16 NMSA 1978, requests for interim relief other than interim rate relief may be acted upon with or without public hearing.

E. Bond: Interim relief may be granted subject to refund and conditioned upon a bond or other adequate protection.

[1.2.2.27 NMAC - Rp, 17 NMAC 1.2.30, 9-1-08]

1.2.2.28 SUBPOENAS:

A. Subpoena for witnesses and documents:

(1) Any party or staff requiring the attendance of a witness from any place in the state to any designated place for the purpose of taking testimony of such witness at a deposition or public hearing in a proceeding before the commission shall make written application to the commission or presiding officer requesting that a subpoena be issued to compel attendance of such witness.

(2) Likewise a written application requesting the issuance of a subpoena *duces tecum* to compel production of specific books, papers, accounts, or other documents must also be made to the commission or presiding officer if production at deposition or public hearing is desired.

(3) Such written application must set forth reasons supporting the issuance of the subpoena for the production of specific books, papers, and other documents as the case may be.

(4) All applications for the issuance of subpoenas shall be accompanied by the proposed subpoena, a form for which is available from the commission upon request.

B. Who may issue: Subpoenas shall be signed and issued by the presiding officer or by any commissioner, unless the issuance would be an abuse of process. A copy of the signed and issued subpoena shall be filed.

C. Service; fees:

(1) Subpoenas may be served by any person authorized to serve process under the New Mexico rules of civil procedure for the district courts. The return of service shall be filed promptly after service. The return shall be by certificate if service is made by a county sheriff or the county sheriff's deputy. Otherwise the return shall be by affidavit. The form for the return of service is included with the form of subpoena, available from the commission upon request.

(2) The witness being subpoenaed shall receive fees in the amount and in the manner as provided in civil cases in the district courts of this state.

(3) Whenever a subpoena is issued at the request of a party the cost of service thereof and the fee of the witness shall be borne by the requesting party.

D. Enforcement: The commission, any commissioner, staff, or any party may seek enforcement of the subpoena pursuant to Sections 62-10-9, 63-7-1.1, 63-9-19, 63-9A-20, 63-9B-14, 63-9H-14, 65-3A-34, and 70-3-19 NMSA 1978, or other applicable law.

E. Order for protection of staff, parties, or witnesses: The commission or presiding officer may issue such orders to protect staff, parties, or witnesses from annoyances, embarrassment, or oppression as may be just and proper under the circumstances.

[1.2.2.28 NMAC - Rp, 17 NMAC 1.2.31, 9-1-08]

1.2.2.29 PRESIDING OFFICER:

A. General: The functions of a presiding officer, as the term is used in this rule, may be performed by a hearing examiner, who may be a commissioner appointed by the commission to hear the case to the same extent as would a commission employee appointed as "hearing examiner," unless otherwise provided by statute or commission rule or order. Nothing contained in this rule shall be deemed a waiver of the commission's power of superintending control over the activities or decisions of the hearing examiner.

B. Designation of hearing examiner:

(1) In all proceedings, the commission may designate a hearing examiner, including a commissioner, to preside over the proceeding. The commission shall designate what cases and to what extent the hearing examiner shall preside over such cases, and such designation may be made by memorandum from the commission or as otherwise directed by the commission.

(2) If, after public hearing, the designated hearing examiner becomes unavailable to the commission, the commission will designate another qualified hearing examiner to report and recommend the decision or will otherwise proceed with the case as it may deem appropriate, giving notice to staff and the parties.

C. Powers of hearing examiners: Hearing examiners shall have the duty to conduct full, fair, and impartial public hearings and to take appropriate action to avoid unnecessary delay in the disposition of proceedings and to maintain

order. They shall possess all powers necessary to that end, including the following:

(1) to administer oaths and affirmations;

(2) to order subpoenas issued and to provide for other methods of discovery;

(3) to issue orders to show cause regarding proceedings before the hearing examiner;

(4) to receive evidence and rule upon all objections and motions which do not involve final dispositions of proceedings, and to recommend to the commission rulings on objections and motions which do involve final dispositions of proceedings;

(5) within their discretion, or upon direction of the commission, to certify any question to the commission for its consideration and disposition, although the commission has the discretion to refuse to review a question so certified;

(6) to order parties and staff to hold appropriate conferences before or during the public hearing or investigation, provided that the presiding officer shall not take part in any settlement conference unless their participation is agreed to by all parties and by staff;

(7) to regulate the course of public hearings or investigations, including the scheduling, recessing, reconvening, and adjournment thereof, unless otherwise provided by the commission;

(8) to apply the procedures of this rule subject to waivers granted pursuant to this rule;

(9) to take such other action as may be necessary and appropriate to the discharge of their duties, consistent with the statutory authority or other authorities under which the commission functions and with the rules and policies of the commission.

D. Duties of hearing examiner: Hearing examiners shall have the following duties:

(1) to follow and apply the policies of the commission as enunciated in previous orders and rules, and to comply with the Public Utility Act, the Telephone and Telegraph Company Certification Act, the New Mexico Telecommunications Act, the Rural Telecommunications Act, the Public Regulation Commission Act, the Motor Carrier Act, the Pipeline Safety Act, Chapter 62, Article 14 NMSA 1978, the Motor Vehicle Act, the Ambulance Standards Act, the Cooperative Association Act, the Corporate Reports Act, the Professional Corporation Act, the Economic Development Corporation Act, the Nonprofit Corporation Act, the Business Corporation Act, the Limited Liability Company Act, the Foreign Business Trust Registration Act, Chapter 59A, Article 52, the Fireworks Licensing and Safety Act, the Conflict of Interest Act, and other applica-

ble law;

(2) to disqualify themselves at any point where their impartiality might be or is reasonably questioned;

(3) in all rate cases, to render a recommended decision as soon as practicable before the termination of the suspension period;

(4) to submit final recommended decisions subject to commission review and treatment as provided in this rule; the hearing examiner shall file the final recommended decision and provide copies to all parties, staff, each commissioner, and the advisory staff;

(5) except as to *ex parte* matters authorized by law and commission rules, no hearing examiner shall, in any proceeding to which they have been assigned, consult with any party on any substantive issue unless notice is given and an opportunity afforded all parties and staff to participate and respond.

[1.2.2.29 NMAC - Rp, 17 NMAC 1.2.32, 9-1-08]

1.2.2.30 PROCEDURAL AUTHORITY OF A SINGLE COMMISSIONER:

A. The chairman of the commission or any other commissioner shall preside at public hearings conducted by more than one commissioner.

B. The chairman of the commission or any other commissioner may issue any procedural orders prior to, during, or after a public hearing, including but not limited to orders or notices:

(1) designating a hearing examiner to preside in a proceeding;

(2) scheduling public hearings;

(3) clarifying the issues to be considered during a proceeding;

(4) in the absence of a quorum of commissioners and when prompt action is necessary to avoid the effectiveness of rate increases for customers of utilities or telecommunications providers by operation of law, suspending the operation of a rate increase request, provided that such procedural order is consistent with law and does not involve the final determination of the proceeding; and

(5) issuing orders temporarily suspending operating authorities pursuant to 18.3.2.30 NMAC.

C. The delegation to one commissioner of procedural authority shall not narrow the authority of the hearing examiner pursuant to this rule or to other rules or orders of the commission, unless the order by the hearing examiner is inconsistent with and superseded by the procedural order of the one commissioner.

D. A party may appeal, pursuant to 1.2.2.31 NMAC, a procedural order of a single commissioner.

[1.2.2.30 NMAC - N, 9-1-08]

1.2.2.31 INTERLOCUTORY APPEALS FROM RULINGS OF THE PRESIDING OFFICER:

A. General:

(1) Rulings of the presiding officer during the course of a proceeding may only be appealed as provided in this rule.

(2) The commission does not favor interlocutory appeals from the rulings of a presiding officer and expects that appeals will be taken only in extraordinary circumstances. The movant in any such appeal bears the burden of establishing grounds for review and reversal of a ruling of the presiding officer made in the course of the proceeding.

B. Motion to presiding officer to permit appeal:

(1) Any party or the staff may, during a proceeding, move that the presiding officer permit appeal to the commission from a ruling of the presiding officer. The motion must demonstrate that:

(a) the ruling involves a controlling question of law or policy as to which there is substantial ground for difference of opinion and that an immediate appeal to the commission from the ruling may materially advance the ultimate disposition of the proceeding; or

(b) circumstances exist which make prompt commission review of the contested ruling necessary to prevent irreparable harm to any person.

(2) The motion must be filed in writing within three (3) days of the date of an oral ruling or service of a written ruling.

(3) Upon receipt of a motion to permit appeal, the presiding officer shall determine according to the standards of Paragraph (1) of Subsection B of 1.2.2.31 NMAC whether to permit appeal of the ruling to the commission. The presiding officer need not consider any response to the motion.

(4) If the presiding officer permits appeal the presiding officer shall transmit to the commission copies of the ruling being appealed, if written, or a summary of the ruling being appealed, if oral, and any findings of fact, conclusions of law, or opinion relating thereto together with the moving party's motion under Paragraph (1) of Subsection B of 1.2.2.31 NMAC and any response permitted to the motion. The presiding officer may also, but is not required to, transmit to the commission a memorandum setting forth the relevant issues and an explanation of the rulings on the issues.

(5) If the presiding officer does not issue an order under Paragraph (3) of Subsection B of 1.2.2.31 NMAC within fifteen (15) days after the motion is filed, the motion is deemed denied. The movant may appeal denial to the commission within

three (3) days of:

(a) the date the motion is deemed denied;

(b) the date the motion is denied by oral ruling; or

(c) the date a written order denying the motion is served, appeal the denial to the commission.

C. Commission action:

(1) Unless the commission acts upon an appeal permitted by a presiding officer under Paragraph (4) of Subsection B of 1.2.2.31 NMAC or upon an appeal taken from the presiding officer's denial of a motion to permit appeal under Paragraph (5) of Subsection B of 1.2.2.31 NMAC within fifteen (15) days after the date the appeal is permitted under Paragraph (4) of Subsection B of 1.2.2.31 NMAC or an appeal is taken under Paragraph (5) of Subsection B of 1.2.2.31 NMAC, the ruling of the presiding officer will be reviewed in the ordinary course of the proceeding as if an appeal had not been made.

(2) In the event the commission decides in its discretion to hear an appeal, it may also in its discretion:

(a) review the motions, briefs, and other documents which were before the presiding officer when the presiding officer issued the order being appealed;

(b) require that the presiding officer transmit to the commission a memorandum explaining the ruling being appealed;

(c) require submission of briefs by staff and the parties; or

(d) direct such other submissions as will assist in its consideration of the issues.

D. Appeal not to suspend proceeding: Any decision by a presiding officer to permit appeal or by the commission to hear an appeal under the provisions of this rule governing interlocutory appeals from rulings of the presiding officer will not suspend the proceeding unless otherwise ordered by the presiding officer or the commission.

[1.2.2.31 NMAC - Rp, 17 NMAC 1.2.33, 9-1-08]

1.2.2.32 PUBLIC HEARINGS:

A. Rights of staff, parties, and commenters:

(1) At any public hearing all parties and staff shall be entitled to enter an appearance, introduce evidence, examine and cross-examine witnesses, make arguments, and generally participate in the conduct of the proceeding.

(2) Commenters shall be entitled to make an oral or written statement for the record but such statement shall not be considered by the commission as evidence. Commenters are not parties and shall not

have the right to introduce evidence or examine or cross-examine witnesses, to receive copies of pleadings and documents, to appeal from any decisions or orders, or to otherwise participate in the proceeding other than by making their comments.

B. Duty to participate:

Except as otherwise provided in this rule or directed by the commission or presiding officer, parties or staff who fail to attend meetings, conferences, or public hearings scheduled or who otherwise fail to participate in the proceeding are deemed to have notice of, and waive their right to object to, all matters addressed, resolved, or determined in their absence.

C. Continuance:

(1) Staff or any party who desires a continuance shall move for a continuance immediately upon receipt of notice of public hearing or as soon thereafter as facts requiring such continuance come to their knowledge, stating in detail the reasons why a continuance is necessary and describing when the need for a continuance came to their knowledge.

(2) The commission or presiding officer, in passing upon a motion for a continuance, shall consider whether such motion was promptly made.

(3) The commission or presiding officer may grant such a continuance and may at any time order a continuance upon their own motion.

D. Appearances:

(1) **General:** Staff, parties, and commenters shall enter their appearances at the beginning of the public hearing by giving their names and addresses in writing to the reporter who will include the same in the record of public hearing. The presiding officer conducting the public hearing may in addition require appearances to be stated orally so that the identity and interest of all parties, staff, and others present will be known to those at the public hearing.

(2) **Termination of party status:** Notwithstanding any other provision of this rule pertaining to party status, the party status of any person failing to enter a written appearance, and if requested by the presiding officer, an oral appearance terminates at the close of the period for taking such appearances at the public hearing unless otherwise ordered by the commission or presiding officer. After entering an appearance neither staff nor a party shall be unrepresented at the public hearing unless excused by the presiding officer. The commission or presiding officer may impose appropriate sanctions for violation of this provision up to and including termination of party status.

E. Service of notice:

Following the entry of appearances at the public hearing, all notices, pleadings, and

orders thereafter served shall be served upon such attorneys or parties of record as defined in this rule entering an appearance, and such service shall be considered valid service for all purposes upon the party represented. Persons who have not appeared as parties may request to the commission to be mailed a copy of any final order at their own expense in any proceeding contemplated by this rule at which these persons have appeared as witnesses or commenters or have given written notification to the commission of their interest in the proceedings.

F. Failure to appear:

(1) At the time and place set for public hearing, if an applicant, petitioner, or complainant fails to appear without having obtained a continuance in the manner specified in Subsection C of 1.2.2.32 NMAC, the commission or presiding officer may dismiss or recommend dismissal of the petition, application, or complaint with or without prejudice or may upon good cause shown recess such public hearing for a further period to be set by the commission or presiding officer to enable said applicant, petitioner, or complainant to attend.

(2) At the time and place set for public hearing, if a respondent fails to appear without having obtained a continuance in the manner specified Subsection C of 1.2.2.32 NMAC, the commission or presiding officer may proceed with the public hearing as scheduled and enter such orders disposing of the case as may be proper according to the evidence adduced, and the respondent failing to appear will be presumed to have waived the right to refute or rebut such evidence and otherwise present further evidence. The commission or presiding officer may upon good cause shown recess such public hearing for a further period to be set by the commission or presiding officer to enable said respondent to attend.

G. Conduct at public hearings:

(1) All parties, staff, counsel, commenters, and spectators shall conduct themselves in a respectful manner. Demonstrations of any kind at public hearings shall not be permitted. Any disregard by parties, staff, attorneys, or other persons of the rulings of the commission or presiding officer on matters of order and procedure may be noted on the record and treated as provided in Sections 59A-52-24, 62-10-9, 62-12-4, 63-7-23, 63-9-19, 63-9A-20, 63-9B-14, 65-2A-32, 65-2A-34, 63-9H-14 or 70-3-19 NMSA 1978, or as provided in the New Mexico rules of civil procedure for the district courts.

(2) The commission or presiding officer may at their discretion adjourn, recess, or continue any public hearing in case the conduct of witnesses, spectators, or other persons interferes with the proper and

orderly holding of such public hearing and for any other cause or circumstance which may prevent the proper conduct of such public hearing.

(3) The commission or presiding officer may at their discretion limit the time for providing direct testimony or cross-examination at any public hearing if necessary to promote the proper and orderly management of such public hearing.

H. Consolidated public hearings: The commission, upon its own motion or upon motion of staff or a party, may order two or more proceedings involving a similar question of law or fact to be consolidated for public hearing where rights of staff, the parties, or the public interest will not be prejudiced by such procedure and where such consolidation will not confuse the issues.

I. Joint public hearings: To the extent authorized by law, the commission may participate jointly in any hearing with any federal, state, or other regulatory agency. In joint formal proceedings the participating agencies shall agree upon the rules of procedure to be followed. Any person entitled to appear in a representative capacity before either agency involved in the joint public hearing may appear in a joint public hearing.

J. Telephonic public hearings. Public hearings may be conducted by telephone or video conference at the discretion of the commission or presiding officer.

[1.2.2.32 NMAC - Rp, 17 NMAC 1.2.34, 9-1-08]

1.2.2.33 ORDER OF PRESENTATION AND RECEIPT OF EVIDENCE: Evidence will ordinarily be received in the order prescribed in this section unless otherwise directed by the commission or presiding officer. In hearing several proceedings upon a consolidated record, the presiding officer shall designate the order of presentation.

A. Investigation on motion of the commission:

- (1) respondent;
- (2) intervenors;
- (3) staff; and
- (4) rebuttal by respondent.

B. Applications and petitions:

- (1) applicant or petitioner;
- (2) intervenors;
- (3) staff; and
- (4) rebuttal by applicant and petitioner.

C. Formal complaints:

- (1) complainant;
- (2) respondent;
- (3) intervenors;
- (4) staff; and
- (5) rebuttal by complainant.

D. Order to show cause:

- (1) staff;
- (2) intervenors;
- (3) respondent; and
- (4) rebuttal by staff;

E. Order to cease and desist.

- (1) staff;
- (2) respondent, and
- (3) rebuttal by staff.

F. In other public hearings, at the discretion of the presiding officer.

[1.2.2.33 NMAC - Rp, 17 NMAC 1.2.35, 9-1-08]

1.2.2.34 TRANSCRIPTS:

A. Record of proceedings and testimony: A full and complete record of all proceedings before the commission or presiding officer in any formal public hearing and all testimony shall be taken down by a reporter appointed by the commission.

B. Copies of transcripts: Transcripts may be requested by any party or by staff at the inception of the public hearing or their preparation otherwise directed by the commission or presiding officer. Any party other than the commission or its staff who requests and receives transcripts shall pay the specified costs to the preparer of the transcript. If such receipt is earlier than the date on which the commission or staff would otherwise receive transcripts, the preparer shall deliver the commission's and staff's copies to the commission and staff on the earlier date.

C. Corrections: Suggested corrections to the transcript or record must be offered within thirteen (13) days after the transcript is filed in the proceeding except for good cause shown, and such suggestion shall be in writing and served upon each party, staff, the official reporter, and the presiding officer. Failure to timely file suggested corrections without good cause shown constitutes a waiver of objections to the transcript.

(1) Objections to the suggested corrections shall be made in writing within thirteen (13) days from the filing of the suggestions. The commission or presiding officer shall, with or without public hearing, determine what changes, if any, shall be made in the record.

(2) If no objection is made to the suggested corrections, the presiding officer may in their discretion direct that the corrections be made and the manner of making them.

D. Citation form: When referring to the record in briefs and other documents, staff and the parties shall cite to the transcript using the reporter's pagination, e.g., Tr. (transcript page number).

[1.2.2.34 NMAC - Rp, 17 NMAC 1.2.36, 9-1-08]

1.2.2.35 RULES OF EVIDENCE:

A. General:

(1) Subject to the other provisions of this rule, all relevant evidence is admissible which, in the opinion of the presiding officer, is the best evidence most reasonably obtainable, having due regard to its necessity, competence, availability, and trustworthiness.

(2) In passing upon the admissibility of evidence the presiding officer shall give consideration to, but shall not be bound by, the New Mexico rules of evidence which govern proceedings in the courts of this state. The presiding officer shall also give consideration to the legal requirement that any final decision on the merits be supported by competent evidence.

B. Testimony under oath: All testimony to be considered by the commission or presiding officer in formal public hearings except matters officially noticed or entered by stipulation shall be made under oath.

C. Stipulation as to facts:

(1) The parties and staff in any proceeding before the commission or presiding officer may, by stipulation in writing filed or entered in the record, agree upon the facts or any portion thereof involved in the controversy, which stipulation shall be binding upon the parties and staff entering into the stipulation and may be regarded and used by the commission or presiding officer as evidence at the public hearing. It is desirable that the facts be thus agreed upon wherever practical. The commission or presiding officer may, however, require proof or evidence of the facts stipulated to, notwithstanding the stipulation of the parties and staff.

(2) In the event the parties and staff stipulate to certain facts as part of a proposed settlement of the case, and the settlement is rejected, the stipulations of fact entered for purposes of the settlement will not be binding upon the parties or used as evidence in any subsequent public hearing on the merits unless all signatories thereto agree to refile the stipulations of fact.

D. Administrative notice:

(1) The commission or presiding officer may take administrative notice of the following matters if otherwise admissible under Subsection A of 1.2.2.35 NMAC:

(a) rules, regulations, administrative rulings, published reports, licenses, and orders of the commission and other governmental agencies;

(b) contents of certificates, permits, and licenses issued by the commission;

(c) tariffs, classifications, schedules, and periodic reports regularly established by or filed as required or authorized by law or order of the commission;

(d) decisions, records, and transcripts in other commission proceedings;

(e) state and federal statutes;

(f) decisions of state and federal courts;

(g) generally recognized technical and scientific facts; and

(h) matters of which the courts of this state may take judicial notice.

(2) In addition the commission or presiding officer may take administrative notice of the results of their own inspection of any physical location or condition involved in the proceeding, and may take administrative notice on the record of the results of the commission's previous experience in similar situations and general information concerning a subject within the commission's expert knowledge.

(3) Parties and staff requesting that administrative notice be taken of documents or portions of documents or of the contents thereof must submit those documents or portions of documents to the commission or presiding officer in the form of exhibits except as may otherwise be provided in this rule.

(4) The commission or presiding officer may take administrative notice whether requested or not subject to appropriate objection under Subsection L of 1.2.2.35 NMAC. If staff or a party requests that administrative notice be taken, the commission or presiding officer must be provided the necessary information.

(5) Matters noticed are admitted into evidence to the same extent as other relevant evidence.

E. Resolutions: Resolutions, properly authenticated, of the governing bodies of cities, towns, counties and other municipal corporations, and of chambers of commerce, commercial or mercantile boards of trade, agricultural or manufacturing societies, and other civic organizations will be received in evidence if relevant. Such resolution shall be received subject to rebuttal by adversely affected staff or parties as to the authenticity of the resolution. Recitals of fact contained in resolutions shall not be deemed proof of those facts.

F. Official records: An official rule, report, order, record, or other document prepared and issued by any governmental authority may be introduced into evidence. In cases where such official records, otherwise admissible, are contained in official publications or publications by nationally recognized reporting services and are in general circulation and readily accessible to all parties and staff, they may be introduced by reference unless the presiding officer directs otherwise, provided that proper and definite reference to the record in question is made by the party

or staff offering the same.

G. Commission files: Papers and documents on file relevant to the proceeding may be introduced into evidence by reference to number or date or by any other method of identification satisfactory to the presiding officer unless the presiding officer directs that the paper or document or a summary thereof be presented for the record in the form of an exhibit. If only a portion of any such paper or document is offered in evidence, the part so offered shall be presented for the record in the form of an exhibit.

H. Records in other proceedings: In case any portion of the record in any other proceeding before the commission or presiding officer is admissible for any purpose and is offered in evidence, a true copy of such portion may be presented for the record in the form of an exhibit.

I. Prepared testimony:

(1) Prepared written testimony shall be received in evidence with the same force and effect as though it were stated orally by the witness. All witnesses must be present at the public hearing and shall adopt, under oath, their prepared written testimony, subject to cross-examination and motions to strike unless the witness's presence at public hearing is waived by the commissioner or presiding officer upon notice to and without objection from staff and the parties.

(2) Unless the commission or presiding officer directs otherwise, testimony in written form shall be prepared in accordance with the following guidelines:

(a) the cover page shall contain the case caption and number and the name of the witness;

(b) all pages are to be typed or machine printed and double-spaced;

(c) the top, bottom, and left-hand margins shall be at least one and one-half (1-1/2) inches;

(d) the name of the witness and the case number, if then known, shall be typed at the top center of each page two (2) inches from the edge;

(e) the page number for each page shall be typed at the bottom center one (1) inch from the edge;

(f) a square of approximately one and one-half (1-1/2) inches in the upper right-hand corner of each page shall be left clear for commission use; and

(g) testimony shall contain line numbers on the left-hand side of the page.

(3) Prepared testimony shall be included in the record as an exhibit.

J. Exhibits:

(1) Use of data in exhibits:

(a) When supporting exhibits consist of tables of data or graphs, all formulae, equations, or other methodology

used to derive the data shall be included as part of the supporting exhibit.

(b) If data used in supporting exhibits are derived from or supported by complex computerized analyses, working copies of the computer models may be included on a diskette compatible with the commission's current computer capabilities, in lieu of printed material.

(2) **Size of exhibits:** Except by special permission of the presiding officer, no specially prepared exhibits offered as evidence shall be of greater size, when folded, than eight and one-half (8-1/2) inches by eleven (11) inches.

(3) **Marking of exhibits:** All exhibits shall be marked numerically in the order of introduction by the moving party or staff. To the extent practicable all exhibits, including those to be introduced on cross-examination, shall be marked before the start of public hearings on the day the witness will be examined thereon.

(4) Designation of part of document as evidence:

(a) When relevant and material matter offered in evidence by any party or staff is embraced in a book, paper, or document containing other matter not material or relevant, the party or staff offering the same must plainly designate the matter so offered.

(b) If other matter is in such volume as would unnecessarily encumber the record, such book, paper, or document will not be received in evidence but may be marked for identification, and, if properly authenticated, the relevant or material matter may be read into the record, or, if the presiding officer so directs, a true copy of such matter in proper form shall be received as an exhibit and like copies delivered by the party or staff offering the same to all other parties and staff appearing at the public hearing.

(c) All parties and staff shall be afforded an opportunity to examine the book, paper, or documents and to offer in evidence in like manner other portions thereof if found to be material and relevant.

(5) **Abstracts of documents:** When documents are numerous and it is desired to offer in evidence more than a limited number of such documents as typical of the others, an abstract shall be prepared and offered as an exhibit giving other parties to and staff in the proceeding reasonable opportunity to examine the abstract and the documents.

(6) **Summaries of documents:** Where a document being offered into evidence is voluminous, the presiding officer may direct that a summary be prepared and offered as an exhibit giving other parties to and staff in the proceeding reasonable opportunity to examine the summary and

the document. The presiding officer may require that the summary be offered as an exhibit in addition to the summarized document or in lieu thereof.

(7) Copies of exhibits:

(a) When exhibits not attached to pleadings as required by this rule are offered in evidence, the original shall be furnished to the reporter.

(b) The party or staff offering exhibits shall also furnish a copy to each commissioner or hearing examiner sitting, advisory staff if in attendance, each party, and the staff unless such copies have previously been furnished or the presiding officer directs otherwise.

(c) The proponent shall, to the extent practicable, furnish the required copies to the reporter, the commissioners or hearing examiner, advisory staff, parties, and staff before the start of the public hearings on the day said proponent intends to offer the exhibits into evidence.

K. Additional evidence:

At any stage of the proceeding the commission or presiding officer may require the production of further evidence upon any issue. Such evidence may, at the discretion of the commission or presiding officer, be in writing or presented orally. All parties and the staff will be given an opportunity to reply to such evidence submitted and cross-examine the witness under oath.

L. Objections:

(1) Any evidence offered in whatever form shall be subject to appropriate and timely objection. When objection is made to the admissibility of evidence, such evidence may be received subject to later ruling by the commission or presiding officer.

(2) The commission or presiding officer their discretion either with or without objection may exclude inadmissible, incompetent, cumulative, or irrelevant evidence or order the presentation of such evidence discontinued.

(3) Parties or staff objecting to the introduction of evidence shall briefly state the grounds of objection at the time such evidence is offered.

(4) The evidence to be admitted at public hearing shall be material and relevant to the issue. Formal exceptions to rulings are not necessary and need not be taken.

M. Offers of proof: An offer of proof for the record may be made and shall consist of a statement of the substance of the evidence to which objection has been sustained. The commission or presiding officer may require offers of proof to be submitted in writing in question and answer form.

N. Rebuttal evidence:

(1) Rebuttal evidence is evidence which tends to explain, counteract, repel, or disprove evidence submitted by another

party or by staff. Evidence which is merely cumulative or could have been more properly offered in the case in chief is not proper rebuttal evidence.

(2) Staff or a party wishing to offer rebuttal testimony shall at the close of their opponent's direct case move the commission or presiding officer to allow introduction of rebuttal testimony. The movant shall indicate the nature of the evidence sought to be adduced and demonstrate why it is proper rebuttal testimony.

(3) The commission or presiding officer may permit or require rebuttal evidence to be submitted in prepared form in accordance with this rule prior to its introduction.

[1.2.2.35 NMAC - Rp, 17 NMAC 1.2.37, 9-1-08]

1.2.2.36 PROPOSED FINDINGS AND CONCLUSIONS AND BRIEFS:

A. Proposed findings and conclusions:

(1) **Notice:** The presiding officer may require all parties of record and the staff to file proposed forms of order, including proposed findings and conclusions, at the close of testimony in the proceeding. The presiding officer shall immediately fix the time in which the proposed order shall be filed.

(2) Contents:

(a) The party or staff submitting a proposed order shall clearly identify themselves on the first page of the order.

(b) Each proposed finding of fact and conclusion of law shall be clearly and concisely stated and numbered.

(c) Each proposed finding of fact shall show specifically, by appropriate transcript reference, the evidence which supports the proposed finding unless otherwise permitted by the presiding officer.

(d) Proposed findings and conclusions should be kept to the minimum needed and may reflect the party's or staff's position but shall not be used to argue that position.

(3) Failure to file; dismissal:

The commission may dismiss with or without prejudice any proceeding where the staff or the party who initiated such proceeding fails to comply with this rule.

B. Briefs and oral argument; right to file or argue:

(1) The presiding officer may require the filing of briefs or the presentation of oral argument or both by staff and the parties. Requests for filing of briefs or oral argument shall be made before or at the close of the public hearing and may be made in writing or orally on the record.

(2) The parties and staff shall be given an opportunity to make argument, upon request, but the manner of presenta-

tion, whether written, oral, or both shall be at the discretion of the presiding officer.

(3) Presiding officers may also at their discretion set page limits for briefs, limit the time allocated to each party and to staff for oral argument, or conduct an oral argument by telephone conference call.

(4) Any issues raised in a contested public hearing that are not argued in a post-hearing brief will not be considered unless consideration will not prejudice the due process rights of other parties and the commission or presiding officer in their discretion decides to consider such issues.

C. Time of filing:

(1) Proposed orders and briefs:

(a) Unless otherwise ordered by the presiding officer, parties and the staff shall have twenty (20) days after the date the complete transcript of the public hearing is filed with the commission to file whatever proposed orders and briefs are required by the presiding officer.

(b) Response briefs may be filed thirteen (13) days after service of the opening briefs unless otherwise ordered by the presiding officer.

(c) Replies to response briefs shall not be filed without leave of the commission or presiding officer. Replies to response briefs shall be filed within thirteen (13) days of service of the response, or such other time period as the commission or presiding officer may prescribe.

(2) **Enlargement:** A motion for enlargement of time to file a proposed order or brief must be filed no later than three (3) days prior to that time as set out in Paragraph (1) of Subsection C of 1.2.2.36 NMAC except for good cause shown.

D. Filing and service of proposed orders and briefs: All proposed orders and briefs shall be filed and must be accompanied by a certificate of service. The original and five (5) copies shall be filed unless otherwise ordered by the commission or presiding officer.

E. Briefs, contents generally:

(1) Briefs shall be concise and shall include transcript citations for each statement of fact or transcript reference in the form required by Subsection D of 1.2.2.34 NMAC.

(2) Briefs shall contain a table of contents with page references and a list of authorities cited.

(3) Argument regarding an issue shall include a brief statement of the position of each party and of staff regarding that issue.

F. Reconciliation statements:

(1) Unless the commission or presiding officer directs otherwise, each brief filed in a rate case shall contain a reconciliation statement setting forth in dollars the

final position of the staff or party filing the brief. The reconciliation statement shall be in a simple and concise form and, to the extent necessary for the type of rate regulation applicable, shall set forth:

(a) the claimed rate base for the regulated entity showing test year figures per book, adjustments, and adjusted test year figures (if rate base items are at issue the statement shall set forth on a separate sheet the contested items and their dollar effect on rate base);

(b) an income statement showing operating revenues and expenses with test year figures per book, adjustments, and adjusted test year figures (if any expense items are at issue the statement shall set forth on a separate sheet the contested expense or revenue items in detail and the dollar effect on total company expenses or revenues of their allowance);

(c) the capital structure of the company (if there is no actual capital structure, any proposed imputed capital structure, the ratio of each type of capital to total capital, and the cost and weighted cost of each shall be shown; this schedule shall show the dollar effects of the requested return upon revenue requirements);

(d) a computation of projected state and federal taxes on adjusted figures based on statutory rates or other applicable rates; and

(e) a computation of the claimed revenue deficiency.

(2) If the information required by Paragraph (1) of Subsection F of 1.2.2.36 NMAC is clearly set forth in schedules in evidence, such schedules may be appended to the brief in lieu of a separate reconciliation statement. If staff or a party adopts the position of another party or of staff, the party or staff may state whose position is adopted rather than file a separate duplicative reconciliation statement.

(3) The company must provide a proof of revenue statement.

(4) The parties or staff may, on sheets separate from those needed for the reconciliation statement required by Paragraph (1) of Subsection F of 1.2.2.36 NMAC, show details of adjustments by account numbers, give short explanations or reasons for the adjustments, and show where these adjustments require adjustments elsewhere. The parties and staff may also give citations to the transcript to show where the requested adjustment is supported by the record.

[1.2.2.36 NMAC - Rp, 17 NMAC 1.2.38, 9-1-08]

1.2.2.37 COMMISSION ORDERS, EXCEPTIONS, AND REHEARINGS:

A. Commission orders:

(1) The commission will issue its order in writing in every proceeding. The order shall contain separately stated findings of fact and, in the commission's discretion, conclusions of law, or combined findings and conclusions. The commission may in its discretion issue an oral decision prior to the issuance of its written order. The timeliness of applications for rehearing and notices of appeal shall be calculated from the date the commission issues its written order. The date a written order is issued is the date when the written order, signed under the seal of the commission, has been filed with the chief clerk or the chief clerk's designee.

(2) The commission may adopt a hearing examiner's recommended decision. If a recommended decision is adopted in its entirety the commission's order shall so state. Where the only changes between the commission order and the hearing examiner's decision are those to correct grammatical or typographical errors, the commission's order shall so state.

(3) The commission may issue an order which makes reference to the recommended decision and indicate disagreements with the hearing examiner and the commission may make further or modified findings and conclusions based on the record.

B. Issuance of recommended decisions: A hearing examiner shall issue a recommended decision. The recommended decision shall be served on all parties to and the staff in the proceeding and shall contain separately stated findings of fact and conclusions of law.

C. Exceptions to recommended decisions:

(1) Filing requirements:

(a) Unless otherwise ordered by the commission or presiding officer exceptions may be filed by staff or by any party within thirteen (13) days after the recommended decision is issued.

(b) Except by prior written approval of the commission or presiding officer, exceptions shall be no longer than forty (40) pages. A summary of argument identifying with particularity and numbering the points excepted to of no more than five (5) pages shall be included with the exceptions and does not count toward the forty (40) page limit.

(c) Unless otherwise ordered by the commission or presiding officer, responses to exceptions may be filed within eight (8) days after the exceptions have been filed. Except by prior written approval of the commission or presiding officer, responses to exceptions shall be no longer than thirty-five (35) pages. A summary of argument of no more than three (3) pages shall be included with a response and does

not count toward the thirty-five (35) page limit.

(d) Replies to responses to exceptions shall not be filed without leave of the commission or presiding officer. Except by prior written approval of the commission or presiding officer, replies to responses shall be no longer than fifteen (15) pages. A summary of argument of no more than two (2) pages shall be included with a reply and does not count toward the fifteen (15) page limit. Replies to responses to exceptions shall be filed within thirteen (13) days of service of the response, or such other time period as the commission or presiding officer may prescribe.

(e) Any exception, response, or reply ten (10) pages long or longer shall include a table of contents listing the points made and authorities relied on. A table of contents shall not count toward any page limitation.

(2) **Contents:** Responses shall not raise for the first time matters which were not raised in the exceptions of a party or the staff. Exceptions and any responses must specifically set forth:

(a) the precise portions of the proposed decision to which the exception is taken or response to exception is made;

(b) the reason for the exception or response;

(c) authorities on which the party or staff relies and specific citations to the record in the form required by Subsection D of 1.2.2.34 NMAC.

(d) In rate cases, reconciliation statements containing the information listed in Subsection F of 1.2.2.36 NMAC.

(3) **Copies:** Exceptions and responses shall be filed and be accompanied by a certificate of service. The original and five (5) copies shall be filed unless otherwise ordered by the commission or presiding officer.

D. Oral argument to commission after recommended decision: Any party or staff may petition the commission for oral argument after the issuance of a recommended decision. Such request may be included in a brief on exceptions or a response but must be filed no later than the last day to file responses. The commission in its discretion may allow oral argument. If it allows oral argument, it may in its discretion conduct the argument by telephone conference call.

E. Reopening proceedings:

(1) **Motion to reopen:** Before the issuance of a commission order or after the issuance of a recommended decision, staff or a party to a proceeding may file a motion to reopen the proceeding for the taking of additional evidence.

(2) **Allegations:** Such motion

shall specify those facts claimed to constitute grounds in justification thereof, including material changes of fact or law alleged to have occurred since the conclusion of the public hearing, and shall contain a brief statement of proposed additional evidence and an explanation as to why such evidence was not previously produced.

(3) Responses: Within thirteen (13) days following the service of any motion to reopen staff or any other party may file responses thereto.

(4) Commission may reopen: The commission on its own motion may at any time reopen any proceeding when it has reason to believe that conditions of fact or law have so changed as to require, or that the public interest requires, the reopening of such proceeding.

F. Rehearing:

(1) Motion for rehearing:

(a) Except as otherwise provided in Sections 62-10-16 and 62-11-1 NMSA 1978, after an order has been issued by the commission in a proceeding staff or any party to the proceeding may within ten (10) days after the issuance of the order move for rehearing of the order with respect to any matter determined in the proceeding.

(b) The motion shall specify the matters upon which the movant requests rehearing and the ground or grounds on which the movant considers the order to be unlawful, unjust, or unreasonable with regard to each such matter.

(2) Responses: Any party or staff may file a response in writing within five (5) days, or within thirteen (13) days if Sections 62-10-16 and 62-11-1 NMSA 1978 apply, which opposes or supports the motion for rehearing. Replies to responses shall not be permitted without leave of the commission or presiding officer.

(3) New evidence: A motion for rehearing may seek modification of the order without introduction of additional evidence. If the movant or any party or staff who opposes or supports the motion seeks to introduce additional evidence on any matter, the new evidence must be specified and must be supported by affidavit and a statement of the reasons why the new evidence was not previously introduced. Any new evidence furnished in support of the motion or response shall be considered by the commission only for purposes of the commission's decision on the motion and shall not be considered as evidence pertaining to the order that the commission previously had issued.

(4) Effect of filing motion: The filing of a motion for rehearing shall not excuse staff or a party from complying with or obeying any order or any requirement of an order of the commission, nor shall it operate in any manner to stay or postpone the enforcement thereof except as the com-

mission may by order direct as provided by law.

(5) Oral argument: If the commission in its discretion grants oral argument on a motion for rehearing of the commission's order, said order shall not thereby be vacated.

(6) Disposition of motion for rehearing:

(a) Except as otherwise provided in Section 62-10-16 NMSA 1978, the commission may grant or deny the motion at any time within twenty (20) days after the final order has been issued and prior to the expiration of the period prescribed for filing of responses. If the commission does not act on a motion for rehearing within twenty (20) days after the final order has been issued, the motion shall be deemed denied.

(b) The commission may limit the rehearing to some or all of the matters raised in the motion or may expand the rehearing to include other matters determined in the proceeding.

(c) On rehearing the commission in its discretion may receive some or all of the new evidence specified in the motions or responses subject to cross-examination, may expand the rehearing to include additional evidence, or may restrict the rehearing to modification of its order without introduction of new evidence.

(d) If the rehearing is limited to modification of the order without introduction of new evidence, all parties and staff will have an opportunity to oppose or support the proposed modification, but the rehearing will be decided without oral argument or public hearing unless the commission directs otherwise.

(e) If the commission grants the motion for rehearing in whole or in part, the order being reheard shall be deemed vacated and no order or decision at that time shall exist in the proceeding.

(7) New order: After any rehearing the commission shall enter a new order which may incorporate by reference any portion of the previously issued order which the commission had vacated.

G. Errata notice:

(1) The commission, the commission chairman, or, in the absence of the chairman any other commissioner, may correct typographical errors, omissions, or other non-substantial errors in commission orders through the issuance of errata notices. A presiding officer may also correct typographical errors, omissions, or other non-substantial errors in their orders through the issuance of errata notices. The issuance of an errata notice shall not affect the finality of the decision or order corrected.

(2) A party to a formal proceeding or staff may correct typographical errors, omissions, or other non-substantial errors in

its pleadings or documents through the filing of an errata notice, which shall conform to the rule governing pleadings.

H. Notice of appeal:

Notices of appeal of commission decisions shall be filed pursuant to applicable statutes, including but not limited to Section 53-13-2 NMSA 1978, Section 59A-52-22 NMSA 1978, Section 62-11-1 NMSA 1978, Section 63-9-16 NMSA 1978, Section 63-9A-14 NMSA 1978, Section 63-9B- 9 NMSA 1978, Section 63-9H-12 NMSA 1978, Section 70-3-15 NMSA 1978, Section 65-2A-35 NMSA 1978, and Section 63-7-1.1 NMSA 1978.

I. Docketing of submissions in compliance with and motions for variances from final orders:

(1) Submissions in compliance with and motions for variances from commission final orders shall be filed under the same case number as that of the final order. A certificate of filing and service stating that the compliance submission has been filed shall be filed and served on staff and all other parties to that case. Motions for variances shall be served on staff and all parties to the case.

(2) Requests for extensions of time to meet compliance provisions contained in final orders of the commission must be in writing and must explain why an extension of time is being requested. Requests shall be filed under the same case number as that of the final order. The chief of staff has the authority to grant such requests.

[1.2.2.37 NMAC - Rp, 17 NMAC 1.2.39, 9-1-08]

1.2.2.38 DISQUALIFICATION:

A. Disqualification of hearing examiner:

(1) A hearing examiner, other than a commissioner, designated by the commission to preside in a proceeding, may, upon his or her own motion under Paragraph (2) of Subsection E of 1.2.2.29 NMAC or upon written request and approval of the commission, disqualify himself or herself.

(2) Any party or staff may file a motion to disqualify and remove a hearing examiner other than a commissioner. Such motion shall be supported by an affidavit setting forth the alleged grounds for disqualification. A copy of the motion and affidavit shall be served by the movant on the hearing examiner whose removal is sought and the hearing examiner shall respond within ten (10) days from such service. If the hearing examiner does not disqualify himself or herself or respond to the motion within ten (10) days, then the commission shall promptly determine the validity of the grounds alleged and take appropriate action.

(3) A hearing examiner, other than a commissioner, may be disqualified for violation of the code of conduct adopted by the commission.

B. Disqualification of commissioner:

(1) A commissioner may, upon their own motion or upon written request, disqualify themselves from participating in any proceeding.

(2) Any party or staff may file a motion to disqualify and remove a commissioner from participating in a proceeding.

(a) Such motion shall be supported by an affidavit setting forth the alleged grounds for disqualification.

(b) A copy of the motion and affidavit shall be served by the movant on the commissioner whose removal is sought and the commissioner shall respond within ten (10) days from such service.

(c) The response shall be considered a final order for purposes of appeal. Until otherwise provided by law, no commissioner shall rule on a motion to disqualify any other commissioner.

(3) A commissioner may be disqualified for violation of the code of conduct adopted by the commission. [1.2.2.38 NMAC - Rp, 17 NMAC 1.2.40, 9-1-08]

1.2.2.39 COMMISSION CODE OF CONDUCT: The conduct of commissioners and all employees of the commission shall be governed by the code of conduct adopted by the commission pursuant to Section 10-16-11 NMSA 1978 of the Governmental Conduct Act unless inconsistent with Sections 8-8-17, 8-8-18 and 8-8-19 NMSA 1978. [1.2.2.39 NMAC - Rp, 17 NMAC 1.2.41, 9-1-08]

1.2.2.40 VARIANCE:

A. An petitioner may request a variance from a requirement of any commission rule or order.

B. A petition for variance shall be supported by an affidavit signed by an officer of the applicant or person with authority to sign for the applicant.

C. Such petition may include a motion that the commission stay the affected portion of the rule or order for the transaction specified in the motion.

D. The commission may, at its discretion, require an informal conference or formal evidentiary public hearing prior to making its determination.

E. A petition for variance shall:

(1) identify the section of the rule or order from which the variance is requested;

(2) describe the situation that

necessitates the variance;

(3) describe the effect of complying with the rule or order on the applicant if the variance is not granted;

(4) describe the result the variance will have if granted; and

(5) describe how the proposed alternative will achieve the purpose of the rule, and why it is in the public interest.

[1.2.2.40 NMAC - Rp, 17 NMAC 1.2.39-Subsection I, 9-1-08]

HISTORY OF 1.2.2 NMAC:

Pre NMAC History:

NMPUC Rule 110, Rules of Practice and Procedure, filed 10/4/93 (by former Public Utility Commission);

SCC 78-2, Order (no number), Docket No. 857, In the Matter of the Adoption of Rules of Practice and Procedure for all Cases Before the N.M. SCC, filed 10/24/78;

SCC 85-11, Rules of Procedure of New Mexico State Corporation Commission, filed 10/15/85 (by former NM State Corporation Commission).

History of Repealed Material:

17 NMAC 1.2, Public Utilities and Utility Services, Utilities General Provisions, Utility Division Procedures (filed 12/14/98) repealed 9-1-08.

18.1.2 NMAC, Transportation and Highways, Transportation General Provisions, Transportation Division Procedures (filed 12/10/02) repealed 9-1-08.

Other History:

NMPUC Rule 110, Rules of Practice and Procedure (filed 10/4/93) and SCC 85-11, Rules of Procedure of New Mexico State Corporation Commission (filed 10/15/85) were renumbered, reformatted, amended and replaced by 17 NMAC 1.2, Public Utilities and Utility Services, Utilities General Provisions, Utility Division Procedures, effective 12/31/98.

That applicable portion of 17 NMAC 1.2, Public Utilities and Utility Services, Utilities General Provisions, Utility Division Procedures (filed 12/14/98) and 18.1.2 NMAC, Transportation and Highways, Transportation General Provisions, Transportation Division Procedures (filed 12/10/02) were renumbered, reformatted, amended and replaced by 1.2.2 NMAC, General Government Administration, Administrative Procedures, Public Regulation Commission Rules of Procedure, effective 9-1-08.

NEW MEXICO PUBLIC REGULATION COMMISSION

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES

CHAPTER 1 UTILITIES GENERAL PROVISIONS

PART 2 UTILITY APPLICATIONS

17.1.2.1 ISSUING AGENCY:

Public Regulation Commission.

[17.1.2.1 NMAC - Rp, 17 NMAC 1.2.1, 9-1-08]

17.1.2.2 SCOPE: This rule applies to applications for approval of certificates of public convenience and necessity, securities, and new rates filed by utilities pursuant to the Public Utility Act, Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978. [17.1.2.2 NMAC - Rp, 17 NMAC 1.2.2, 9-1-08]

17.1.2.3 STATUTORY AUTHORITY: Paragraph (1) of Subsection B of 8-8-4 NMSA 1978, and 62-8-3 NMSA 1978.

[17.1.2.3 NMAC - Rp, 17 NMAC 1.2.3, 9-1-08]

17.1.2.4 DURATION: Permanent.

[17.1.2.4 NMAC - Rp, 17 NMAC 1.2.4, 9-1-08]

17.1.2.5 EFFECTIVE DATE: September 1, 2008, unless a later date is cited at the end of a section.

[17.1.2.5 NMAC - Rp, 17 NMAC 1.2.5, 9-1-08]

17.1.2.6 OBJECTIVE: To establish procedures for filing applications for certificates of public convenience and necessity, new rates, and securities pursuant to the Public Utility Act.

[17.1.2.6 NMAC - Rp, 17 NMAC 1.2.6, 9-1-08]

17.1.2.7 DEFINITIONS: As used in this rule:

A. advice notice means a listing by a utility of proposed changes in tariff schedules and proposed effective dates issued to the public and filed with the commission; and

B. new rates means either a change in an existing rate or rates or the institution of a rate or rates where none had existed previously.

[17.1.2.7 NMAC - Rp, 17 NMAC 1.2.7, 9-1-08]

17.1.2.8 APPLICATIONS RELATING TO SECURITIES:

A. Annual informational financing filing:

(1) For purposes of this section, the term "utility" shall include each person subject to Subsection B of Section 62-6-4 NMSA 1978 and each electric, gas, or combination utility subject to the jurisdiction of the commission.

(2) Each rural electric cooperative other than a generation and transmission cooperative shall not be required to file, correct or update an annual information filing, but shall file contemporaneously with the commission copies of all documentation submitted to the rural electrification administration supporting any loan application to that agency. The documents shall include, but are not limited to, a power requirements study, a financial forecast, and an engineering work plan.

(3) To assist the commission in reviewing applications relating to securities within the thirty (30) days required by statute, each utility shall file with the commission on an annual basis the information required by this rule.

(a) Such information shall be filed by the utility in the form of a written statement plus any pertinent exhibits. Such written statements and exhibits shall be filed by the utility with its annual report and cover the twelve month period between the filing of its current annual report and the date its next annual report is due to be filed.

(b) The commission or presiding officer may, subsequent to the filing of the statement, require that the utility attend a conference with staff and other parties to review the filing and discuss the utility's financing plan. The filing and any conference held are for informational purposes and no actions taken or statements made by staff shall be deemed approval of an issuance of securities or in any way bind the commission or staff.

(4) A utility, for good cause, shall have a reasonable opportunity to cure its failure to file its annual informational financing filing in a timely manner and to cure any deficiencies contained in an annual informational financing filing. A utility has the duty to discover and cure any such deficiencies at the earliest possible time. A utility may also request, for good cause, an extension of time in which to make the annual filing.

(5) A utility which fails to make its annual informational financing filing may be subject to the imposition of sanctions as provided in Sections 62-12-1 NMSA 1978 et seq. and such other sanctions as are authorized by law. An application relating to securities may be dismissed if the utility's annual informational financing filings are not current and if the utility

has not demonstrated good cause for its failure to make its annual filing when due.

(6) The following information must be provided in the annual informational financing filing:

(a) a general description of the anticipated annual capital requirements with an explanation of the amount which will be provided internally and the amount to be provided externally;

(b) a general description of all known and projected securities to be issued, assumed, or guaranteed during the twelve (12) month period between the filing of the utility's current annual report and the date its next annual report is due to be filed;

(c) the capital structure in dollar and percentage amounts expected to be achieved by the utility upon issuance of each of the known and projected securities, if approved by the commission;

(d) in the case of investor-owned utilities with common stock outstanding, a list of all stock plans available to employees, investors, or consumers; the number of shares issued by the utility under each plan; and the proceeds to the utility therefrom and any discounts available;

(e) the status of the securities described in the applications of the utility filed or approved during the reporting period preceding the period covered by the current report.

B. Applications to issue, assume, or guarantee securities:

(1) Except as otherwise provided in Subsection E of 62-6-6 NMSA 1978, before issuing, assuming or guarantying any securities, or creating a lien on its property situated within New Mexico, each utility or person subject to Subsection B of Section 62-6-4 NMSA 1978 shall file an application, and receive the commission's approval, regarding such transactions. Applications relating to securities shall conform to the requirements of this rule regarding pleadings and shall include in written form direct testimony and supporting exhibits.

(2) Testimony shall explain the proposed transactions and specifically address in detail any features which may have significant impact on ratepayers or the commission's ability to regulate the utility.

(3) Drafts of all available transaction documents shall be filed with the application. Investment memoranda, prospectuses, information or registration statements or other documents produced to describe the transactions to potential funding sources shall also be included, if available.

(4) The proposed contents of transaction documents shall be summarized and included in testimony.

(a) Summaries shall specify those terms and conditions of the transaction that are firm.

(b) If any terms are not firm, ranges for interest rates and dollar amounts involved in the transactions and alternative terms and conditions of the transactions being negotiated shall be summarized in the application.

(c) Such terms shall include, but not be limited to, interest rates, maturities, terms of call and restrictions, necessity for security, manner of sale, and proposed purchasers.

(d) The commission or presiding officer may require more information.

(e) The utility shall serve notice of the filing of the application relating to securities on the attorney general at the time it files the application with the commission.

(5) The utility shall, to the extent that the annual informational financing filing is no longer accurate or that new information has been obtained which would have been included in the filing if known at the time of filing, include in its direct testimony and supporting exhibits a corrected or updated version of the annual informational financing filing, which document shall also be submitted in duplicate and separately as a compliance filing.

(6) The application shall show whether the financing for which approval is sought was reported in the annual informational financing filing and, if it was not reported, include a statement of the utility's reasons for not having reported it. Failure to report in the annual filing the financing for which approval is sought may be grounds for dismissing the application, except where the utility has demonstrated good cause for the omission.

(7) Final documents shall be submitted when available following the close of the transaction. Every change from the documents presented before the commission in the application to issue securities shall be identified.

C. Procedure upon receipt of application relating to securities:

(1) Upon receipt of an application relating to securities, the application will automatically be assigned on a rotating basis to a hearing examiner employed by the commission who shall preside over the proceedings and take all actions necessary and convenient thereto within the limits of his or her authority and 17.1.2.8 NMAC, unless otherwise ordered by the commission.

(2) The commission or presiding officer shall then determine whether or not a hearing should be required pursuant to Section 62-6-7 NMSA 1978 or should be held for good cause shown pursuant to Subsection B of Section 62-6-8 NMSA 1978.

(3) In the event the commission or presiding officer determines that a public

hearing is not required, the commission will take public comment and dispose of the application at an open meeting.

(4) The commission will in all cases involving applications to issue securities dispose of such applications within thirty (30) days from the date of filing unless for good cause the commission or presiding officer determines and orders that a longer period is required.

D. Notice of filing:

(1) A utility filing an application relating to securities shall, at its expense, publish notice of the filing in a newspaper of general circulation available in the county where the principal New Mexico office of the utility is located, as directed by the presiding officer. The notice must appear at least once. The applicant shall ensure that an affidavit of publication is filed promptly with the commission upon publication of the notice.

(2) The notice required by Paragraph (1) of Subsection D of 17.1.2.8 NMAC shall include the following information:

(a) a statement of the nature, amount, and purpose of the filing of the application and the date of its filing;

(b) a statement that the commission is required by law to act promptly on the application;

(c) a statement of the date, time, and place of the hearing on the application or the open meeting at which comments will be taken and a further statement that any persons desiring to comment on the application or to intervene in the proceeding should contact the commission for confirmation of the hearing or meeting date, time, and place, since hearings and open meetings are on occasion rescheduled;

(d) a statement that those persons desiring to intervene in a proceeding must file a motion to intervene under Subsections A and B of 1.2.2.23 NMAC before the commencement of the hearing, or by the date established by the commission or presiding officer;

(e) a statement that any interested person may appear at the time and place of hearing and make a written or oral comment at the hearing pursuant to this rule without becoming an intervenor, but that the comment will not be considered as evidence in the proceeding;

(f) a statement that the utility's application together with any exhibits and related papers may be examined at the main New Mexico office of the utility or at the offices of the commission in Santa Fe and indicating the addresses and telephone numbers of both the utility and the commission;

(g) a statement that this rule will apply to the proceeding except as modified

by order of the commission or presiding officer in the proceeding; and

(h) a statement that further information can be obtained by contacting either the utility or the commission.

(3) At the time of the filing of the application the applicant shall submit a copy of the notice to the commission in the form prescribed by the commission. At the time of submission the notice shall be complete except as to the date, time, and place of the hearing or open meeting on the application, which information will be provided to the utility before it sends the notice to the newspaper for publication. The commission or presiding officer shall issue the form of notice to be published.

(4) The commission or presiding officer may by order require such other notice as is deemed proper under the circumstances.

(5) Failure to comply with the provisions of this Subsection D of 17.1.2.8 NMAC may result in a dismissal of the application.

E. Securities subject to Section 62-6-8.1 NMSA 1978:

(1) A utility proposing to issue, assume, or guarantee securities which are payable at periods of not more than eighteen (18) months after the date thereof and over which the commission has jurisdiction by virtue of Section 62-6-8.1 NMSA 1978 shall file with the commission a written statement setting forth:

(a) the anticipated total amount of such securities to be issued, assumed, or guaranteed during the twelve (12) month period between the filing of the utility's current annual report and the date its next annual report is due to be filed;

(b) the general purposes for which such securities will be issued, assumed, or guaranteed;

(c) the anticipated manner in which such securities will be refunded; and

(d) the status of the securities described in the written statement of the utility filed the prior fiscal year.

(2) Such statement shall be filed by the utility with its annual report and cover the twelve (12) month period between the filing of its current annual report and the date its next annual report is due to be filed.

(3) Not later than ten (10) days after such statement is filed with the commission, the commission may, upon a finding of good cause, set a hearing, but otherwise no hearing concerning such filing shall be required. The filing shall be deemed approved by the commission in the absence of an order setting such a hearing, which approval shall, at the request of the utility, be evidenced by confirming letter of the chief of staff.

(4) Notwithstanding the setting of

a hearing, the utility shall be authorized to proceed with the proposed financing program until otherwise directed by the commission. The provisions of Subsection A of 17.1.2.8 NMAC, but not those of Subsections B, C and D of 17.1.2.8 NMAC, shall apply to the securities described in Subsection E of 17.1.2.8 NMAC.

[17.1.2.8 NMAC - Rp, 17 NMAC 1.2.51, 9-1-08]

17.1.2.9 APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY:

A. Applications for certificates: Applications for certificates of public convenience and necessity shall conform to the requirements of this rule regarding pleadings and shall include in written form all direct testimony and supporting exhibits intended to be introduced into evidence.

B. Notice to other utilities: The utility making the application for a certificate of public convenience and necessity shall determine whether Extensions, Improvements, Additions, and Cooperative Agreements Between or Among Utilities, 17.5.440 NMAC, requires notification to any other public utility and, if so, the applicant shall serve a copy of such application on such other public utility. Failure to so notify such other utility may be grounds for dismissal of the application.

C. Procedure upon receipt of application for certificate of public convenience and necessity: The commission, upon receipt of an application for a certificate of public convenience and necessity, shall fix a time for a public hearing.

D. Notice of hearing: Prior to the initial hearing on any application for a certificate of public convenience and necessity, the notice of such initial hearing shall be published in a newspaper of general circulation in the counties in which the applicant seeks to construct or operate the proposed facilities. Such publication must appear once, at least twenty (20) days prior to the date of initial hearing. The applicant shall bear the cost of such publication.

[17.1.2.9 NMAC - Rp, 17 NMAC 1.2.52, 9-1-08]

17.1.2.10 APPLICATIONS FOR NEW RATES:

A. General: This section applies to all filings seeking new rates, except as otherwise provided by statute or by commission rule or order.

B. Filings seeking new rates:

(1) Proceedings involving new

rates shall be initiated by advice notice notifying the commission of the utility's intent to implement new rates by a certain date which may not be less than thirty (30) days after the filing of such notice.

(a) The utility shall file with the advice notice direct testimony and supporting exhibits in written form, including any rate filing package required by commission rule or order.

(b) In a general rate case the utility shall also file a petition setting forth the concise statement, supported by direct testimony and exhibits, required by Subparagraph (c) of Paragraph (2) of Subsection B of 17.1.2.10 NMAC.

(c) All advice notices shall conform to the requirements of Schedule of Rates, Rules, and Forms, 17.1.210 NMAC.

(d) The utility shall serve a copy of the advice notice on the attorney general and all counsel of record and *pro se* parties in the utility's last rate case at the time it files the advice notice with the commission but need not accompany the copy with testimony and exhibits.

(2) The utility shall submit the following with its filing.

(a) A copy of the notice to be sent to ratepayers and published pursuant to Subsection C of 17.1.2.10 NMAC. At the time of submission the notice shall be complete except as to the date, time, and place of the hearing and the deadline for intervention, which information will be provided to the utility before it sends the notice to newspapers and ratepayers. The notice shall be in the form prescribed by the commission and shall be subject to approval by the commission or presiding officer as to form. The commission or presiding officer shall provide the date, time, and place of the hearing and the deadline for intervention and issue its approval of or corrections to the form of notice within twenty (20) days after the commission issues its order suspending the proposed rates and assigning the matter to a hearing examiner, if such assignment is made.

(b) A statement comparing the new rate or rates with the present rate or rates, which statement shall contain the information required in Subparagraphs (a) through (e) of Paragraph (2) of Subsection C of 17.1.2.10 NMAC.

(c) In general rate cases, a concise statement supported by the direct testimony and exhibits identifying:

(i) whenever the utility proposes to change the ratemaking treatment upon which the present rates are based, each proposed change, the reasons for the proposed change, and the impact in dollars of the proposed change on the rates being requested; and

(ii) any extraordinary event or circumstance, known or projected,

which materially alters the utility's operating or financial condition from the condition existing during the utility's test period in its last rate case.

(d) A concise statement setting forth its compliance or failure to comply with each part of the commission's final order in each of the utility's cases decided during the preceding five (5) years. Combination utilities shall provide this statement with respect to the utility operation for which the rate change is being sought. This requirement shall not apply in the event the utility elects to make an annual informational financing filing on a date certain each year setting forth the requested information.

(3) Failure to abide by the requirements set forth in this subsection may be deemed grounds for rejection of the filing.

C. Notice of hearing:

(1) **Notice to general public:** A utility filing for new rates shall cause notice of the hearing on the proposed rates to be published in a newspaper of general circulation available in every county where the utility provides service and in such other counties as the commission or presiding officer by order may determine.

(a) Such notice shall be published within forty (40) days of the date of the order of the commission or presiding officer setting the date, time, and place of the hearing and approving the form of notice.

(b) The notice shall appear at least once and shall contain the information set forth in Paragraph (2) of Subsection C of 17.1.2.10 NMAC.

(c) The utility making the application for new rates shall bear the cost of publication.

(d) The utility shall ensure that an affidavit of publication is filed promptly upon publication of the notice.

(2) **Notice to ratepayers:** Every utility seeking a change in rates shall notify affected customers of the pendency of the application for new rates. Such notice shall be given no later than forty (40) days after the date of the order of the commission or presiding officer setting the date, time, and place of the hearing and approving the form of notice and shall include the following information:

(a) the amount of the change requested, in both dollar amounts and percentage change;

(b) the customer classifications to which the rate change will apply;

(c) the present rates and the proposed rates for each customer class to which the proposed rates would apply;

(d) for residential customers without demand meters, the present bill and the anticipated bill for each of the following levels of consumption or closest reasonable

equivalent units:

(i) for electric service: 0 kwh, 250 kwh, 500 kwh, 750 kwh, 1,000 kwh, and 2,000 kwh;

(ii) for gas service: 0 therms, 50 therms, 100 therms, 200 therms, and 300 therms;

(iii) for water service: 0 gallons, 5,000 gallons, 10,000 gallons, 15,000 gallons, and 25,000 gallons;

(iv) for sewer service: 0 gallons, 5,000 gallons, 10,000 gallons, 15,000 gallons, and 25,000 gallons, or fixed charge if applicable;

(e) a statement that the rate changes stated by class and, for residential customers, by consumption levels are for informational purposes only and that the final rate design may vary the rates ultimately charged to each class and for each consumption level;

(f) the commission case number assigned to the proceeding and the schedule ordered by the commission or presiding officer for the proceeding including the date, time, and place of hearing as well as other procedural dates established by the commission or presiding officer together with the further statement that interested persons should contact the commission for confirmation of the hearing date, time, and place since hearings are on occasion rescheduled;

(g) the statement that any interested person may examine the rate filings together with any exhibits and related papers that may be filed at the main office of the utility or at the offices of the commission in Santa Fe, and indicating the addresses and telephone numbers of both the utility and the commission;

(h) a statement that a person may intervene by filing a motion for leave to intervene pursuant to this rule on or before a date to be stated in the notice, such date to correspond to the deadline established by this rule or ordered by the commission or presiding officer pursuant to this rule;

(i) a statement that any interested person may appear at the time and place of hearing and make a written or oral comment at the hearing pursuant to this rule without becoming an intervenor, but that the comment will not be considered as evidence in the proceeding;

(j) a statement that this rule will apply to the proceeding except as modified by order of the commission or presiding officer in the proceeding;

(k) a statement that further information may be obtained by contacting either the utility or the commission.

(3) The commission or presiding officer may by order require such other notice of the proceeding as is deemed proper under the circumstances.

(4) Failure to comply with this

section may result in a dismissal of the application.

[17.1.2.10 NMAC - Rp, 17 NMAC 1.2.53, 9-1-08]

HISTORY OF 17.1.2 NMAC:

Pre NMAC History: This rule was previously filed with the state records center as: PSC-GO 1 (Case No. 1373), In the Matter of the Adoption of Proposed General Order 30 & Proposed 2nd Revised General Order 1; Order Adopting 2nd Revised General Order No. 1; 2nd Revised General Order Number 1, Rules of Practice and Procedure of NMPSC, filed 8/14/78; G.O. 1, Third Revised General Order Number 1 - Rules of Practice and Procedure, filed 12/17/86; NMPSC Rule 110, Rules of Practice and Procedure, filed 6/20/88; NMPUC Rule 110, Rules of Practice and Procedure, filed 10/4/93; SCC 78-2, Order (no number), Docket No. 857, In the Matter of the Adoption of Rules of Practice and Procedure for all Cases Before the N.M. SCC, filed 10/24/78; SCC 85-11, Rules of Procedure of New Mexico State Corporation Commission, filed 10/15/85.

History of Repealed Material: 17 NMAC 1.2, Public Utilities and Utility Services, Utilities General Provisions, Utility Division Procedures (filed 12/14/98) repealed 9-1-08.

Other History:

NMPUC Rule 110, Rules of Practice and Procedure (filed 10/4/93) and SCC 85-11, Rules of Procedure of New Mexico State Corporation Commission (filed 10/15/85) were renumbered, reformatted, amended and replaced by 17 NMAC 1.2, Public Utilities and Utility Services, Utilities General Provisions, Utility Division Procedures, effective 12/31/98. That applicable portion of 17 NMAC 1.2, Public Utilities and Utility Services, Utilities General Provisions, Utility Division Procedures (filed 12/14/98) was renumbered, reformatted, amended and replaced by 17.1.2 NMAC, Public Utilities and Utility Services, Utilities General Provisions, Utility Applications, effective 9/1/08.

NEW MEXICO PUBLIC REGULATION COMMISSION

This is an amendment to 1.2.3 NMAC, Section 7, effective September 1, 2008. This also amends the part name.

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION CHAPTER 2 ADMINISTRATIVE PROCEDURES PART 3 PUBLIC REGULATION COMMISSION EX PARTE COMMUNICATIONS

1.2.3.7 DEFINITIONS: As used in this rule:

A. advisory staff means a person hired by the chief of staff, with the consent of the commission, with expertise in regulatory law, engineering, economics or other professional or technical disciplines, to advise the commission on any matter before the commission, including a member of the commission's office of general counsel or an expert or staff hired by the chief of staff on a temporary, term or contract basis for a particular case, but not including persons hired by an individual commissioner who serve at the pleasure of that commissioner;

B. ex parte communication means a direct or indirect communication with a party or his representative, outside the presence of the other parties, concerning a pending rulemaking after the record has been closed or a pending adjudication, that deals with substantive matters or issues on the merits of the proceeding, including any attachments to a written communication or documents shown in connection with an oral presentation that deals with substantive matters or issues on the merits of the proceeding;

(1) ex parte communications do not include:

(a) statements made by commissioners, hearing examiners, or advisory staff that are limited to providing publicly available information about a pending adjudication or rulemaking after the record has been closed; or

(b) inquiries relating solely to the status of a proceeding, including inquiries as to the approximate time that action in a proceeding may be taken;

(2) ex parte communications include a status inquiry which states or implies:

(a) a view as to the merits or outcome of a rulemaking after the record has been closed or a pending adjudication;

(b) a preference for a particular party, or a reason why timing is important to

a particular party;

(c) a view as to the date by which a proceeding should be resolved; or

(d) a view which is otherwise intended to address the merits or outcome, or to influence the timing, of a pending adjudication or rulemaking after the record has been closed;

C. hearing examiner means a person appointed by the commission pursuant to NMSA 1978 Section 8-8-14 to preside over any matter before the commission, including rulemakings, adjudicatory hearings and administrative matters, and provide the commission with findings of fact, conclusions of law, and a recommended decision on the matter assigned;

D. non-adjudicatory notice of inquiry means a proceeding commenced by the commission's issuance of a notice entitled "non-adjudicatory notice of inquiry" for the purpose of inquiring into issues of broad applicability to consumers or regulated entities, or to a class or type of consumers or regulated entities, with a view toward possible future rulemaking or other procedures where the proceeding does not directly concern a dispute between particular parties or company-specific regulatory issues;

[D] E. party, unless otherwise ordered by the commission, means:

(1) a person who has been given formal party status;

(2) a person who has submitted to the commission a filing seeking affirmative relief, including, but not limited to, an application, waiver, motion, tariff change or petition;

(3) a person who has filed a formal complaint, petition for order to show cause, petition for investigation or petition for notice of inquiry;

(4) the subject of a formal complaint, order to show cause, investigation or notice of inquiry;

(5) members of the general public, after the issuance of an order closing the record in a rulemaking proceeding; and

(6) staff of the commission's utility division, transportation division, or insurance division directed by statute to represent the public interest in a proceeding before the commission;

[E] E. pending adjudication means any matter docketed, or, in the case of a party represented by counsel, any matter that an attorney representing such party reasonably believes will be docketed, before the commission, including, but not limited to, formal complaint proceedings, show cause proceedings, investigations, notices of inquiry other than non-adjudicatory notices of inquiry, application proceedings, petitions, and any matter other than a rulemaking or a non-adjudicatory notice of

inquiry requiring decision or action by the commission.

[1.2.3.7 NMAC - N, 7-15-04; A, 9-1-08]

NEW MEXICO PUBLIC REGULATION COMMISSION

This is an amendment to 10.25.1 NMAC, Sections 11 and 12, effective September 1, 2008.

10.25.1.11 INSPECTION OF DOCUMENTS: Any person who wishes to inspect public records or other documents relating to fires shall ~~file a written~~ make a request to the fire marshal. The request shall meet the requirements of the Inspection of Public Records Act, ~~[Section 14-2-8]~~ Sections 14-2-1 through 14-2-12 NMSA 1978, and shall follow the procedure required by that law.

[10.25.1.11 NMAC - N, 11-15-07; A, 9-1-08]

10.25.1.12 REQUESTS FOR COPIES:

A. Filing of request. A person shall make a request in writing for copies of a document or report and shall list all documents or information requested. A request may be mailed or delivered as provided in 12.3.1.9 NMAC, or sent by facsimile to (505) 827-3778. If a person cancels a request within twenty-four (24) hours, the fire marshal shall not assess any fees.

B. Estimate of fees. When the fire marshal receives a request for copies, the fire marshal's office shall issue an informal estimate of fees. The fire marshal shall ~~copy five (5) pages at no charge, and shall charge ten cents (\$0.10) for each additional page~~ charge the fees enumerated in Subsection C of 1.2.2.8 NMAC, *Public Regulation Commission Rules of Procedure*.

C. Completion of request.

(1) If the person approves the estimate, the fire marshal shall prepare the copies within the time periods provided in the Inspection of Public Records Act, Section 14-2-1 et seq. NMSA 1978.

(2) When the requested documents are ready, the fire marshal shall provide a written statement of fees due and shall release the copies electronically upon payment of all fees due.

[10.25.1.12 NMAC - N, 11-15-07; A, 9-1-08]

NEW MEXICO PUBLIC REGULATION COMMISSION

This is an amendment to 18.3.2 NMAC, Section 22, effective September 1, 2008.

18.3.2.22 ISSUANCE OF A CERTIFICATE OR PERMIT:

A. Within five (5) business days after the date the director certifies that the applicant has complied with all qualifying provisions, the commission shall ~~[-over the signature of a single commissioner,]~~ adopt the final order approving the application. The director will then sign and issue a certificate or permit.

B. The commission will issue the certificate or permit in the name of the person owning the motor carrier, if the motor carrier is a sole proprietorship; in the name of the partners, if the motor carrier is a partnership; in the name of the limited liability company if the motor carrier is a limited liability company; and in the name of the corporation, if the motor carrier is a corporation. No certificate or permit will be issued only in a "doing business as" name.

C. In addition to the requirements in Subsection D of NMSA 1978 Section 65-2A-8, a certificate or permit issued to an ambulance service shall specify:

- (1) the patient catchment area to be served, if different from the territory to be served; and
- (2) the level of EMS service to be provided.

D. Certificates issued to ambulance services shall be valid for the time period prescribed in NMSA 1978 Section 65-6-5.

[18.3.2.22 NMAC - Rp, 18.3.2.20 and 18.4.2.57 NMAC, 1-1-05; A, 9-1-08]

NEW MEXICO PUBLIC REGULATION COMMISSION

This is an amendment to 18.3.6 NMAC, Section 14, effective September 1, 2008.

18.3.6.14 CHANGES IN TARIFFS AND COMMON TARIFFS:

As used in this section, tariff includes a motor carrier agreement.

A. Application. A motor carrier that proposes to change its rates, terms and conditions of service, or general schedule, shall file an application for a change in tariff.

(1) An application for a change in rates shall include:

- (a) a proposed tariff including the proposed changes in rates;

(b) a balance sheet for the preceding fiscal year;

(c) an income statement for the preceding fiscal year;

(d) all documentary evidence which the applicant believes supports its proposed change in rates; and

(e) pre-filed direct testimony explaining why a change in rates is required for the motor carrier to achieve revenue levels that will provide a flow of net income adequate to support reasonable expense levels, including reasonable depreciation expense and repayment of a reasonable level of debt, and permit the raising of needed equity capital.

(2) An application for a change in terms and conditions of service or a change in a general schedule shall include:

(a) a proposed tariff including the proposed changes in terms and conditions of service or general schedule;

(b) a description of the proposed changes and an explanation as to why they are needed; and

(c) all evidence upon which the applicant intends to rely in support of its proposed changes in terms and conditions of service or general schedule.

B. Procedure. The commission shall review applications for a change in tariff in accordance with 18.3.2.16 through 18.3.2.20 NMAC.

C. Qualifying provisions.

If the commission finds that the applicant has met the statutory requirements in NMSA 1978 Sections 65-2A-20, 65-2A-21, and 65-2A-22 and 65-2A-23 if applicable, the commission shall issue an order conditionally approving the application for a change in tariff or ~~[motor carrier agreement]~~ common tariff. The applicant must, within the timeframe set forth in the order, comply with any qualifying provisions, terms, conditions, or limitations set forth by the commission in its order. If the applicant fails to timely comply with all qualifying provisions, the commission may dismiss the case without prejudice and close the docket.

D. Approval. Within five (5) business days after the date the director certifies that the applicant has complied with all qualifying provisions, the commission shall ~~[-over the signature of a single commissioner,]~~ issue an order approving the tariff change.

[18.3.6.14 NMAC - N, 12-30-02; A, 1-1-05; A, 9-1-08]

NEW MEXICO PUBLIC REGULATION COMMISSION

This is an amendment to 18.3.8 NMAC, Sections 9, 10, 11, and 16, effective September 1, 2008.

18.3.8.9 AMENDMENT OF A CERTIFICATE OR PERMIT:

A. Application. An applicant for amendment of a certificate or permit shall file:

(1) an application on the form prescribed by the director containing the information and documents required by 18.3.2.15 NMAC;

(2) copies of its current certificate or permit and all endorsements; and

(3) the fee required by NMSA 1978 Section 65-2A-36.

B. Procedure for commission review. The commission shall review an application for amendment of an existing certificate or permit in accordance with 18.3.2.15 through 18.3.2.19 NMAC.

C. Qualifying provisions. If the commission finds that the applicant for amendment of a certificate or permit has met the statutory requirements in NMSA 1978 Section 65-2A-14, the commission shall issue an order conditionally approving the application. Then, unless the commission prescribes a different period, the applicant must, within ninety (90) days from the date of the order, comply with all qualifying provisions set forth in 18.3.2.21 NMAC and with any other qualifying provisions, terms, conditions, or limitations set forth by the commission in its order. If the applicant fails to timely comply with all qualifying provisions, the commission may dismiss the case without prejudice and close the docket.

D. Issuance. Within five (5) business days after the date the director certifies that the applicant has complied with all qualifying provisions, the commission shall [~~over the signature of a single commissioner,~~] issue an endorsement to the existing certificate or permit. [18.3.8.9 NMAC - Rp, 18.3.8.9 NMAC, 1-1-05; A, 9-1-08]

18.3.8.10 LEASE OF ALL OR PART OF A CERTIFICATE OR PERMIT:

A. Application.

(1) A lessor-applicant shall file:

(a) an application on the form prescribed by the director;

(b) copies of its current certificate or permit and all endorsements;

(c) a complete description of all operating equipment to be leased;

(d) a showing that the proposed

lease is not being made to avoid any previously incurred taxes or legal obligations, or to circumvent any otherwise applicable requirements of these rules or the Motor Carrier Act; and

(e) a copy of the proposed lease, containing provisions:

(i) stating that the proposed lease may not go into effect until approved by the commission;

(ii) stating which party to the lease shall be responsible for complying with the qualifying provisions in 18.3.2.21 NMAC; and

(iii) specifying the term of the lease.

(2) A lessee-applicant shall file:

(a) an application on the form prescribed by the director containing the information and documents required by 18.3.2.15 NMAC, except that the lessee-applicant shall not be required to provide the affidavits or other evidence required by Paragraph (11) of Subsection A of 18.3.2.15 NMAC to show that the service is required by the public convenience and necessity;

(b) an application for amendment of a certificate or permit if the lessee-applicant seeks to change the type of service or the territory to be served;

(c) an application for a change in a tariff if the lessee-applicant seeks to change the rates or schedules for service;

(d) a showing that the proposed lease is not being made to avoid any previously incurred taxes or legal obligations, or to circumvent any otherwise applicable requirements of these rules or the Motor Carrier Act; and

(e) the fee required by NMSA 1978 Section 65-2A-36.

B. Procedure for commission review. The commission shall review an application for lease of all or part of an existing certificate or permit in accordance with 18.3.2.16 through 18.3.2.20 NMAC.

C. Qualifying provisions.

If the commission finds that the lessee-applicant for lease of a certificate or permit has met the statutory requirements in NMSA 1978 Section 65-2A-14, the commission shall issue an order conditionally approving an application for lease of all or part of a certificate or permit. Then, unless the commission prescribes a different period, the lessee-applicant must, within ninety (90) days from the date of the order, comply with all qualifying provisions set forth in 18.3.2.21 NMAC and with any other qualifying provisions, terms, conditions, or limitations set forth by the commission in its order. If the lessee-applicant fails to timely comply with all qualifying provisions, the commission may dismiss the case without prejudice and close the docket.

D. Issuance. Within five (5) business days after the date the director certifies that the lessee-applicant has complied with all qualifying provisions, the commission shall [~~over the signature of a single commissioner,~~] issue an order approving the application for lease of a certificate or permit.

[18.3.8.10 NMAC - Rp, 18.3.8.10 NMAC, 1-1-05; A, 9-1-08]

18.3.8.11 VOLUNTARY TRANSFER OF A CERTIFICATE OR PERMIT:

A. Application.

(1) The transferor-applicant shall file:

(a) an application on the form prescribed by the director;

(b) copies of its current certificate and all endorsements or permit;

(c) a joint affidavit on the form prescribed by the director, executed by the transferor-applicant and the transferee-applicant certifying that all accrued taxes, rents, wages of employees and all other indebtedness incident to the transferor-applicant's operations have been paid in full, or that the transferee-applicant will assume responsibility for paying them if they have not been paid in full;

(d) a complete description of all operating equipment to be transferred;

(e) a showing that the proposed transfer is not being made to avoid any previously incurred taxes or legal obligations, or to circumvent any otherwise applicable requirements of these rules or the Motor Carrier Act; and

(f) a tax clearance certificate from the New Mexico taxation and revenue department certifying that all state tax indebtedness incident to the transferor-applicant's operations has been paid in full.

(2) The transferee-applicant shall file:

(a) an application containing the items required by 18.3.2.15 NMAC, except that the transferee-applicant shall not be required to provide the affidavits or other evidence required by Paragraph (11) of Subsection A of 18.3.2.15 NMAC to show that the service is required by the public convenience and necessity;

(b) an application for amendment of a certificate or permit if the transferee-applicant seeks to change the type of service and the territory to be served;

(c) an application for a change in a tariff if the transferee-applicant seeks to change the rates or schedules for service;

(d) a showing that the proposed transfer is not being made to avoid any previously incurred taxes or legal obligations, or to circumvent any otherwise applicable requirements of these rules or the Motor

Carrier Act; and

(e) the fee required by NMSA 1978 Section 65-2A-36.

B. Procedure for commission review. The commission shall review an application for transfer of an existing certificate or permit in accordance with 18.3.2.16 through 18.3.2.20 NMAC.

C. Qualifying provisions. If the commission finds that the transferee-applicant for transfer of a certificate or permit has met the statutory requirements in NMSA 1978 Section 65-2A-14, the commission shall issue an order conditionally approving the application. Then, unless the commission prescribes a different period, the transferee-applicant must, within ninety (90) days from the date of the order, comply with all qualifying provisions set forth in 18.3.2.21 NMAC and with any other qualifying provisions, terms, conditions, or limitations set forth by the commission in its order. If the transferee-applicant fails to timely comply with all qualifying provisions, the commission may dismiss the case without prejudice and close the docket.

D. Issuance. Within five (5) business days after the date the director certifies that the transferee-applicant has complied with all qualifying provisions, the commission shall [~~over the signature of a single commissioner,~~] issue a new certificate or permit. [18.3.8.11 NMAC - Rp, 18.3.8.11 NMAC, 1-1-05; A, 9-1-08]

18.3.8.16 CANCELLATION OF A CERTIFICATE OR PERMIT:

A. Application. An applicant for cancellation of all or part of its certificate or permit shall file:

- (1) an application on the form prescribed by the director;
- (2) copies of its current certificate or permit and all endorsements it seeks to cancel in whole or in part; and
- (3) the date on which the applicant proposes to terminate all or part of its service.

B. Procedure for commission review. The commission shall review an application for cancellation of an existing certificate or permit in accordance with 18.3.2.16 and 18.3.2.17 NMAC, except that the applicant shall not be required to mail notice pursuant to Subsection C of 18.3.2.17 NMAC.

C. Issuance. The commission may [~~over the signature of a single commissioner,~~] issue an order approving an application for cancellation of a certificate or permit if the commission finds that cancellation of the certificate or permit would not be adverse to the public interest.

D. Disputed application. If the need for cancellation is disputed, the commission shall give the applicant an

opportunity to request a hearing. [18.3.8.16 NMAC - Rp, 18.3.8.15 NMAC, 1-1-05; A, 9-1-08]

NEW MEXICO PUBLIC REGULATION COMMISSION

This is an amendment to 18.3.9 NMAC, Section 8, effective September 1, 2008.

18.3.9.8 APPLICATION AND PRIOR APPROVAL REQUIRED:

A. Application. Prior to leasing equipment, household goods carriers and motor carriers of persons (except charter services and commuter services) must file an application for approval of an equipment lease with the commission. The application shall include:

- (1) one (1) copy of each proposed lease (or equipment interchange agreement);
- (2) proof that each vehicle to be leased has passed an annual vehicle safety inspection in accordance with 49 CFR Part 396 within the preceding twelve (12) months;
- (3) evidence that the proposed lease does not circumvent any law or rule pertaining to the status, service, classification of facilities, or rates of motor carriers; and
- (4) the fee required by NMSA 1978 Section 65-2A-36.

B. Procedure. The commission shall review applications for approval of equipment leases in accordance with 18.3.2.16 NMAC.

C. Qualifying provisions. If the commission finds that the proposed lease does not circumvent any law or rule pertaining to the status, service, classification of facilities, or rates of motor carriers, as required by NMSA 1978 Section 65-2A-24, the commission shall issue an order conditionally approving the proposed equipment lease. Then the applicant must, within the timeframe set forth in the order, comply with any qualifying provisions, terms, conditions, or limitations set forth by the commission in its order. If the applicant fails to timely comply with all qualifying provisions, the commission may dismiss the case without prejudice and close the docket.

D. Approval. Within five (5) business days after the date the director certifies that the applicant has complied with all qualifying provisions, the commission shall [~~over the signature of a single commissioner,~~] issue an order approving the equipment lease.

E. Disapproval. If the commission finds that the proposed equipment lease circumvents any law or rule pertaining to the status, service, classification

of facilities, or rates of motor carriers, the commission shall disapprove the proposed equipment lease.

[18.3.9.8 NMAC - Rp, SCC Rules 223.02, 223.03, and 223.05, 12-30-02; A, 1-1-05; A, 9-1-08]

End of Adopted Rules Section

Other Material Related to Administrative Law

NEW MEXICO DEPARTMENT OF GAME AND FISH

The New Mexico Department of Game and Fish Office is announcing the opening of a public comment period on the 2008 Biennial Review, as directed by the Wildlife Conservation Act [17-2-40, NMSA 1978]. Initial director recommendations are to uplist gray redbhorse from threatened to endangered and to down list (desert) bighorn sheep from endangered to threatened status. Comments regarding the biological and ecological evidence and the economic impacts, pertaining to the director's recommendations on the 2008 Biennial Review may be submitted and will be included in the public repository established under the Wildlife Conservation Act. Written comments pertaining to the biological and ecological evidence, submitted within 14 days of the announcement of the opening of the public comment period at the August 21st New Mexico Game and Fish Commission Meeting (State Bar of New Mexico, 5121 Masthead, NE, Albuquerque, NM 87199, 9:00am - 5:00pm) shall be considered by the commission in taking action on the director's recommendation. Comments will be taken from August 21-September 4, 2008. To obtain a copy of the report or to submit comments for inclusion in the public repository please contact Renae Held, P.O. Box 25112, Santa Fe, NM 87505, phone (505) 476-8101, fax (505) 476-8128, renae.held@state.nm.us

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

NOTICE OF PUBLIC HEARING

The Human Services Department will receive public comment for the New Mexico State plan for administration of the Temporary Assistance for Needy Families (TANF) and file the plan with the Federal Department of Health and Human Services, Administration for Children and Families (ACF). The hearing will be held at 9:00 am on Tuesday, October 14, 2008. The hearing will be held at the Income Support Division conference room, 2009 S. Pacheco St., Santa Fe, NM. The conference room is located in Room 120 on the lower level.

The Department proposes the New Mexico TANF State plan covering the period of January 1, 2009 to December 31, 2011. The

45-day comment period will begin August 29, 2008 and end at 5:00 P.M. on October 14, 2008. All comments received during the comment period will receive consideration for the New Mexico TANF State plan.

Individuals may submit written or recorded comments to the address below. Individuals may also submit comments electronically to: Vida.Tapia-Sanchez@state.nm.us.

A copy of the proposed TANF State plan is available as of August 29, 2008 on the Department's web site at: <http://www.hsd.state.nm.us/isd/ISDRegisters.html>. A copy of the proposed TANF State Plan can be requested by calling the Office of the Director, Income Support Division, in Santa Fe at 1-800-432-6217 or (505) 827-7250; or by writing to:

Human Services Department
Income Support Division
P.O. Box 2348
Pollon Plaza; Room 111
Santa Fe, NM 87504-2348

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact the Department toll free at 1-800-432-6217, TDD 1-800-609-4TDD (4833), or through the New Mexico Relay System toll free at 1-800-659-8331. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

NEW MEXICO COMMISSION OF PUBLIC RECORDS HISTORICAL RECORDS ADVISORY BOARD

Commission of Public Records
New Mexico State Records Center &
Archives
1205 Camino Carlos Rey
Santa Fe, New Mexico 87507

NOTICE OF REGULAR MEETING

The next meeting of the New Mexico Historical Records Advisory Board will be held on Thursday & Friday, September 25 & 26, 2008 from 9:00 a.m. to 5:00p.m. The meeting will be held at the Santa Fe New Mexican, located at 202 E. Marcy Avenue, Santa Fe, NM. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or serv-

ice to attend or participate in the meeting, please contact Randy Forrester at 505-476-7936 of the State Records Center and Archives at least one week prior to the meeting. Public documents, including the agenda and minutes will be available 24 hours before the meeting.

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

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rule making, proposed rules, adopted rules, emergency rules, and other similar material. The Commission of Public Records, Administrative Law Division publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978. For further subscription information, call 505-476-7907.